COPY SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **GLEN TAYLOR HELZER,** **Defendant and Appellant.**	**CAPITAL CASE** Case No. S132256

SUPREME COURT
FILED
AUG 26 2015
Frank A. McGuire Clerk
Deputy

Contra Costa County Superior Court
Case No. 012057-6
The Honorable Mary Ann O'Malley, Judge

RESPONDENT'S BRIEF

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
RONALD S. MATTHIAS
Senior Assistant Attorney General
GLENN R. PRUDEN
Supervising Deputy Attorney General
SARAH J. FARHAT
Deputy Attorney General
State Bar No. 228179
455 Golden Gate Avenue, Ste 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5866
Fax: (415) 703-1234
Email: Sarah.Farhat@doj.ca.gov
Attorneys for Respondent

DEATH PENALTY

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Appellant, Glen Taylor Helzer, was charged in Contra Costa County Superior Court case number 5-012057-6 with: conspiracy (Pen. Code, [1] § 182, subd. (a)(1); Count 1); the murder of Ivan Stineman (§ 187; Count 2); the murder of Annette Stineman (§ 187; Count 3); the murder of Selina Bishop (§ 187; Count 4); the murder of Jennifer Villarin (§ 187; Count 5); the murder of James Gamble (§ 187; Count 6); kidnapping for extortion (§ 209, subd. (a); Count 7 (Ivan Stineman) and Count 8 (Annette Stineman)); extortion (§§ 518/520; Count 9); first degree residential robbery (§§ 211/212.5, subd. (a); Count 10 (Ivan Stineman), Count 11 (Annette Stineman), and Count 16 (Mary Mozzochi)); first degree residential burglary (§§ 459/460, subd. (a); Count 12 (the Stinemans), Count 13 (William Sharp), and Count 15 (Mary Mozzochi)); attempted first degree residential robbery (§§ 211/212.5, subd. (a)/664; Count 14); false imprisonment by violence (§§ 236/237; Count 17); and possession of a controlled substance for sale (Health & Saf. Code, § 11378; Count 18).[2]

---

[1] All further statutory references are to the California Penal Code unless otherwise indicated.

[2] Co-defendants Justin Alan Helzer and Dawn Godman were also charged in Counts 1 through 12 and 18. (8CT 2971-2982.) Godman eventually entered a guilty plea to certain counts (including two additional counts, 19 and 20) and received a sentence of 25 years to life in prison, plus 12 years, 8 months in state prison, in exchange for her truthful testimony in this case. (3RT 726-742.)

(8CT 2971-2982.) Thirty-nine overt acts were alleged to support the conspiracy charge (8CT 2971-2974), and multiple special circumstances were alleged with the murder counts: felony murder (Counts 2 and 3)(8CT 2974-2976); witness killing (Count 4)(8CT 2976); and multiple murder (Counts 2 through 6)(8CT 2977). Further, it was alleged that appellant used a deadly or dangerous weapon, a knife, (§ 12022, subd. (b)(1)) in Counts 15, 16, and 17. (8CT 2980-2981.) Appellant initially pled not guilty and denied all the special allegations. (1RT 63, 245.)

On January 28, 2002, co-defendant Dawn Godman filed a cursory, two-page motion to suppress evidence, citing section 1538.5. (7CT 2680-2681.) On February 8, 2002, appellant filed a request to join in Godman's motion. (7CT 2706.) On November 19, 2002, Godman submitted for filing an "Omnibus Notice of Motion and Motion to Suppress Evidence and Traverse Various Search Warrants"[3] wherein she challenged a number of search warrants, including those executed at 5370 Saddlewood Court in Concord, a residence she shared with both appellant and his brother, co-defendant Justin Alan Helzer ("Helzer"). (8CT 3000-3279; 1RT 173-174.) On December 30, 2002, appellant filed a notice of intent to join in this motion. (9CT 3415.) Following extensive briefing, argument, and a

[3] Godman subsequently filed two supplemental pleadings supporting her motion to suppress evidence and traverse the search warrants. (10CT 3985-3991.)

multiple-day hearing that included testimony from Marin County Sheriff's Department Detective Steve Nash and Concord Police Sergeant Steve Chiabotti, the trial court denied the motions in their entirety. (9CT 3499-3500; 10CT 3980-3982, 3995; 1RT 246-332; 2RT 469-3RT 719.)

On March 5, 2004, appellant withdrew his previous pleas and denials and entered guilty pleas to all charges and admissions to all special allegations. (11CT 4419-4422; 5RT 1339-1392.) The trial court found that appellant's pleas were entered "knowingly, intelligently and freely with full knowledge of [appellant's] rights and the consequences of all those pleas," and accepted the pleas and admissions. (5RT 1370, 1392.) On March 8, 2004, all parties submitted letters or pleadings addressing severance of appellant's case from Helzer's case in light of appellant's guilty pleas. (11CT 4423-4435.) The trial court granted severance (11CT 4436, 4449; 5RT 1393-1415, 1429-1432), and ordered that Helzer's guilt and penalty trials proceed before appellant's penalty trial.[4] (11CT 4436-4437, 4449; 5RT 1494-1496, 1503-1504, 1510-1511.)

In the months that followed, there was extensive litigation in appellant's case over juror questionnaires, discovery issues, and in limine

---

[4] Helzer was found guilty and sentenced to death. His automatic appeal in California Supreme Court case number S132253 was dismissed after he died while in prison. (See http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1863931&doc_no=S132253.)

motions. The parties began taking evidence in appellant's penalty trial on November 5, 2004, after 11 days of jury selection. (7RT 1746 - 14RT 3284.) The prosecutor elicited testimony from 64 witnesses, and the defense called 22 witnesses. Following two closing arguments from each side (30RT 3363), and approximately two days of deliberation (see 30RT 6869, 6883), the jury returned verdicts sentencing appellant to death for each of the five murders charged. (30RT 6883-6884.) Appellant's motion to reduce the penalty to life without the possibility of parole was denied. (30RT 6903-6912.)

On March 11, 2005, appellant was sentenced to death on Counts 2, 3, 4, 5, and 6. (30RT 6933.) He was sentenced on the remaining counts as follows: on Count 1, 25 years to life in prison; on Counts 7 and 8, life without the possibility of parole; on Count 9, the middle term of 3 years; on Count 10, the middle term of 4 years; on Count 11, the middle term of 4 years; and on Count 12, the middle term of 4 years. These terms were stayed pursuant to section 654. (30RT 6928.) On Count 16 (designated the principle count), appellant was sentenced to the middle term of 4 years, plus an additional year for the weapon enhancement; on Count 13, the middle term of 4 years; on Count 14, the middle term of 2 years (stayed pursuant to section 654); on Count 15, the middle term of 4 years, plus an additional year for the weapon enhancement (stayed pursuant to section 654; enhancement stricken); on Count 17, the middle term of 3 years, plus

an additional year for the weapon enhancement (stayed pursuant to section 654; enhancement stricken); and on Count 18, the middle term of 2 years. The terms that were not stayed were ordered to run concurrent to Counts 2-6. (30RT 6929-6930.) Restitution was ordered as determined by the probation department, and the standard fines were imposed. (30RT 6930.) The determinate sentences were stayed pending this appeal. (30RT 6933.)

This appeal is automatic. (§ 1239, subd. (b); Cal. Rules of Court, rule 8.600(a).)

STATEMENT OF FACTS

I. PROSECUTION PENALTY-PHASE EVIDENCE

A. Background Evidence Leading up to "Children of Thunder" and the Murders of Ivan and Annette Stineman, Selina Bishop, Jennifer Villarin, and James Gamble

1. The Mormon Church

Several witnesses testified about the history of the Mormon Church (the Church of Jesus Christ of Latter Day Saints), and the principles and practices of members of the church. (See, e.g., 16RT 3606-3607, 3610 [Kelly Lord], 3696-3708 [Dawne Kirkland]; 19RT 4221-4244, 4251, 4280 [Brent Halversen].) People who knew appellant before the crimes committed in this case described him as being energetic, enthusiastic, charismatic, positive, achievement-oriented, outgoing, and social. (19RT 4289-4290; 20RT 4341.) At some point, appellant began to disagree with the direction of the Mormon Church's principles, had his own

interpretations of scriptures, and spoke about getting messages from "Spirit." (16RT 3669, 3678-3679; 19RT 4215, 4286; 20RT 4412, 4443, 4507; 21RT 4580, 4724, 4743-4745.) Appellant believed and told others that killing is sanctioned if it is God's will, and he cited passages from the Book of Mormon and from the Bible for support.[5] (19RT 4190; 20RT 4465.) He also talked about his belief that there was no right or wrong. (19RT 4284; 20RT 4343, 4378.) He believed all people had the potential to become gods and believed that he, himself, was close to becoming a god. (19RT 4287.)

Appellant also believed he was a prophet and was known to conduct "meetings" in the church parking lot with Helzer. (16RT 3693-3696, 3678; 20RT 4411, 4486.) Several of the church members who had attended these meetings did not return to that particular church/ward. (16RT 3696.)

During a fast and testimony meeting, appellant offered his "testimony" and spoke publicly about his hiatus from the church. (16RT 3692.) His appearance was "striking" – he wore a long black trench coat, had long, dark hair, had facial hair, and wore small, peculiar glasses. (16RT 3693; 19RT 4252-4253.) He said that he had received a call from church leadership about excommunicating him, but he felt a spiritual prompting to return and knew God wanted him to come back to avoid

---

[5] Specifically, he talked about Nephi and Laban from the Book of Mormon, and Agog from the Old Testament. (20RT 4465.)

excommunication. (16RT 3692.) However, appellant was eventually excommunicated from the Mormon Church. (16RT 3669.)

2. Morgan Stanley/Dean Witter

In 1992, appellant was hired as a financial advisor trainee at Morgan Stanley's Concord branch. (15RT 3557.) He was a "good, clean, Mormon kid, back from mission, vibrant, just a happy-go-lucky, dynamic young man, clean-cut[,]" and he was characterized as a "rising star" within the company. (15RT 3558, 3561.)

Appellant had approximately 200 clients, and Ivan and Annette Stineman were among them. (15RT 3442, 3573.) In the early 1990's, the Stinemans were retired and had a significant amount of money in stock holdings. (15RT 3440, 3442.) Appellant and the Stinemans developed an amiable relationship that extended outside the office. Appellant visited the Stinemans' home to help with finances, and he took the Stinemans and their daughter, Nancy Hall, on a river rafting trip. (15RT 3442-3443, 3445.) The Stinemans spoke fondly of appellant and thought he was a "nice young man." (15RT 3443.)

Around 1996, shortly after appellant was married and after the birth of his first daughter, he began to change. (15RT 3561.) He began smoking, coming into work late, and staying out late at night at clubs. (15RT 3562.) Clients began complaining that appellant was not returning their phone calls. (15RT 3563.) In response to the company's concerns,

appellant's attitude was that he was just taking a detour in life, but that he could handle it. (15RT 3564.) Appellant believed that when he was ready and through having fun, he would be able to come back and function as a financial advisor and a father. (15RT 3567.)

In August 1998, appellant left the firm.[6] (15RT 3444, 3446, 3570; 19RT 4150.) Appellant told several people that he was faking a psychiatric illness and had himself declared legally insane to collect disability payments and to avoid legal punishment. (16RT 3633-3634; 19RT 4177, 4192, 4301-4302, 4311; 20RT 4347, 4419, 4425; 23RT 5034-5035.) Appellant visited doctors to confirm the existence of the disability for Morgan Stanley. (20RT 4347.) In preparation for the doctors' visits, appellant would deliberately not shower or shave, and he would practice how to act in front of the doctors. (20RT 4347.) No one who knew him thought he was actually mentally ill. (See 19RT 4189, 4292; 20RT 4419.)

3. New age self-help programs: "Harmony" and "Impact"

Godman met appellant at an event sponsored by the Mormon Church in Walnut Creek in October or November 1997. (20RT 4438-4441.) Appellant had attended the Harmony/Impact programs, and recruited many people into them, including Godman in the Spring of 1999. (20RT 4445;

---

[6] He was formally terminated from employment sometime in 1999. (15RT 3570.)

see 16RT 3616, 3618; 20RT 4341, 4345, 4450.) She completed the program during the Summer of 1999. (20RT 4450.) After completing the program, Godman began seeing appellant more socially. (20RT 4447.) Appellant believed in something he called the "Principles of Magic," which contained 12 principles and purported to be "a way of living your life so that you're more in alignment with God and everything he would have you do." (20RT 4453-4454; see also 23RT 5189-5190.) Godman and appellant had extensive conversations about these principles, and, in order to remain close with appellant, Godman accepted them.[7] (20RT 4454.) Godman also believed appellant and Jesus Christ were brothers, and that appellant was a prophet of God. (20RT 4457, 4482.)

4. Drug abuse and dealing

Between 1996 and the time appellant was arrested, he had used marijuana, Ecstasy, and methamphetamine. (See 16RT 3800; 19RT 4165, 4188-4189, 4283-4284; 20RT 4344, 4407-4408; 21RT 4570, 4572, 4712-

[7] The Principles included, *inter alia*, "I am already perfect and therefore can do nothing wrong[,]" "There is no such thing as right and wrong[,]" "I am all powerful and therefore the creator of and accountable for everything that occurs in my life[,]" and "There is a higher power than mine, and that is my savior, Jesus Christ, the son of my Father." (20RT 4454-4456; see also 21RT 4650-4666.) "If you wanted to be around [appellant] you accepted his principles." (21RT 4658.) She never questioned him, and never talked to appellant about inconsistencies between the Twelve Principles and the Book of Mormon/Bible. (21RT 4670.) Appellant also had a conversation with Kelly Lord that included justifying criminal conduct. (See 16RT 3631-3632.)

4713; 22RT 4762; 23RT 5029.) Appellant sought to manufacture both Ecstasy and methamphetamine. (19RT 4178; 20RT 4356.) He contacted "Brandon," who knew how to manufacture Ecstasy, and they were "in negotiations." (19RT 4210.) And at some point, appellant and others cooked methamphetamine in a garage. (20RT 4356-4357.)

Appellant also sold Ecstasy, and talked about selling marijuana. (19RT 4303-4304.) Prior to and during 2000, appellant sold Ecstasy at raves and to individuals who would contact him. (19RT 4316; 20RT 4350, 4352, 4471; 23RT 5022, 5100, 5130.) Initially, appellant's then-girlfriend, Keri Mendoza (Furman), helped him sell it. (20RT 4352.) In February 2000, Godman joined them. (20RT 4352, 4471.) Later, one of his victims, Selina Bishop, would also help him. (17RT 3857-3858, 3898.)

5. "The Feline Club"/"Vibe Alive Girls"/"Intimacy" & "Dean Witter"

Between 1998 and 2000, Furman provided a substantial amount of the income used to support herself and appellant; indeed she was the primary source of income. (20RT 4390.) At one point, appellant slapped Furman on her bottom and referred to her as his "meal ticket." (19RT 4160.) Aside from living expenses, she loaned appellant money to help him sell Ecstasy. (20RT 4390.) Despite this, in 1999 and 2000, appellant was in significant debt. (20RT 4414; 22RT 4951.) Appellant wanted to be

"set for life," and he had several illicit money-making ideas to try to make that happen. (19RT 4162.)

"The Feline Club" was an idea appellant had late in 1998 as a "backup" to selling drugs. (19RT 4184-4185; 20RT 4363.) It was to be an escort service that Furman was in charge of putting together. (19RT 4186.) The idea was to throw parties where men could pay a lump sum of money to get into the party and then have their choice of the women in the room. (20RT 4358-4360, 4366.) The women who attended would be paid a certain amount of money. (20RT 4359.) Ecstasy would be made available. (20RT 4359.) Appellant wanted Furman to speak to dancers at the Gold Club in San Francisco, where she worked, about the idea and convince them to meet with him. (20RT 4350, 4358.) Furman never did. (20RT 4360.) There was also some discussion about importing girls from Brazil to work the parties.[8] (20RT 4392.)

"Vibe Alive Girls" and "Intimacy = In To Me See" were similar escort/prostitution schemes that progressed further in planning and execution.[9] (19RT 4162; 22RT 5024.) Appellant had business cards

---

[8] Appellant had served his Mormon mission in Brazil, knew someone there, and thought Brazilian women might want to come to the United States and make money. (20RT 4392.)

[9] There was, however, some testimony that "Intimacy" was appellant's version of couples' counseling. (20RT 4363-4364.) Apparently he had counseled his own mother and her boyfriend, sharing "himself as far

(continued...)

developed, and he and Godman worked out the financial projections and a point system for the women who worked the parties.[10] (20RT 4363-4364; 21RT 4686-4687.) They also created questionnaires for prospective women who would attend the parties. (20RT 4371-4374, 4495-4496; 23RT 5024.) The questionnaires contained morally questionable questions. (20RT 4371-4377.)

"Dean Witter" was another of appellant's money-making schemes. (See 20RT 4462.) Appellant would solicit the help of "a couple underage girls, and [Godman would] pose as their aunt, open up accounts for them, and to get a young stockbroker and put him in a situation in which he would have sex with these girls, not knowing they were underage," and then blackmail the company. (20RT 4462; 21RT 4631; 22RT 4764; 23RT 5033-5034.) Appellant would "train" the girls – they would go through the Harmony program and then spend time with appellant, when he would teach them how to sexually please a man. (22RT 4769; 23RT 5033.) They would settle the case for $20 million. (23RT 5034.)

(...continued)
as how he viewed things . . . and how he viewed relationships." (20RT 4363-4364.)

[10] There was also discussion that women who chose to have sex with the men who attended the parties would be paid $500; those who did not would be paid $300. (23RT 5024.)

6. Transform America/impact America

At some point prior to the summer of 1998, appellant came up with the idea of "Transform America." (See 19RT 4168, 4176.) The idea was to create "an organization of people who were committed to bring [the] Harmony [program] to the world." (20RT 4458; see also 20RT 4364; 19RT 4176; 16RT 3629.) The plan required an "inner core" of three people, one of which was appellant and the other two of which had to earn appellant's trust and be loyal to appellant.[11] (20RT 4458-4461; see 19RT 4190-4191; 20RT 4481; see also 20RT 4364-4365.) The "inner core" was originally appellant, Helzer, and Furman, but because appellant and Furman ended their relationship in December 1999 or January 2000, Godman became the third person. (20RT 4365, 4459-4461.) Appellant moved in

---

[11] One example of the kind of trust and loyalty appellant needed was if he killed someone and brought the body home, would the person cut them up and hide them for him without asking a single question. (19RT 4191.) Another was provided by Kelly Lord: appellant asked her if she would come and get him if she found out he had done something criminal and was in jail. (16RT 3633; see also 16RT 3650-3651.) He also asked her if she would break him out of a prison mental facility if he was incarcerated there. (16RT 3634.) Concomitantly, appellant was "very concerned about betrayal." (21RT 4691.) He told Godman that people who betrayed him "would eventually end up getting hurt." (20RT 4482; 21RT 4691.) Godman believed that if she betrayed appellant, he would go after her parents, her son, and eventually her. (20RT 4482.) Appellant spoke specifically of "taking care of" Olivia Embrey, Brandon Davids, and Furman. (21RT 4692.) Separately, when Lord confronted appellant about his drug use, he told her, "If Kelly gets in my way, she's fucked." (16RT 3643.) He also told Lord that if anyone betrayed him he would have to kill them. (16RT 3652.)

with Godman around February or March 2000. (20RT 4461.) They lived together in Godman's apartment in Martinez for about a month before moving to 5370 Saddlewood Court in Concord ("the Saddlewood residence"). (20RT 4461; 23RT 5025.) During this time, appellant spoke about "Children of Thunder." (20RT 4461.) Moving to the Saddlewood residence and setting up a base of operations was the first step of "Children of Thunder." (20RT 4466.)

7. "Children of Thunder"

"Children of Thunder" was a plan to extort money from one of appellant's past clients in order to fund Transform America and to bring about the second coming of Jesus Christ. (20RT 4462, 4483; 23RT 5027.) Appellant believed that the second coming would be preceded by darkness and apostasy and to avoid the darkness, he would sacrifice a few to save billions. (See 20RT 4483; 21RT 4663-4664.) Specifically, appellant planned to "take one of [his] past clients . . . and extort them for their money that was in their [brokerage] account, to kill them and to have another individual take – deposit the money in another individual's account, and then have that individual withdraw the money and give it to [appellant]." (20RT 4463.) The person who would be used to withdraw the money would be a young female, and would likewise be killed. (*Ibid.*)

Appellant had several ideas for how to dispose of the bodies. One idea was to "get dogs from the pound and let the dogs eat them." (20RT

4474-4475.) Another was to find an abandoned mine shaft and toss the bodies down the shaft.[12] (20RT 4475.) Yet another was to bury the bodies in the woods.[13] (20RT 4476.) Finally, appellant had the idea of dismembering the bodies, putting them in duffel bags, and using a jet ski to take them out on the Delta river and dump them. (20RT 4477.)

B. "Children of Thunder" in Action: the Murders and Dismemberments of Ivan Stineman, Annette Stineman, and Selina Bishop; and the Aftermath: the Murders of Jennifer Villarin and James Gamble [the Charged Crimes]

Helzer rented the Saddlewood residence beginning May 1, 2000, and he, appellant, and Godman moved in. (20RT 4467; 22RT 4912; see also 16RT 3788-3789.) Appellant scoured his old financial records for clients who maintained a brokerage portfolio of at least $100,000. (20RT 4468.) Helzer took out a loan and borrowed money from his credit lines. (20RT 4484.) He also purchased a Beretta 9mm semi-automatic firearm specifically for "Children of Thunder." (20RT 4468, 4473; see also 16RT 3785-3787.) While living in Godman's apartment, appellant had obtained a .22-caliber semi-automatic pistol from a friend, Brandon Davids. (20RT

---

[12] Godman and appellant went to Amador County to look for mine shafts, but were unable to find any that would serve their purpose. (20RT 4475-4476.)

[13] This idea was abandoned because appellant thought it would take too long to dig the holes. (20RT 4476.)

4468.) Together, appellant and Davids ground off the serial number of the gun. (20RT 4469.)

They built a dog run in the back yard of the Saddlewood residence and adopted three dogs from the pound for the purpose of disposing of the bodies.[14] (20RT 4474; 23RT 5036; 24RT 5566-5570.) Large amounts of meat and bones were purchased to see how much the dogs could eat over a period of time. (20RT 4474; 23RT 5037.) It was determined that the dogs could not eat enough to consume three people. (20RT 4474.) Appellant decided, instead, that they would dismember the bodies and dump them in the Delta River. (20RT 4477.) They purchased a variety of tools and supplies to dispose of the bodies in this manner, including a reciprocating saw and a skill saw (20RT 4473), water gloves, ski masks (20RT 4477), a briefcase, duffel bags, handcuffs, and leg irons (20RT 4478, 4498).

Appellant met Selina Bishop (Selina) at a rave in Guerneville. (17RT 3858, 3880, 3898.) They began dating around May 2000 (17RT 3897; 18RT 4132-4133), started a sexual relationship, and Selina fell in love with him (17RT 3827-3828, 3855, 3870-3872, 3919; 23RT 5109), but it was appellant's plan that Selina would be the person who would deposit

---

[14] Jake was adopted by Godman on July 10, 2000. (25RT 5566.) Two other dogs, a border collie and an Australian shepherd, were adopted by appellant on that same date. (24RT 5569-5570.) A fourth dog, a mastiff, was adopted by Godman on July 12, 2000, but was never picked up. (24RT 5570-5571.)

the money for the "Children of Thunder" scheme. From the beginning of their relationship, it was appellant's intention to use Selina for this purpose and then to kill her. (20RT 4464; 21RT 4551.) So appellant ended the sexual relationship with Selina, but continued an emotional one. (17RT 3828; 18RT 4045.) Appellant told Selina that he was going to be inheriting $125,000 from a grandparent and needed to hide it from his ex-wife. (17RT 3858, 3902; 18RT 4134.) He asked her to help him. He wanted her to open a bank account and deposit the money in $25,000 increments, then transfer the money back to him in $20,000 increments. (17RT 3859, 3903; 18RT 4134.) For helping him, Selina could keep the remaining $5,000 from each increment. (17RT 3859, 3902; 18RT 4134.) Selina intended to use the money to pay off some debt and start a life with appellant. (17RT 3859; 18RT 4134.)

Around July, appellant told Selina he wanted to take her on a three-day camping trip to Yosemite on August 2. (17RT 3829, 3845, 3849, 3865-3875, 3901-3902, 3915; 21RT 4552; 23RT 5109; 25RT 5591.) He planned to do this to get her out of town and away from the television while "Children of Thunder" was happening. (21RT 4552.) Selina was excited (17RT 3830, 3850, 3868) and arranged to have her shifts covered at Two Bird Café in San Geronimo, where she worked. (17RT 3822, 3841, 3845.) Her last day of work was July 29, 2000. (17RT 3847.) She was expected to return from the trip on August 4. (*Ibid.*)

In mid-July 2000, appellant called Jeannette Carter, a friend of his mother's, several times. He asked if he could come to her property and practice shooting, but Carter turned him away. (16RT 3732.) A couple of days later appellant called again and asked her if she wanted to invest $5,000 in a "business opportunity." (16RT 3733-3734.) He told her that her money would be doubled within a week or two. (16RT 3733.) Helzer and Godman were talking in the background. (16RT 3735; 21RT 4754.) Carter did not have the money, but told appellant she could invest $1,000; appellant declined, saying he needed $5,000. (16RT 3734.) The call ended. (16RT 3734.) Appellant called back and asked if he could borrow the money, that it was a "matter of trust," but apparently Carter declined. (16RT 3735-3736; see 21RT 4754.)

On July 30, 2000, a date selected in advance and planned for,[15] appellant had a list of five people whom he could target. (20RT 4486-4487; 21RT 4541.) Appellant, Godman, and Helzer had spent three days earlier in July scouting the residences of each person on the list and appellant put them in order of who to attack first. (20RT 4488.) A corporate airline pilot named Bob White was at the top of appellant's list. (20RT 4487; 25RT 5627.) White had the most money in his brokerage

[15] "Children of Thunder" was thought about, considered, refined, and prayed about for at least three months before this date. (20RT 4489.) Appellant, Godman, and Helzer all knew they were contemplating a number of unlawful acts. (20RT 4490.)

accounts, was single, and lived in a good location with easy access that was somewhat isolated from neighbors. (20RT 4488; 25RT 5628-5629.) Ivan and Annette Stineman were second on appellant's list. (20RT 4501.)

Early that morning, appellant, Godman, and Helzer gathered together and "declared war on Satan" by openly stating their intent to follow through with what they believed was God's will. (20RT 4492.) Appellant then called a friend, Debra McClanahan, and asked her to establish an alibi for them. (23RT 5049.) He asked her to buy four movie tickets for a movie showing later that night, and then to go to a restaurant and buy enough food for four people. (20RT 4492-4493; 23RT 5038-5040.) Godman drove over to McClanahan's residence and gave her enough money to buy the movie tickets and the food. (16RT 3713-3715, 3726; 20RT 4496-4497; 23RT 5041-5042.) Appellant called McClanahan again to make sure she had enough money, and was concerned about making sure McClanahan bought the tickets. (23RT 5042.) McClanahan bought the tickets and four meals from Denny's, and placed the tickets stubs and meal receipt in a place where appellant or Godman could find and access them. (23RT 5044-5049.) In response to repeated calls from McClanahan later that night, appellant called to make sure everything went okay and then told McClanahan not to call again. (23RT 5046-5047.)

Around noon, Godman bought an expensive bottle of wine and a package of cigarettes; appellant and Helzer went with her. (20RT 4491.)

The bottle of wine was appellant's way to get into White's house. His plan was to go there with Helzer, knock on White's door, and say he was with a new company and had just made a lot of money. Appellant would tell White that the bottle of wine was for a new customer down the road that he had just seen, but they decided they did not want it. Then appellant would ask White to join him in a drink to celebrate. (20RT 4497.) They considered what to do if White had guests. (20RT 4499.) Appellant thought they could kidnap, and then kill, up to five people to avoid leaving any witnesses alive. (20RT 4499-4500.)

That night, appellant and Helzer drove to White's house in appellant's black Saturn car, and Godman drove in Helzer's white Nissan pickup truck. (20RT 4498, 4505.) Appellant and Helzer were dressed in dark business suits, and both had long hair pulled back into ponytails. (15RT 3511-3512; 20RT 4498-4499.) They walked to White's house and knocked on the front door. (20RT 4499.) No one answered.[16] (20RT 4500.) So they moved on to the next people on the list: Ivan and Annette Stineman. (20RT 4501.)

All three drove to the Stinemans' house at 4940 Frayne Lane in Concord. (15RT 3435; 20RT 4501.) At approximately 8:30 p.m., Godman strategically parked the pickup truck down the street to keep an eye on the

[16] White was in San Antonio, Texas, at the time. (25RT 5632.)

Stinemans' house as well as to keep an eye out for police. (15RT 3510, 3544; 20RT 4501.) Appellant and Helzer parked on the street behind the Stinemans' house and, still dressed in the same dark business suits, walked to the house. (15RT 3511-3512; 16RT 3717, 3723; 20RT 4501.) Appellant carried a briefcase containing papers, handcuffs, Helzer's gun, a blow torch (to be used to threaten), a Taser gun, and a cell phone. (15RT 3511; 16RT 3717; 20RT 4502.) They knocked on the front door, and Ivan answered. (15RT 3514.) Appellant and Helzer entered the home and the door closed. (See 15RT 3450, 3452-3453, 3514.)

About an hour later, appellant called Godman and told her they were coming out. (15RT 3525; 20RT 4504.) A short while later, he drove by in the Stinemans' white Chevy Lumina van. (20RT 4504-4505; see also 15RT 3454, 3503, 3516-3518 [Stinemans' van missing from driveway], 3527, 3529 [white van approached Godman], 3538.) Godman saw the silhouettes of four people in the van, and asked "Did you get it?" (15RT 3527; 20RT 4506.) Appellant replied, "I got it." (20RT 4506.) Then the van drove off. (15RT 3527; 20RT 4506.)

Godman got out of the truck and approached Rise Bradfield-Minder, her husband Fritz Minder, and their friend, who had been watching her from their nearby residence. (15RT 3524, 3528; 20RT 4507; 21RT 4709.) In an effort to avoid suspicion, Godman told them her friends were down the road buying some marijuana and she was sitting there to keep a look out

in case anything happened. (15RT 3528; 20RT 4507.) Godman then got back in the truck and drove to the Saddlewood residence. (20RT 4507.)

Appellant parked the Stinemans' van in the garage, and then he, Helzer, and the Stinemans, who were handcuffed together, entered the house and went to the front living room. (20RT 4508-4510.) Helzer stayed with the Stinemans while appellant and Godman went to appellant's room and discussed how they were going to get financial information out of the Stinemans. (20RT 4510-4511.) Appellant had stolen financial paperwork from the Stinemans' house, and he and Godman prepared a list of questions about the Stinemans' plans for the next few days. (20RT 4511.) Appellant took Ivan into his bedroom, and Godman took Annette to the den, and questioned both. (20RT 4511-4512.) When done, the Stinemans were returned to the living room and appellant and Godman went to appellant's bedroom to compare answers. (20RT 4513.)

When appellant and Godman emerged, appellant explained to the Stinemans that he had run into some trouble and needed some money to get out of the country. (20RT 4515.) He told them that they needed to stay with him until he got the money, and so they needed to make some phone calls to cancel appointments and to lead family members to believe they had taken a short vacation. (20RT 4514-4515.) Appellant told them that after three days he would call someone and let them know where the Stinemans were. (20RT 4515.) Annette was very upset. (*Ibid.*) Appellant

and Godman moved a mattress into the living room so that the Stinemans could rest. (*Ibid.*) While the Stinemans slept, appellant and Godman, who were high on methamphetamine in order to stay awake,[17] went over plans on how to get the money out of the Stinemans' accounts. (20RT 4516-4517.)

Early the next morning, July 31, 2000, while Helzer stayed with the Stinemans, appellant and Godman drove to a payphone and called Dean Witter. (20RT 4517, 4519; 21RT 4541.) Appellant coached Godman on what to say and how to say it. (20RT 4518.) Pretending to be Annette, Godman called and spoke to the branch manager, George Calhoun. (15RT 3556, 3573-3576.) Godman told him that she wanted to liquidate the Stinemans' account, which was valued at over $100,000, because of a family medical emergency. (15RT 3577; 20RT 4517, 4519.) Calhoun tried to talk her out of doing so because the account holdings were long-term investments, and then advised her to speak with the Stinemans' financial advisor, Greg Mathias. (15RT 3578.) Godman replied that she was in a

[17] On cross examination, Godman testified that in the weeks before the Stinemans were murdered, she used methamphetamine daily and appellant used it every other day. (21RT 4713.) During the homicidal events and aftermath at Saddlewood, both she and appellant were high on methamphetamine daily. (21RT 4712-4713.)

hurry[18] and did not have time to talk to Mathias; she once again instructed Calhoun to liquidate the account. (*Ibid.*) Because Godman seemed to be knowledgeable about some of the particularities of the securities she was asking to liquidate, and provided the account numbers, Calhoun believed her to be Annette and processed her request. (15RT 3579-3581.) When Mathias arrived in the office, Calhoun told him of the conversation and instructed him to liquidate the account. (15RT 3581.) Mathias was concerned, and he tried to contact the Stinemans to discuss the decision but he could not reach them. (15RT 3581-3582.) The Stinemans' securities were sold that day, and the cash was in their money marketing fund approximately three days later. (15RT 3582, 3591.)

After the phone call, appellant and Godman returned to the Saddlewood residence and woke the Stinemans. (20RT 4519.) Appellant told Ivan they needed to make the phone calls they had discussed the night before. (20RT 4519-4520.) Appellant and Ivan went to a payphone and made the calls; appellant told Ivan that Godman would harm Annette if he caused any trouble. (20RT 4520.)

---

[18] Toward the end of this brief conversation, Calhoun heard a male voice in the background say, "Hurry, we have to go." (15RT 3580.)

About thirty minutes later, appellant and Ivan returned and the Stinemans were put in the living room.[19] (20RT 4520-4521.) The Stinemans were each given a large dose of Rohypnol. (20RT 4522.) Appellant and Godman went over the financial figures. (20RT 4521.) Then appellant took Ivan into his bedroom while Annette was restrained in a kitchen chair with handcuffs and leg irons. (*Ibid.*) Appellant told Ivan to make out a check to Selina Bishop for $33,000; Ivan complied, and then Ivan and Annette switched places. (15RT 3484; 20RT 4522, 4533.) Appellant told Annette to make out a check to Selina Bishop for $67,000. (15RT 3483; 20RT 4533.) Annette had been feeling the effects of the Rohypnol, so appellant blew methamphetamine smoke into her face to revive her. (20RT 4522-4523.) Eventually, Annette complied. (20RT 4522.)

At appellant's suggestion, he, Helzer, and Godman stripped down to their underwear, and appellant and Helzer carried the Stinemans, one at a time, into the bathroom and waited. (20RT 4523, 4528.) They hoped that the amount of Rohypnol they had given the Stinemans would be sufficient

---

[19] At some point during the morning, appellant called Debra McClanahan and asked her for $50,000. (23RT 5050.) He was frantic. (23RT 5051.) He said he would accept $35,000, but needed it as soon as possible. (*Ibid.*) McClanahan told him she had some artwork she could sell for approximately $30,000, which appellant accepted. (*Ibid.*) About two hours later, appellant called McClanahan back and told her not to worry, that everything was under control. (23RT 5052.)

to kill them, but it was not. (20RT 4524.) Appellant put his hand over Annette's nose and mouth to attempt to suffocate her, but Annette began fighting back. (*Ibid.*) At appellant's request, Godman retrieved some plastic sheeting from the garage, then remained standing in the doorway while the Stinemans were murdered. (20RT 4524, 4528.) The Stinemans lie next to each other on the bathroom floor, and appellant and Helzer attempted to suffocate them by putting the plastic over their faces. (20RT 4525.) When that did not work, appellant banged Annette's head on the floor. (*Ibid.*) Helzer followed suit, and banged Ivan's head on the floor. (20RT 4526.) Then appellant picked Annette up, put the upper half of her body over the bathtub, and slit her throat with a knife. (*Ibid.*) Helzer continued to suffocate Ivan and slam Ivan's head into the floor. (*Ibid.*) Annette struggled; appellant turned her over, causing the blood to flow down her throat. (20RT 4526-4527.) Annette eventually died and Ivan succumbed on the bathroom floor shortly after. (20RT 4527.)

Appellant, Helzer, and Godman walked out of the bathroom. (20RT 4527.) Appellant told Godman to practice writing because she would need to forge a check on Ivan's bank account to distract police. (*Ibid.*) Godman changed her clothes and drove appellant's black Saturn to the Petaluma

branch of Washington Mutual.[20] (20RT 4528; 21RT 4542 (July 31, 2000).) She deposited a forged $10,000 check into Ivan's account, then left. (15RT 3483-3484; 20RT 4528.)

When Godman arrived back at the Saddlewood residence, there was a large piece of plastic laid out on the hallway. On top were several black plastic bags containing the Stinemans' body parts. (20RT 4530.) Helzer was in the bathroom wiping down the walls and countertops. (20RT 4531.) Appellant sent Godman to Yardbirds to purchase replacement bathroom fixtures. (20RT 4532.) Godman bought the supplies and replaced the faucets. (20RT 4533.)

Later that night, at around 11:35 pm, appellant went to Debra McClanahan's apartment wanting to access a safe he had left there. (23RT 5052-5053.) McClanahan gave the key to appellant, and appellant took the safe out of the closet and opened it. (23RT 5053.) He removed some tabs of Ecstasy, put them in a plastic bag provided by McClanahan, hugged her, and left. (23RT 5055-5057.) He was there for approximately 35 minutes. (23RT 5057.)

On August 1, 2000, Godman deposited the Stinemans' checks, totaling $100,000, into Selina's Cal Fed bank account at the Walnut Creek

---

[20] She wore a pair of green cotton pants and a matching long sleeved shirt, a cowboy hat, and went into the bank sitting in a wheelchair. (20RT 4528-4529.) Appellant told her it would disguise her height and make it difficult to identify her. (20RT 4529.)

branch.[21] (20RT 4534-4535; 21RT 4542.) Godman told the branch manager her name was "Vicki." (21RT 4554.) The branch manager tried to contact the Stinemans using the phone number on the checks to confirm the legitimacy of the transaction. (*Ibid.*) When no one answered, the manager left a message. Appellant had not expected this. (21RT 4554, 4557.) They had rented a pager with voicemail and left an outgoing message that was supposed to be either Ivan or Annette. (21RT 4554.) Godman gave the branch manager that number, informing her that the Stinemans had recently moved and this was their new number. (21RT 4555.)

Later that same day, appellant and Godman drove to the Stinemans' house to retrieve the answering machine tape, social security cards, and additional identifying information. (21RT 4557-4558, 4561; see also 15RT 3468-3470 [answering machine tapes missing].) Godman and appellant were concerned that there would be a problem with Cal Fed and that the checks would not be deposited. (21RT 4552-4553.) At appellant's request, Godman called Cal Fed a little later, pretended to be Annette, and left a scripted message for the branch manager with the Stinemans' social security numbers. (21RT 4561.) As Annette, she also explained that they

[21] Godman wore the same clothes and used the same wheelchair as she did at the Washington Mutual branch in Petaluma. (20RT 4535.)

were in Los Angeles visiting their sick granddaughter, Selina Bishop, and they needed the money deposited quickly. (21RT 4562-4563.)

Godman then called "Cool Rides" jet ski rental company in Livermore and scheduled an appointment to rent a jet ski. (21RT 4544-4546.) She and Helzer drove his pickup truck to pick up the jet ski, then returned to the Saddlewood residence and ate dinner. (21RT 4534-4535, 4547.)

That afternoon/evening, Selina and her mother, Jennifer Villarin, went to Villarin's home to drop off the rent and pick up some clothes. (17RT 3913, 3915.) They planned to go out, and then return to Selina's apartment to pack for the Yosemite camping trip. (17RT 3915.) Villarin planned to stay over night at Selina's house. (*Ibid.*) Later that evening, appellant called and cancelled the Yosemite camping trip with Selina, telling her "I have something better planned." (17RT 3874-3875.)

The next afternoon, August 2, 2000, Selina left an outgoing message on her answering machine to appellant, asking him to call her. (17RT 3812, 3864-3866.) A little while later, appellant met Selina at a hotel and they went to a pawn shop in Dublin to pawn Annette's engagement and wedding rings. (21RT 4550, 4560.) Unable to do so, they went back to the Saddlewood residence, driving separately.[22] (21RT 4550.)

---

[22] Selina drove an older model Honda. (21RT 4565.)

When Selina arrived at the Saddlewood residence, she seemed happy and in love with appellant. (21RT 4564.) Godman took her into the bathroom and they discussed redecorating.[23] (21RT 4565.) The plan was to have Helzer strike Selina over the head with a hammer while she was distracted and her back was turned. (21RT 4567.) Their attempts to get Selina to turn her back failed. (21RT 4570.) Abandoning that plan, they went to the living room where appellant, Godman, and Selina smoked some marijuana and talked. (*Ibid.*)

Appellant decided to take Selina back to his bedroom for a shower and a nap so that Godman and Helzer could attack and murder her while she slept.[24] (21RT 4571.) Appellant and Selina showered, but Selina was not tired and would not sleep. (21RT 4572.) After about 30 minutes, appellant and Selina came out to the living room, smoked some more marijuana, and played the board game "Risk." (21RT 4572.) While playing, appellant slipped some Rohypnol into a wine glass and offered it

---

[23] Before the Stinemans were murdered, several things had been removed from the bathroom: shelving, a basket of flowers, things you would generally find on a bathroom countertop, and the shower curtain. (21RT 4566.) These items were removed so that blood would not get on them. (*Ibid.*)

[24] The plan was to have Godman throw a towel over Selina's head and to have Helzer hit Selina over the head with a hammer. (21RT 4571.)

to Selina, thinking she would overdose on the drug.[25] (21RT 4573-4574.) Selina noticed something floating in her wine, so appellant took it from her and poured her a new glass. (21RT 4575.) Some time later, appellant decided he would give Selina a back rub and, while she was in a defenseless position, Helzer could attack her. (21RT 4576.) He and Helzer spread blankets out on the family room floor, and Selina laid down. (21RT 4576-4577.) Appellant rubbed her back for about 10 minutes then, when she was relaxed and had closed her eyes, Helzer came up beside them and pummeled Selina over the head multiple times with a hammer. (21RT 4577-4578.) After the first blow Selina cried out, but then she did not make any noises after that. (21RT 4578.)

Appellant and Helzer picked Selina up in the blanket and moved her into the kitchen. (21RT 4578.) Blood soaked the blanket and dripped onto the family room carpet and kitchen floor. (*Ibid.*) Appellant told Godman to clean the blood off the carpet while he and Helzer went into the bathroom "to get stuff ready." (*Ibid.*) "They took a saw horse in the bathroom, and an extension cord and a [reciprocating] saw." (*Ibid.*) While Godman was cleaning the carpet she heard noises coming from the kitchen. (21RT 4579.) Appellant returned to the kitchen and, upon finding Selina alive, picked up the hammer and delivered several additional blows. (*Ibid.*)

---

[25] Godman had crushed up the Rohypnol for this purpose earlier in the day. The original plan was to overdose Selina. (21RT 4574.)

Selina stopped moving and appellant and Helzer carried her to the bathroom. (*Ibid.*)

Appellant called Godman to the bathroom to witness what they were going to do. (21RT 4580.) Appellant and Helzer were in their underwear; Selina was in the bathtub. (21RT 4580, 4582.) Appellant grabbed Selina's hair, pulled her head back, and cut her throat with a hunting knife. (21RT 4580-4581.) Godman returned to the living room, but could hear the saw running in the bathroom followed by large thuds, like large body parts falling from the sawhorses to the bathtub floor. (21RT 4582-4583.)

Appellant emerged from the bathroom and started a fire in the fireplace in order to burn Selina's belongings.[26] (21RT 4583-4584.) Helzer cleaned up the bathroom then went to bed. (21RT 4584.) Selina's body was placed, in pieces, into black plastic bags and onto a tarp in the hallway. (*Ibid.*) Her body parts were eventually moved to Helzer's bedroom, where the Stinemans' body parts were already being stored. (21RT 4584, 4591.) Appellant and Godman burned Selina's possessions and, just to see if any of their dogs would actually eat human flesh, appellant fed one of them, Jake, two pieces of Selina's skin, one of which contained a tattoo. (21RT 4585-4587, 4630.) Appellant realized that two of Selina's friends or family

[26] The Stinemans' clothing and personal belongings had already been burned. (21RT 4584.)

could identify him: Selina's mother, Jennifer Villarin,[27] and Selina's co-worker, "Karen." (18RT 4054; 21RT 4585.) Appellant decided that he and Godman would drive to Selina's apartment where Selina's mother was staying that night and "take care of her." (17RT 3915; 18RT 3958; 21RT 4585, 4591.) "He would have to deal with Karen at a later time." (21RT 4585.) Appellant packed a change of clothes and two guns: his .22-caliber pistol and Helzer's 9mm semi-automatic handgun. (21RT 4591-4592.)

Earlier in the night, Villarin, who tended bar at the Paper Mill Creek Saloon in Forest Knolls, called friends Gloria LaFranchi and James Gamble and asked them to bring her something to eat. (20RT 4328-4330.) Gamble took some food over to Villarin, then the two drove to Selina's apartment. (18RT 3957-3960; 20RT 4330.)

In the early morning hours the next day, August 3, 2000, Godman and appellant drove to Selina's apartment at 257 Redwood Drive in Woodacre, California. (17RT 3925-3926, 3929 [911 calls came in between 5:00 and 5:30 am]; 18RT 3947-3949; 21RT 4560, 4593.) Appellant walked toward the apartment while Godman waited in the car. (21RT 4593.) Appellant entered the apartment and approached Villarin, who was asleep in the bed, and shot her twice in the face. (18RT 3963, 4027; 21RT 4593; 24RT 5435-5441, 5458.) Appellant shot at Gamble from the same position,

---

[27] About two weeks earlier, Villarin had made an excuse to stop by Selina's apartment so she could meet appellant. (17RT 3832-3833.)

but Gamble made it out of bed and onto the floor. (24RT 5458-5460.) Appellant went to Gamble's right side and shot at him again. (24RT 5460.) Gamble lifted his left arm in defense, and appellant shot him through the chest, killing him. (*Ibid.*) Gamble's last word was "Jennifer." (18RT 3964, 3968.)

Appellant ran out of the apartment and toward the car. (21RT 4594.) Godman was in the driver's seat and had the car running when appellant jumped in. (*Ibid.*) They drove off and returned to the Saddlewood residence. (21RT 4595.) During the drive, appellant was "a little flustered at first, but other than that, calm." (21RT 4596.) Jay Soladay, Selina's landlord who lived in the residence above hers, went downstairs after hearing the gunshots, found Villarin and Gamble, and called 911. (18RT 3963-3972.)

When appellant and Godman got to Saddlewood, they woke Helzer and he and Godman went to Denny's to get breakfast. (21RT 4596.) They returned with the food and ate. (*Ibid.*) During breakfast,[28] appellant said they had to remove the victims' teeth from their heads to prevent identification. (*Ibid.*) Helzer and Godman took the heads of Ivan, Annette, and Selina into the bathroom and proceeded to knock the teeth out and

---

[28] There is some evidence that this discussion occurred before appellant and Godman drove to Selina's apartment. (See 21RT 4598-4599.)

dismantle the jaws. (21RT 4598.) Their heads were put back into plastic bags and the teeth and jaws were placed in a different bag. (21RT 4599.) All the plastic bags were then dispersed into nine nylon athletic duffel bags and weighted down with rocks and stepping stones from the back yard. (21RT 4599, 4611-4612.)

Meanwhile, appellant made several phone calls. From a payphone he called Two Bird Café, where Selina worked, and spoke to Kebrina Feickert. (18RT 4049, 4055.) He identified himself as "Jordan," Selina's boyfriend, and asked for Selina. (18RT 4050.) Feickert told him she was not there. (*Ibid.*) Appellant asked to speak to Karen, Selina's friend, and became flustered when he was told she was not there. (18RT 4051.) He told Feickert that he had not seen Selina all week, and that they were supposed to meet but Selina never showed up. (*Ibid.*) He tripped over his words and spoke quickly, seeming nervous or paranoid. (*Ibid.*) Appellant said that Selina had been playing games and he was tired of it, and told Feickert to have Selina call him if she saw her. (18RT 4052.)

Appellant also called Jesse Sullivan's residence, and spoke to a roommate, David Levi. (18RT 4060, 4062.) Appellant asked Levi if he knew were Selina was, and said she was late to meet him. (18RT 4062.) Appellant said he had been waiting for 30 minutes, that it was not like Selina to be that late, she was not answering her phone or his pages, and he was worried. (18RT 4063.) He asked Levi to have Selina call him. (*Ibid.*)

Appellant also said that "Selina better not be acting foolish or playing games because he is too old for games." (18RT 4064.)

Later that same day, August 3, 2000, the duffel bags containing Ivan, Annette, and Selina's remains were loaded into the back of Helzer's truck and, with the jet ski in tow, appellant, Helzer, and Godman drove out to the Delta River area. (16RT 3775-3777; 21RT 4600-4602.) It had been decided beforehand that they would go out to Korth's Pirate's Lair, and launch the jet ski from there. (21RT 4601-4602.) They arrived at Korth's and launched the jet ski. (21RT 4603.) Appellant and Helzer got on the jet ski, and appellant told Godman to drive the truck down the road and find an open spot on the riverbank, which she did. (21RT 4604-4606.) Appellant and Helzer drove the jet ski down the river and met her. (21RT 4606.)

Helzer got off the jet ski, went to the back of the truck, took out a knife, and stabbed several holes into the duffel bags to prevent them from floating. (21RT 4606.) He carried two bags down to the river bank and, with appellant's help, loaded them onto the jet ski. (21RT 4606-4607.) Then appellant and Helzer sped off on the jet ski, and were gone for about 30 minutes. (21RT 4607.) They repeated the process twice more. (21RT 4608.) After the third load, Godman moved the truck to a different location on the river bank. (*Ibid.*) After an additional trip, Helzer and Godman took out the last bag. (21RT 4609-4611.) Godman drove for about 30 minutes to a spot where Helzer dropped the bag over the side of the jet ski. (21RT

4611.) The bag floated for a minute and then sank. (*Ibid.*) The two drove the jet ski back to Korth's Pirate's Lair and met appellant, who had driven the truck and trailer back there. (21RT 4612.) They loaded the jet ski and then drove off. (*Ibid.*) They stopped for a drink, and later for some food, and eventually arrived back at the Saddlewood residence. (21RT 4612-4613.)

Appellant washed some clothes and packed to leave on a trip to a music festival. (21RT 4614.) Appellant left a list of things for Helzer and Godman to do, including clean the house, return the jet ski, drive the Stinemans' van to Oakland and leave it with the keys (in the hope it would be stolen and taken to a chop shop), take Selina's car to Petaluma and leave it, and dispose of things in the house. (21RT 4614-4615.) Helzer and Godman cleaned the house and returned the jet ski. (21RT 4614.) They disposed of the reciprocating saw and a skill saw (used to cut up the bloodied saw horses), the Stinemans' suitcases, and a bag of ashes from the fireplace in various commercial trash bins around Concord. (21RT 4617-4618.) Selina's car was wiped down to remove fingerprints, Ivan's wedding ring was planted under the front passenger seat,[29] and the car was left across from a bus station in Petaluma. (21RT 4619-4621.)

---

[29] This was part of the instructions appellant left. He believed it would confuse police to find Ivan's wedding ring in Selina's car, and make them believe that Ivan had run off with Selina. (21RT 4620.)

On their way back to the house, Helzer and Godman stopped at Debra McClanahan's house and borrowed a carpet cleaner and cleaning solution. (21RT 4622; 23RT 5058.) The carpet cleaner did not work and left a mess. (21RT 4623-4624.) Helzer called professional cleaners to come and clean the carpet. (21RT 4624.) They arrived and cleaned the carpet on August 7, 2000, leaving industrial-sized fans to dry the carpet. (21RT 4624-4625.) Godman spent the previous night at McClanahan's house (21RT 4625), taking the rented wheelchair with her to store there until she could return it. (23RT 5060, 5062, 5212.)

Appellant returned from the music festival in the afternoon of August 7, 2000. (21RT 4625.)

C. The Ensuing Investigations

1. Investigation into the missing Stinemans

On August 3, 2000, the Stinemans' daughter, Nancy Hall, who had been unable to contact her parents for four days, went to the Stinemans' house during her lunch break. (15RT 3452-3454.) The Stinemans' Lincoln, which was normally in the garage, was parked in the driveway and their van, which was usually in the driveway, was gone. (15RT 3454.) There were four newspapers on the front porch (dated July 31 through August 3), and a Terminex receipt dated August 1. (15RT 3454, 3462, 3467-3468.) Inside, the Stinemans' cats were locked in rooms without food, water, or litter boxes, a pan on the stove containing soup had gone

moldy, and Ivan's electric chair (to assist him in going between the first and second floors after knee surgery) was at the top of the stairs. (15RT 3455, 3457-3458.) Worried because her parents would not have left without leaving instructions for the care of their cats, Hall called her sister and told her she believed their parents were missing. (15RT 3456.) After speaking to her sister, she spoke to some of the neighbors, none of whom had seen her parents or their van leave. (15RT 3456.) Then she called the police. (15RT 3458.)

Concord Police Officer Mark Evans responded to the Stinemans' residence and spoke with Hall. (15RT 3458.) The two went inside and looked around the house. (15RT 3459, 3501.) Officer Evans also noticed that some things were out of place: the electric chair at the top of the stairs, cats locked in rooms, newspapers piled up, a days-old Terminex receipt, and a broken license plate in the driveway. (15RT 3502.) He interviewed some of the neighbors, and then left. (15RT 3503.)

After Officer Evans left, Hall looked around the house again and found Ivan's watch, broken, between the cushions of a chair. (15RT 3459.) She also noticed that the answering machine was continuously beeping, and checked the machine; the tapes were gone. (15RT 3468-3469.) Also missing were the books Annette and Ivan were currently reading, Annette's purse, Ivan's wallet, Ivan's insulin kit (containing insulin bottles with Ivan's name on them), and their pill containers. (15RT 3471-3473.)

Handwritten notes referring to appellant were found on Ivan's upstairs desk. (15RT 3481-3482; 16RT 3745-3746.)

Officer Evans returned with a latent print specialist and had the license plate and various areas within the residence processed for fingerprints. (15RT 3503-3504.) Hall showed Ivan's broken watch to Officer Evans. (15RT 3504.) Officer Evans entered both the Stinemans and the missing van into the missing persons' database, checked with California Highway Patrol to see if they had information about the van, and contacted local hospitals for the Stinemans. (15RT 3505.) He received no information from either the CHP or the hospitals. (15RT 3506.)

Concord Police Officer Patrick Murray investigated three checks drawn on the Stinemans' brokerage account: one deposited into a Washington Mutual account, and two others deposited into a Cal Fed bank account. (22RT 4945.) On August 15, 2000, he recovered two of the original checks: one for $67,000 and another for $10,000. (22RT 4945-4946.) The check for $67,000, dated August 1, 2000, was in Annette's handwriting. (15RT 3483.) It was written on the Stinemans' IRA account and cleared on August 4, 2000. (15RT 3592-3593.) The check for $10,000, dated July 31, 2000, was in neither of the Stinemans' handwriting, and "Stineman" was misspelled. (15RT 3483-3484.) It was written on Annette's IRA account and cleared on August 2, 2000. (15RT 3593-3594.) The third check, for $33,000, was recovered at a later time. (22RT 4947.)

It was dated August 1, 2000, and was in Ivan's handwriting. (15RT 3484.) It was written on the Stinemans' active assets fund account and cleared on August 2, 2000. (15RT 3592-3593.)

2. Investigation into the murders of Villarin & Gamble [the Woodacre murders]

Marin County Sheriffs Deputies were dispatched to respond to Selina's apartment on August 3, 2000, at approximately 5:02 am. (18RT 3984-3985.) They spoke to the landlord, Jay Soladay, who directed them to Selina's apartment. (18RT 3988.) Officers found the apartment door ajar and announced their presence. (*Ibid.*) Receiving no response, they opened the door midway and saw an arm on the ground. The carpet was red and saturated with blood. (18RT 3989-3990.) Officers entered the apartment and found Villarin on the bed with gunshot wounds to the face, blood pooling into the pillow, and blood spatter on the wall; she had no pulse. (18RT 3990.) They found Gamble on the floor with gunshot wounds to his right leg, left arm, the right side of his neck, and the center of his chest. (18RT 3990-3991.) Gamble was warm to the touch and he was making a gurgling sound from the blood filling up the back of his throat. (18RT 3990.)

Officers cordoned off the area and conducted a sweep for other victims or possible suspects. (18RT 3993.) None were found. (*Ibid.*) The rear door, a glass slider, was closed but unlocked. (*Ibid.*) Emergency

personnel arrived and declared Villarin and Gamble dead. (18RT 3993-3994.) No firearms were found in the apartment, but officers observed at least one shell casing on the bed next to Villarin. (18RT 3998.)

Marin County Sheriff's Department Detective Steve Nash arrived on scene and they obtained and served a search warrant that morning for the residence. (18RT 3999; 22RT 4792.) Upon execution of the warrant, officers found six 9mm shell casings in the proximities of Villarin and Gamble (18RT 4005-4011), and at least six expended bullets were recovered either from the location or from items collected from the location. (18RT 4013-4021.) Two expended bullets were recovered from the pillow under Villarin's head and several bullet holes were observed in the floorboards underneath Gamble's body. (18RT 4013-4021.)

Autopsies of Villarin and Gamble revealed that the cause of Villarin's death was two gunshot wounds to the head, both of which entered at the face. (25RT 5433-5443.) Gamble suffered five gunshot wounds; four entered his body and one was a grazing wound. (18RT 3963, 4029; 21RT 4593; 24RT 5448-5457; 25RT 5448-5449.) His cause of death was a gunshot wound to the upper chest, which struck his windpipe allowing blood into the lungs, and damaged his spinal cord causing quadriplegia and "spinal shock." (25RT 5449-5454.)

Marin County Sheriff's Detective Alisia Lellis interviewed several people who knew Villarin and Selina. (22RT 4915-4916.) One person,

Michael Small, a tow truck driver, had been in contact with both Selina and appellant in June and provided Detective Lellis with a description of appellant. (22RT 4917.)

The next day, August 4, 2000, Detective Nash went to Two Bird Café. (22RT 4793.) He spoke to the owner, Tony Maceli, and collected Selina's pager, which had been left there. (22RT 4794.) Detective Nash went through and collected phone numbers from Selina's pager, and found a Concord area phone number. (22RT 4795.) The number was assigned to a prepaid cell phone under the name Denise Anderson, but that was determined to be false. (22RT 4795-4796, 4932.) Phone calls from that cell phone for the previous two weeks were traced and Detective Nash compiled a list of subscriber information for the recipients. (22RT 4796-4797.) Two of the people on that list were Helzer and Ann Helzer. (22RT 4797.)

Through DMV checks, Detective Nash obtained information for Helzer, including information that he owned a white pickup truck and, in May 2000, had purchased a Beretta 92 model 9mm handgun, the same caliber weapon determined to have been used in the Woodacre murders. (22RT 4799; 23RT 5134-5135.) This was the first time that Detective Nash had heard of the Helzers or the Saddlewood address. (22RT 4798.) Through another Marin County Sheriff's detective, Detective Nash discovered that appellant also lived at the Saddlewood address. (22RT

4800.) Detective Nash obtained a DMV photograph of appellant and showed it to a number of people, all of whom identified him as "Jordan," Selina's boyfriend. (*Ibid.*) He contacted the Marin County District Attorney's Office and requested a search warrant for the Saddlewood residence to look for firearms, ammunition, and any related indicia. (22RT 4801.) Marin County Sheriff's Department Detective Erin Inskip and Sergeant Barry Heying established surveillance of the Saddlewood residence. (22RT 4802; 23RT 5123.)

Meanwhile, the Stinemans' white Chevy Lumina van was found in Oakland. (23RT 5191.) The van was parked awkwardly with the driver's window down; it was unlocked and the keys were in the ignition. (23RT 5192-5193.) The car was towed to a crime scene investigation garage and processed. (23RT 5192-5194.)

At approximately 4:00 am on August 7, 2000, Marin County officers and Concord SWAT team members assembled for briefing prior to service of the Marin County search warrant.[30] (23RT 5123-5124.)

---

[30] This was the first of two search warrants for the Saddlewood residence obtained by Marin County law enforcement. A third search warrant was obtained by Concord Police Department in connection with the Stinemans' disappearance. (22RT 4801-4803, 4807.) The two law enforcement agencies worked together during the search of the Saddlewood residence from August 7, 2000 to August 15, 2000. (22RT 4802, 4807, 4899.)

3. Service of the first Marin County search warrant and appellant's flight

The first Marin County search warrant was executed at approximately 6:00 am on August 7, 2000. (22RT 4802; 23RT 5124.) A battering ram was used to gain access to the residence. (23RT 5125.) When SWAT team members entered the residence and began securing it, appellant fled out of the back window of the master bedroom and jumped over the backyard fence. (22RT 4802, 4917; 23RT 5125.) Appellant was caught, handcuffed, walked back to the Saddlewood residence, and turned over to Detective Inskip for interview. (22RT 4802, 4918; 23RT 5125.) Appellant identified himself as "Jordan." (22RT 4918; 23RT 5127.) He said he had been at a reggae party the night before. (22RT 4918.) He also said that he had heard about Selina being missing and he should have called the police. (*Ibid.*) Detective Inskip had the handcuffs removed and informed him about the investigation. (23RT 5125.) She asked appellant if he would speak with her; appellant agreed. (23RT 5126.) They went to an unmarked police car; Inskip told appellant he was not under arrest and did not have to answer any questions. (*Ibid.*) To avoid distraction, Inskip moved the car a little away from the Saddlewood residence. (*Ibid.*)

Detective Inskip explained to appellant that they were investigating a double homicide in Marin County and the disappearance of the daughter of one of the victims. (23RT 5127.) Appellant said he met Selina at a rave

party around April 2000, and that they were in an intimate relationship. (*Ibid.*) He said Selina had given him a key to her current apartment. (*Ibid.*) He said he last spoke to Selina over the phone on August 1, and they fought, which upset Selina. (23RT 5128.) Appellant said that they had planned to go camping at Tamarack Flats in Yosemite National Park, and they were supposed to meet at an unidentified location on August 2, but Selina never showed up. (23RT 5129.) Appellant said he called Two Bird Café on August 4 looking for her. (23RT 5130.) Then later that day he drove to the Garberville area for a music festival to sell mushrooms and Ecstasy to make some cash, and arrived back home late Sunday night. (*Ibid.*) He told Detective Inskip that when he arrived at home he saw that his brother and Godman had videotaped a TV news broadcast about Selina's disappearance and the deaths of Villarin and Gamble. (*Ibid.*) He regretted not contacting police on Sunday when he got home, and he did not know where Selina might be. (23RT 5131.) He did not know anyone who would want to hurt her, and he had no knowledge about the Villarin and Gamble murders. (*Ibid.*)

At this point, Detective Inskip received a phone call and told appellant that another officer had requested some items from the trunk of the car and they were going to drive back over to the Saddlewood residence, but that they would return and talk some more. (23RT 5132.) As Detective Inskip began driving, appellant threw himself out of the

partially open passenger-side window and ran off. (23RT 5132; see also 22RT 4803.)

William Sharp, who lived on an adjacent street, was just sitting down to drink a cup of coffee when appellant came in through his patio sliding door. (23RT 5142-5145, 5150.) Appellant "scuttle[d]" from one sliding door to another. (23RT 5146.) When Sharp asked appellant what he wanted, appellant demanded car keys. (*Ibid.*) When Sharp told appellant he did not have an operable car, appellant told him "I'll kill you if you don't give me your car keys." (*Ibid.*) At that point, Sharp's dogs came running and chased appellant out through one of the sliding doors. (23RT 5147.)

Mary Mozzochi also lived on an adjacent street, and was at home waiting for a rental car to arrive so she could go to work. (23RT 5152-5155.) Her husband's car did not work, and he had taken Mozzochi's car to work that morning. (23RT 5155.) At around 8:00 am, Mozzochi went out the back door and found appellant standing there. (23RT 5156, 5165, 5168.) Mozzochi asked appellant what he wanted; appellant grabbed her, then grabbed a kitchen knife and held it to her. (23RT 5157.) He told her he needed to change his appearance and then get away. (*Ibid.*) He warned her that if she called the police, he would kill her. (*Ibid.*) Appellant demanded car keys and, when Mozzochi told him the car there did not work, he became angry. (23RT 5158.) Appellant saw a replica handgun in

the living room, and demanded it and some bullets. (23RT 5159.) Mozzochi told him the gun did not work and she did not have bullets for it. (*Ibid.*)

Appellant wanted a change of clothes, which Mozzochi provided to him. (23RT 5159-5160, 5163-5164.) Then appellant wanted a pair of scissors, which Mozzochi gave him. (23RT 5161.) Appellant cut across the back of his hair and dropped the clippings on the kitchen table. (23RT 5161, 5203.) Mozzochi told appellant he got what he wanted and he should leave. (23RT 5164.) Appellant told her she would be coming with him, but she refused and, as appellant stepped through the sliding door into the back yard, Mozzochi closed and locked the door. (*Ibid.*) Her adult son, who had been in a back bedroom and had heard the entire exchange, had called the police. (23RT 5153-5155, 5164.)

Concord Police officers, who had cordoned off the surrounding area, saw appellant run out of Mozzochi's house and detained him. (23RT 5133, 5173-5178.)

4. Search of the Saddlewood residence by Marin County and Concord officials

Marin County Sheriff's Detective Steve Nash was present for the service of the first Marin County search warrant, the entry into the residence, and the initial search. (22RT 4802.) Each room was given a number designation, and each item collected was assigned an evidence

number.[31] (22RT 4805.) During execution of the first Marin County search warrant, a dealer's record of sale for a Beretta 9mm model 92FS, dated May 5, 2000, purchased from Hogan Stores, Inc. in Helzer's name was found. (22RT 4933-4934; see also 23RT 5134-5135.)

Based on several things in plain view, specifically the commercial carpet-drying fans, red stains in one bedroom, handcuffs, tasers, duct tape, and latex gloves, Detective Nash left the scene and obtained a second Marin County search warrant. (22RT 4802-4803; see also 18RT 4074.) Among the many items that were seized during execution of the second Marin County search warrant, the following are notable. From Helzer's bedroom, officers recovered a gun box and two knives. (22RT 4808-4810.) From Godman's bedroom, officers recovered: a taser, a set of handcuffs, two handcuff keys, and a receipt for Hogan's Sporting Goods. (22RT 4811-4812, 4939-4941.) From appellant's bedroom, officers recovered: rubber water gloves with the fingertips cut off, appellant's wallet, a business card for "Intimacy = In To Me See," general information for "Intimacy = In To

---

[31] Marin County evidence numbers consisted specifically of: (1) the number designation of the room the item was collected from, (2) the initials of the officer who collected the item, and (3) the number of the order in which the item was collected. (22RT 4805.) Room 1: Helzer's bedroom; Room 2: Godman's bedroom; Room 3: hallway bathroom; Room 4: appellant's bedroom; Room 5: family room/dining room; Room 6: computer room/office/den; Room 7: formal living room/fireplace room; Room 8: garage; RY: rear yard; KI: kitchen. (18RT 4070-4071; 22RT 4808-4810.)

Me See," a spreadsheet containing numbers of women and dollar amounts, a written explanation of how Vibe Alive Girls would work, initial projections (swingers vs. non-swingers), debt statements, a cell phone, a yellow twist tie, white plastic bags, a Rolodex containing contact information for Annette Stineman, and a briefcase. (22RT 4813-4818, 4957-4959, 4982-4988.) From the family room, officers recovered: two pagers, a cell phone and charger, maps of the Delta River with a boating, fishing, and diving directory, a map of the whole Delta loop with Korth's Pirate's Lair circled, and a VHS tape containing commercial news broadcasts of stories about Selina's disappearance from August 3 to August 7, 2000. (22RT 4819-4823, 4942-4943.) In the kitchen, officers found a box of cleaning supplies containing Febreeze, carpet odor remover, carpet room deodorizer, and Glade odor remover. (22RT 4824.) They also found an article from the Contra Costa Times on the kitchen counter entitled "Woodacre homicide victim daughter cannot be found" (22RT 4919), and several receipts in a dayplanner on the kitchen table.[32] (22RT 4921-4928.)

---

[32] The receipts included: a Chem Dry carpet cleaning receipt; a receipt for leg irons, dated July 30, 2000; a Safeway receipt for cleaning supplies, dated August 5, 2000; a Copeland's Sporting Goods receipt for water gloves and masks, dated July 2, 2000; a Long's receipt for carpet deodorizer and hair color, dated August 6, 2000; a Home Depot receipt for a spade bit, duct tape, staples, staple gun, and a poly sheet/tarp; a receipt from Saturn of Concord for replacement of a broken mirror, dated June 7, 2000, with appellant's name; and a customer order for a GTE wireless phone, shipped to Debra McClanahan, dated May 19, 2000. (22RT 4921-

(continued...)

Several yellow twist ties and a receipt for the purchase of red phosphorus (used to manufacture methamphetamine) were found in the computer room/office/den. (22RT 4825, 4967-4968.) A button was found in the fireplace ashes (22RT 4827), and miscellaneous tools and parts were recovered, specifically a hammer, from the hallway bathroom sink. (22RT 4831-4832.)

In the garage, officers collected: a box for a reciprocating saw and a box for a skill saw (although no actual saws were recovered) (18RT 4075-4076, 4081); the owners' manual for a Craftsman variable speed reciprocating saw (18RT 4115-4116); a white plastic bag containing cleaning solutions and Drano (18RT 4098-4100); and a box containing 55-gallon trash bags and 13-gallon tall kitchen trash bags (18RT 4100-4102), more Drano, and Liquid Plumr (18RT 4102). Officers also searched garbage cans and found: tags to athletic bags; two empty twin-containers of Drano; a plastic bottle with the name "Property Cool Rides" containing two spark plugs and a trailer plug for a vehicle harness; latex gloves (18RT 4076, 4078, 4084-4097); a receipt from Cool Rides Watercraft Rental, dated August 1, 2000, and signed by Helzer and Godman (18RT 4108-4109); $360 in cash (18RT 4110); a handwritten flowchart of scenarios

---

(...continued)
4928.) Officers also recovered a receipt for a reciprocating saw, 2 reciprocating saw blades, and razor blades. (23RT 5268.)

(18RT 4111-4115); a small piece of paper with writing "70 Tracy" and "Korth's Pirate's Lair" circled (18RT 4117, 4119); and directions to Cool Rides Watercraft Rental (18RT 4119). Missing from the residence was approximately 50 feet of plastic from a roll of painter's plastic sheeting. (23RT 5220-5221.)

Officers took photographs of where grey cement stepping stones were missing from the back yard. (18RT 4077.) The stones that remained matched those found in the gym bags that began surfacing in the Delta on August 7, 2000, and several of the other stones found in the gym bags matched the stones found in the front yard of the Saddlewood residence. (18RT 4122-4124.)

On August 8, 2000, Concord Police Detective Michael Warnock interviewed Kelly Lord, investigated into locations from which to launch watercraft in the Delta, and followed up on information he received regarding Cool Rides Watercraft in Livermore. (23RT 5185-5186.) At Cool Rides Watercraft, he observed a copy of a jet ski rental receipt bearing the names of Helzer and Godman in a garbage can outside the front door. (23RT 5186.) Concord Police Office Nancy Vedder followed up on items found at the Saddlewood residence concerning the rental of a wheelchair that led her to the Bacon East Pharmacy. (16RT 3742-3473; 23RT 5212.) She obtained a receipt from the pharmacy that showed Godman rented a wheelchair on July 26, 2000. (16RT 3744.)

A chemical search for bodily fluids was conducted toward the end of the searches. (22RT 4808-4809.) Swabs were taken from the northeast corner of the family room wall, the exterior of the bathroom doorway, and from the fireplace. (22RT 4907-4910.) DNA testing proved these swabs contained Selina's DNA. (24RT 5407-5408.)

On August 16, 2000, Helzer's white Nissan pickup truck and appellant's black Saturn car were both processed. (18RT 4033.) A handcuff key was found in the passenger door pocket of appellant's Saturn. (22RT 4826.) In Helzer's pickup truck, officers found a garbage bag containing three sets of handcuffs and two sets of leg cuffs. (22RT 4935-4936.) The handcuff key found in appellant's car opened all the sets of handcuffs and leg irons found in Helzer's truck. (22RT 4938-4939.) The license plate number of Helzer's truck matched the vehicle license number on file for an August 3, 2000 launch from Korth's Pirate's Lair. (24RT 5357-5359.)

On August 22, 2000, a consent search was conducted at Debra McClanahan's residence.[33] (22RT 4991; 23RT 5066.) Officers recovered a

---

[33] When McClanahan was originally contacted by police, she told them she might have an alibi for appellant, Helzer, and Godman, and told them about the movie tickets and dinner receipt. (23RT 5064.) She did this because she thought that was what appellant had wanted her to do. (*Ibid.*) She eventually told the police the truth and asked them to search her apartment for anything left by Godman, including the safe and the wheelchair. (23RT 5066.)

wheelchair and a safe. (22RT 4991; 23RT 5066, 5212.) A search warrant was obtained for the safe and served on August 25. (22RT 4992; 24RT 5286.) The contents were inventoried and photographed (24RT 5287), and included, among other things: two checkbooks in the Stinemans' names (in one, the final entry was a check for $33,000 made payable to Selina Bishop); identification and social security cards for the Stinemans; credit cards for the Stinemans; a "Silver Certificate" dollar bill that Annette kept in her wallet; Annette's wedding rings; a prescription box for insulin in Ivan's name containing three bottles of insulin, and approximately seven syringes; financial information for the Stinemans; identification card and social security card for Selina Bishop; information about Selina's Cal Fed bank account; cash; a Smith & Wesson .22-caliber semi-automatic pistol; two magazines for a .22-caliber handgun; a box of .22-caliber ammunition; a 9mm semi-automatic Beretta handgun; a magazine for a 9mm handgun with 10 cartridges; a box of 9mm ammunition; a black stun gun; drugs (resembling marijuana, Ecstasy, methamphetamine), paraphernalia, and small plastic bags; a gram scale; black handcuffs (which were fitted to the key recovered from appellant's car); silver handcuffs; the answering machine tape from the Stinemans' residence; and a box labeled "Rohypnol." (24RT 5289-5348; see also 15RT 3487-3491.)

On August 31, 2000, Selina's car was found in Petaluma. (18RT 4036; 22RT 4900-4901.) There were parking citations in the wipers dated

August 24, and August 31. (22RT 4901.) A Cal Fed bank hold notice, Selina's student ID card, letters to and from Selina, photobooth photos, and an insurance identification card were found in the car. (22RT 4902; 23RT 5213-5215.) Officers also found a gold wedding band on the passenger-side floorboard. (23RT 5216-5217; 24RT 5385.) The car was towed to the Marin County Sheriff's Department for processing. (23RT 5212.)

The six cartridge cases and five bullets recovered from the Woodacre Murders crime scene and the bodies of Villarin and Gamble matched the 9mm handgun recovered from the safe, which was registered to Helzer. (16RT 3786; 18RT 4007-4021; 24RT 5322, 5364-5377.)

5. Autopsies of the remains of Annette, Ivan, and Selina

Black gym bags began surfacing in the Mokelumne River area on August 7, 2000, and continued to surface until August 10, 2000. (16RT 3747; 23RT 5134.) They were taken to the Sacramento County Coroner's office for examination. (16RT 3747; 25RT 5468.) The examinations began on August 8, 2000, and concluded on August 21, 2000. (25RT 5481, 5504.)

Inside each of the gym bags were a variety of stones and rocks, and the dismembered body parts of the Stinemans and Selina, wrapped in either 30x48" black plastic bags or 16x20" white plastic bags. (16RT 3773; 25RT 5473-5483.)

Doctor Gregory Reiber, a forensic pathologist, performed the autopsies. (25RT 5431-5432, 5468.) Two types of gym bags were used: Athletech and Dunlop. (16RT 3748-3749; 25RT 5473.) Each of the nine gym bags recovered had several random cuts on the outside, and each was weighted down with either rocks (some from the Saddlewood residence, some from the river)[34] or stepping stones from the Saddlewood residence. (16RT 3752-3753, 3757-3758, 3761-3763, 3766, 3769-3772; 25RT 5473, 5478, 5482, 5489.) Moreover, in each gym bag the large body parts and the removed organs were individually wrapped in two to four layers of black plastic bags (measuring 30"x48"). (16RT 3753, 3757-3758, 3761, 3763-3764, 3766-3768, 3771, 3773; 25RT 5473-5483, 5478-5479, 5482.) Nearly every black bag was twisted clockwise to close, and all but one were secured with a twist tie, twisted clockwise. (16RT 3753, 3755, 3761, 3763-3764, 3766-3768, 3771; 25RT 5473-5474, 5483.) The heads, as well as the teeth and jaw fragments, were wrapped in smaller white plastic bags (measuring 16"x20"), twisted counter-clockwise, and all but one was secured with a twist tie, twisted counter-clockwise. (16RT 3751, 3756, 3765; 25RT 5478, 5483.) Dental records and x-rays were used to help identify the remains. (24RT 5267-5268.)

---

[34] On August 18, 2000, officers collected rock samples from the banks of the Mokelumne River in the general area where the gym bags surfaced. (18RT 4034-4036.)

Inside the first gym bag, Dr. Reiber found Annette's eviscerated torso. (25RT 5473-5474, 5527-5528.) There was a large laceration to the front of the torso, and the heart and lungs had been removed. (25RT 5475-5477, 5527-5528.)

In the second gym bag, a package of small, white trash bags contained Selina's head. (25RT 5478, 5480.) There was extensive mutilation to the center and lower portions of the face, indicating an attempt to remove the upper and lower jaws. (25RT 5480-5481.) Dr. Reiber testified this was significant because "that's where you get dental remains which can be used in identifying an individual to specific individual identity." (25RT 5481.) Black plastic trash bags contained a left and right leg,[35] and a right arm. (25RT 5479.)

The third gym bag contained one left leg and one right leg, Ivan's left arm with the hand attached (16RT 3750; 25RT 5481-5482, 5520-5521), and smaller white trash bags containing several jaw segments and numerous detached teeth (16RT 3751; 25RT 5482). There were stab wounds to Ivan's left arm. (16RT 3750; 25RT 5520-21.)

The fourth gym bag contained a left arm with hand attached, Ivan's lower torso, and Annette's head. (16RT 3754-3755; 25RT 5486.) There were approximately 26 stab wounds to Ivan's torso, including wounds to

[35] There were a number of post-mortem stab wounds to all of the legs that were autopsied. (25RT 5521.)

his penis, inflicted randomly and post-mortem. (25RT 5488, 5520.) There was no indication that the stab wounds to his torso correlated with the stab wounds to the gym bag. (25RT 5489.)

The fifth gym bag contained Selina's pelvis. (16RT 3758; 25RT 5491-5493.)

The sixth gym bag contained Ivan's upper torso. (16RT 3761-3762; 25RT 5494-5495.) There were approximately 11 stab wounds to the front and back of his torso, and antemortem bruising consistent with blunt force trauma was present on the front lower rib cage. (16RT 3762; 25RT 5517.) The gym bag also contained fecal material wrapped in paper or tissue. (25RT 5494.)

The seventh gym bag contained: a right arm with attached hand with pink nail polish, Annette's lower torso/pelvis, viscera from Annette's torso (liver, gall stones, heart, two lungs, kidney, a segment of intestine, and four large segments of skin), and Ivan's head. (16RT 3763-3765; 25RT 5496.) Annette's heart had at least two stab wounds. (16RT 3764; 25RT 5498-5500.) These stab wounds did not correlate to the stab wounds on Annette's torso, suggesting they were inflicted after the heart had been removed. (25RT 5498.) Bruising to the front and back of Ivan's head were present, and his upper and most of his lower jaws had been removed. (16RT 3765; 25RT 5513.) There were cuts around his left ear, associated

with decapitation, and around his mid-lower face where his jaw had been removed. (25RT 5513.)

The eighth gym bag contained Selina's upper torso. (16RT 3768; 25RT 5501.) Dr. Reiber observed 34 stab wounds to her torso, several of which were post-mortem wounds but three of them across the center of the chest and two in the upper left chest were inflicted while Selina was still alive. (25RT 5502.) A patch of skin approximately 4" by 4" had been removed from her upper left back area. (16RT 3768; 25RT 5503.)

The ninth and final gym bag contained Selina's left and right arm (both with hands attached), and her left and right leg (both with feet attached and red polish on the toenails). (16RT 3771-3772; 25RT 5504.) The third finger on her left hand was fractured and bruised, and there was antemortem bruising along a substantial portion of the fingers and mid-forearm of her left arm/hand, suggesting blunt force had been applied to her left forearm, wrist, and hand before she died. (16RT 3772; 25RT 5511-5512.)

Dr. Reiber determined that Selina's cause of the death was multiple traumatic injuries, most significantly massive, blunt trauma to the head and a stab wound to the chest. (25RT 5503, 5545.) Her head injuries (overlapping lacerations behind left ear, skull fractures, and bruising and tearing to underlying brain tissue) were consistent with being bludgeoned repeatedly with a hammer. (25RT 5537-5539.) She also suffered blunt

force trauma injuries to her left arm and hand that were possibly defensive wounds. (25RT 5541.) Post-mortem injuries included approximately 30 stab wounds. (25RT 5521-5542.)

Ivan's cause of death was also classified as multiple traumatic injuries. (25RT 5523-5526.) Dr. Reiber believed that, "[g]iven the condition of his body and the dismemberment and mutilation postmortem, there was no way to settle on a single individual injury. I think that all the things that happened to him taken together led to his death." (25RT 5526.)

Annette's cause of death was multiple traumatic injuries, most significantly stab wounds to the lungs[36] and there was some indication her throat was cut before death. (25RT 5527-5535.) Multiple injuries were inflicted post mortem: approximately 18 stab wounds to her upper torso, a long, deep incision down the front of her chest ("appeared to be part of an attempt to gain access for organ removal") that continued into the lower torso (also for organ removal; suggesting organs were removed before torso was divided), a second stab wound to left lung, stab wounds to her organs,[37]

---

[36] A hunting knife, like the one found in Helzer's bedroom that was used to cut Selina's throat, is a double-edged type of knife that could have made these wounds. (25RT 5530; see also 21RT 4581; 22RT 4810.) The soft-tissue cuts made prior to dismemberment were more consistent with a second knife, also found in Helzer's bedroom. (25RT 5530; see also 22RT 4810.)

[37] Dr. Reiber hypothesized that the stab wounds to Annette's organs may have been meant to prevent the accumulation of gas, which would (continued...)

a stab wound to her right hip, and 31 stab wounds to her arms and legs. (25RT 5527-5533.) A small amount of methamphetamine was found in her system. (25RT 5534.)

Dr. Reiber also discussed the tools likely used to effectuate the dismemberments. A reciprocating saw, which operates by a blade moving in and out of the engine casing (18RT 4079; 25RT 5275), would be effective in cutting through bone but not through soft tissue. (25RT 5514.) Here, the soft tissue wounds on all three of the victims indicate that some sort of knife was used to cut through to the bone. (25RT 5515-5516.) The cuts through the bones "showed some degree of markings that were basically stripes . . . or grooves across – running across the cut surface, indicating some sort of back and forth sawing motion necessary to cut the bone, which would be consistent with a reciprocating-type motion with a straight blade."[38] (25RT 5516.)

D. Victim Impact Evidence

The prosecution presented victim impact evidence from a number of sources: for the Stinemans, their daughters Nancy Hall and Judy Nemec,

---

(...continued)
have caused them to float. (25RT 5509-5510.) However, he noted that Ivan's organs had not been removed or stabbed. (25RT 5510.)

[38] The model of reciprocating saw used in this case had a variable speed that could be adjusted by a knob, and the speed was controlled by a trigger. (18RT 4076, 4079; 24RT 5268-5275.) The most common use for this type of saw is destruction. (24RT 5277.)

and long-time friend Harry Dillon testified; for Villarin and Selina, multiple family members (Melissa Villarin, Olga Land, Jill De Diego, Robert Young, Yolanda Gaytan, Lydia Young, and David Villarin) and friends (Roseanne Urban, Anthony Miceli, Kebrina Feickert, and Gloria LaFranchi) testified; and for James Gamble, his friend Roseanne Urban, and his mother Frances Nelson testified.

II. DEFENSE PENALTY-PHASE EVIDENCE

A. Background Evidence from Family and Friends

Appellant presented evidence from family members about mental illnesses in the family, their perception of, and affection for, appellant, and his upbringing in the Mormon Church. Friends and family members testified that, as a child and young adult, appellant was loving, energetic, outgoing, intelligent, fun to be around, had a positive attitude, was well-liked, kind, respectful, and helpful. (26RT 5695, 5700-5701, 5713-5714, 5763, 5773, 5839, 5934, 5945.) And they testified about their love for appellant. (26RT 5697, 5706, 5763.)

Several family members testified about appellant's maternal grandfather, Doyle Sorenson, and his extreme devotion to the Mormon Church and principles. (26RT 5733, 5744, 5760.) Appellant lived with Doyle and his wife, Fay, for a time when he was young, and appellant was devoted to Doyle. (26RT 5744-5745; 29RT 6588.) Appellant was taught Mormon scriptures from an early age. (26RT 5715.) Doyle claimed to

have seen Jesus Christ in person, and on other occasions shared his feelings and revelations with others. (26RT 5734; 29RT 6585-6587.) There was testimony that the family would have "survival meetings" because they believed that after the apocalypse people would have to live off the land; many family members had a very apocalyptic perspective on life. (26RT 5799.) Doyle, as well as others in the family, attended and completed the Impact program. (26RT 5760.)

Several witnesses testified about appellant's experience on his mission for the Mormon Church in Brazil. Jonathan Taylor met appellant while on the mission and they became friends. (26RT 5772.) They spent a lot of time studying scripture and discussing the merit of man, what existed before man, and the end of the world. (26RT 5774-5776.) Appellant was "very comfortable pulling and piecing together scriptural references to support his comments and his conclusions." (26RT 5776; see also 26RT 5798, 5829.) Based on his own interpretations, appellant believed that during the apocalypse, religious leadership would fall into groups led by warrior prophets, and he would be one of those people. (26RT 5784-5785.) When appellant became more adamant about his conclusions and Taylor disagreed with him, appellant said that he had been given additional inspiration to understand how things connected. (26RT 5777, 5780.) Appellant began teaching ideas that were against church policy. (26RT 5777; 26RT 5798; see also 26RT 5902-5903.) He became "increasingly

frustrated" with the mission president, who could not answer his questions, and began to question church leadership.[39] (26RT 5779, 5800, 5843.) When appellant came home from his mission, several people noticed that his views about scriptures and the Mormon Church had changed. (26RT 5842-5843.)

Appellant's uncle, Antone Sorenson, testified that appellant was sent home early from his mission after having a nervous breakdown. (26RT 5745.) Appellant had become overly confident in himself and believed he could convert the world. (26RT 5745.) Upon arriving home, appellant spent 10 days in the county mental hospital, and was then moved to a mental hospital in Sacramento, where he spent a month. (26RT 5748.)

Between 1992 and 1995, appellant took another spiritual course along the lines of Impact, called Introspect. (26RT 5928-5931.) After completing the program, appellant approached the owner about participating in administering the program. (26RT 5933.)

In April 1993, appellant married Ann. (29RT 6607.) He had begun working for Morgan Stanley a week before the wedding. (*Ibid.*) Appellant had a very poor memory, was not dependable, and did not follow through with ideas. (29RT 6610-6611.) Before he and Ann were married, appellant

---

[39] On cross examination, one witness explained that appellant believed the Mormon Church had deviated from Joseph Smith's teachings. He believed Smith's prophecies were a truer reflection of God's will than those who came after Smith. (26RT 5956-5957.)

was sheltered in the culture of the Mormon Church: he did not have a realistic view of people or the world. (29RT 6608.) After their marriage, appellant experienced new things – he was exposed to junk food and he binge-watched television. (29RT 6608-6609.) Their daughter, Sierra, was born in June 1995. (29RT 6610.) Appellant and Ann separated in June 1996. (29RT 6613.) Appellant said he wanted to expand his life outside of the church, wanted to try everything, and wanted to have a non-monogamous lifestyle. (*Ibid.*) However, appellant maintained contact with Sierra.[40] (29RT 6614.)

Several people noticed a change in appellant after his marriage. Marcia Helzer, appellant's aunt, and Charney Hoffman, appellant's cousin, noticed that appellant started using drugs, was drinking and smoking, and was getting into fights. (26RT 5717-5718, 5813 [cross].) Appellant's sister, Heather, noticed appellant was sad and seemed disillusioned with his job at Morgan Stanley. (29RT 6592-6593.) Juliet McCamy, who worked with and dated appellant while he was at Morgan Stanley, testified that although appellant was "kind and chatty," he avoided client contact in the office. (26RT 5873-5874.) While dating, McCamy noticed that appellant did not sleep much, and always seemed a little "manic." (26RT 5875.)

---

[40] Their second daughter was born in 1998 (29RT 6612), and appellant had maintained contact with both of his daughters while in custody. (29RT 6620.) Ann testified that appellant's death would be "catastrophic" for their daughters. (29RT 6622.)

Kristina Kelly, a friend, received a phone call from appellant in 1996, telling her he had left his marriage and the church, and was drinking and using drugs (Ecstasy, marijuana, methamphetamines). (26RT 5860, 5863; see also 26RT 5829; 29RT 6592-6593.) He told Kelly about his plans for an escort service and showed her a sample questionnaire; he told her he had "big plans." (26RT 5861-5862.) He also told Kelly that he was selling Ecstasy. (26RT 5864.)

Elaine Totten, a former girlfriend, testified that appellant had a lot of ideas but was not good at following through with plans and was always late. (26RT 5949.) She stated after appellant left his marriage he seemed more preoccupied with scriptures and had different interpretations of them. (26RT 5948; see also 29RT 6594 [appellant became confrontational].) She last saw appellant in December 1998. (26RT 5950.) He looked different: he was dressed in dark clothing, had facial hair, smelled like cigarette smoke, and was more subdued. (26RT 5950.) Appellant told her he had been clubbing and smoking marijuana. (*Ibid.*)

Appellant was eventually excommunicated from the Mormon Church in 1998. (29RT 6595.)

Appellant's sister, Heather Helzer Allred, testified regarding the family history of mental illness. (29RT 6579.) Appellant's maternal grandmother's sister was institutionalized; his grandmother was suicidal, but never hospitalized. (29RT 6581.) A maternal aunt and uncle had been

institutionalized (*ibid.*), and a cousin had been diagnosed with depression (29RT 6582.) Chase Hoffman, appellant's first cousin, testified that he suffered from borderline paranoid schizophrenia and bipolar disorder. (26RT 5694; 29RT 6582.) Chase's brother, Charney, testified that two of his three brothers had been hospitalized for mental illness, and a number of people in his extended family suffered from depression. (26RT 5793-5794; 29RT 6582.) Under cross examination, several witnesses testified that they did not believe appellant suffered from any mental illness. (26RT 5788, 5807-5808, 5824, 5856, 5941, 5960.)

B. Expert Evidence

Appellant also presented testimony from clinical psychologist Dr. Richard Foster, psychologist Dr. Jeffrey Kaye, and psychiatrists Dr. Douglas Tucker and Dr. John Chamberlain.

1. Dr. Richard Foster

Dr. Foster met appellant in 1995 as a referral for marriage counseling. (27RT 6008.) Although Dr. Foster did not make a diagnosis of appellant at that time, he did note that appellant had a narcissistic personality. (27RT 6009-6010, 6012.) Appellant complained of a sexual discrepancy in his marriage; he believed he was entitled to more sexual gratification, felt misled by his wife, and felt frustrated that he could not make her comply with his expectations. (27RT 6008, 6011-6012.) Appellant also presented with a "grandiose" "inflated" idea of what he

could offer the world, and had a parallel sense that he deserved everything that he wanted. (27RT 6012-6013.) Aside from this, appellant felt shame about masturbating and watching pornography, both of which were prohibited by the Mormon Church, and he felt stressed because of it. (27RT 6014.)

Appellant also shared with Dr. Foster a "highly detailed plan" "infused with a lot of narcissism" about finding an ideal woman who would have sex with him daily. (27RT 6015.) The plan involved placing an advertisement in Brazil, interviewing 80-120 women who responded, choosing and dating 35 of them, and then making a two-year contract with a number of them to ensure he would have sex daily. (*Ibid.*) During their last meeting, on October 4, 1995, appellant was resolved to leave his wife. (27RT 6016.)

Under cross examination, Dr. Foster testified that appellant had communicated to his then-girlfriend, Furman, his intent to deceive to get disability payments. (27RT 6032.) Dr. Foster was unaware that appellant had admitted lying to Dr. Kaye in order to secure an alibi and disability. (27RT 6033.) He was also unaware of anyone claiming appellant had a mental illness prior to September 1998. (27RT 6061.)

2. Dr. Jeffrey Kaye

Dr. Kaye met appellant on September 1, 1998, in the Intensive Outpatient Program of Kaiser Permanente at the Martinez clinic. (27RT

6074, 6082-6083.) Appellant came to the clinic with Furman. (27RT 6083.) He was upset, felt he could not function in his job, and was confused. (27RT 6084.) Dr. Kaye believed that, based on his speech patterns and the difficulty he was having moderating his emotions, appellant was in some kind of manic phase. (27RT 6087.) Appellant claimed many symptoms, including difficulty concentrating, irritability, paranoia, delusions, and hallucinations. (27RT 6088, 6090.) Appellant was reluctant to discuss his paranoia (27RT 6091), but admitted to using both marijuana and Ecstasy in recent months. (27RT 6093.) Dr. Kaye diagnosed appellant with bipolar disorder, type 1; his most recent episode was manic with psychotic features (i.e., presence of delusions/hallucinations, severe). (*Ibid.*) Appellant was prescribed medication[41] and a treatment plan was developed. (27RT 6094-6095.)

Dr. Kaye's next contact with appellant was approximately a week later because appellant was not coming into the clinic as scheduled and was not taking his medications. (27RT 6096.) After that, Dr. Kaye saw appellant on October 1, 1998. (27RT 6097.) They discussed the treatment plan and medications, and appellant spoke about religious ideas and communicating with spirits. (27RT 6097-6098.) On November 20, 1998,

---

[41] Appellant was prescribed Haldol, Lithium, Klonopin, and Neurontin. (27RT 6129-6130.) Haldol was later replaced with Zyprexa. (27RT 6129.)

appellant began including Dr. Kaye in his paranoid delusions, accusing Dr. Kaye of conspiring to prevent appellant from receiving a portion of his disability payment. (27RT 6100-6101.) Dr. Kaye was concerned that appellant's mood swings were not improving, and he suggested voluntary hospitalization, which appellant apparently declined. (27RT 6102.)

On December 22, 1998, appellant presented in a panic attack because he had just been diagnosed with genital warts. (27RT 6107-6108.) Dr. Kaye testified this demonstrated poor ego functioning, and inability to deal with the stresses of life. (27RT 6108.) On January 1, 1999, appellant was dressed "very bizarrely," like a cartoon character. (27RT 6109.) Appellant agreed to hospitalization, but delayed, stating he wanted to see his kids first. (*Ibid.*) Dr. Kaye noted that appellant's moods appeared to have improved – they were less volatile. (*Ibid.*) On January 13, 1999, appellant reported that a voice had instructed him to speak to a stranger because some great money might come out of it.[42] (27RT 6110-6111.)

On February 25, 1999, appellant was involuntarily admitted for psychiatric treatment (27RT 6113-6114), and Dr. Kaye did not see him again on an outpatient basis until March 9, 1999. (27RT 6115.) On that date, appellant presented with pressured speech, agitation, and depression; he spoke about spirits. (*Ibid.*) On April 9, 1999, appellant was "probably

---

[42] Appellant did so, but nothing came of it. (27RT 6111.)

as good as he ever [was] with me." (27RT 6118.) He admitted it was possible he was not a prophet,[43] and felt the absence of inner rage and homicidal thoughts, which was an improvement. (27RT 6119-6120.) Their last meeting was on April 23, 1999. (27RT 6121.) Unlike in their previous meetings, appellant was dressed neatly, his hair was cut, and he was clean-shaven. (27RT 6122.) Dr. Kaye noticed appellant still had a nervous disposition, but his attempt to impress Dr. Kaye showed some insight. (*Ibid.*) Dr. Kaye did not believe that appellant was malingering symptoms of mental illness at any time. (27RT 6130-6135.)

3. Dr. Douglas Tucker

Dr. Tucker spoke to appellant once, for approximately three hours, before testifying on his behalf.[44] (28RT 6170-6171.) In preparation for his testimony, he reviewed appellant's medical records from Kaiser, Mt. Diablo Hospital, and a report by Dr. Chamberlain (see below). (28RT 6172.) At the time of trial, Dr. Tucker diagnosed appellant with

---

[43] Appellant had told Dr. Kaye that he believed he was on a special mission from the spirits, and that he was meant for something big. He talked about bringing peace to the world. (27RT 6121.)

[44] Dr. Tucker was called at the last minute to replace the testimony of Dr. Stalcup, who became unavailable to testify shortly before trial. (28RT 6170-6171.)

schizoaffective disorder, bipolar type,[45] as well as polysubstance abuse (specifically methamphetamine dependence). (28RT 6172-6173.)

Dr. Tucker found support for his diagnosis in the content of his interview with appellant, appellant's manner of speech, and the organization of his thought process. (28RT 6174.) Dr. Tucker observed that appellant had inflated self-esteem (despite being on medication), pressured speech (particularly regarding religious ideas), flight of ideas/racing thoughts, and a disorganized thought process. (28RT 6181-6187.) Based on Dr. Tucker's review of appellant's medical records, he believed appellant previously suffered from all the same symptoms, including a decreased need for sleep. (*Ibid.*) Relying heavily on Dr. Chamberlain's report, Dr. Tucker opined that prior to the murders in this case, appellant was suffering from schizoaffective disorder. (28RT 6208-6209.)

Regarding prior drug abuse, appellant admitted to using marijuana, alcohol, GHB, Ecstasy, LSD, mescaline, mushrooms, methamphetamine, and Ketamine. (28RT 6191.) He consumed alcohol on a daily basis beginning in 1996, and used marijuana daily beginning in 1998. (28RT 6192, 6204.) His methamphetamine abuse also began in 1998. (28RT

---

[45] Schizoaffective bipolar means the patient exhibits schizophrenic features (hallucinations, delusions, disordered thinking) when he is neither depressed nor manic. (28RT 6179.)

6204.) He consumed the hallucinogenic drugs (e.g., Ecstasy, LSD, mescaline, mushrooms, Ketamine), which he interchanged every two to four weeks beginning in 1996, and continued to do so up to a couple of months before the murders in this case. (28RT 6192.) Appellant reported that although these drugs made him feel good, they distracted him. (28RT 6193.) In the final months before the murders, he most heavily abused methamphetamine, which he reported helped him focus.[46] (28RT 6192-6193.)

Dr. Tucker testified that methamphetamine abuse amplifies pre-existing bipolar symptoms, including grandiose delusions, making those symptoms more severe. (28RT 6196-6199, 6206.) Here, Dr. Tucker opined that when appellant began using methamphetamine (at 26 years old), he had already reached a religious crisis. He believed appellant was already suffering symptoms of mental illness, and then went through the Impact and Introspect programs, which had a "very toxic and negative effect on him." (28RT 6202.) Appellant also began drinking, which felt good and confirmed appellant's existing doubts with the church ("how could this be bad if it felt so good?"). (28RT 6203.)

---

[46] Appellant began smoking methamphetamine once or twice a month in 1998. His habit progressed to weekly use about six months before the murders, then to daily use. Finally, in the few months before the murders, appellant abused methamphetamine multiple times a day. (28RT 6205.)

Dr. Tucker believed that the consistency of symptoms appellant presented to different evaluators over time, particularly when there was no apparent benefit from showing symptoms, was indicative of genuine mental illness. (28RT 6176, 6190.) Moreover, he believed the mania that appellant demonstrated, as well as all of the other symptoms Dr. Tucker observed during his interview with appellant, are very difficult to fake. (28RT 6189.)

Finally, Dr. Tucker believed that the remorse appellant demonstrated was genuine, but "tempered" because appellant still believed it was possible he was "doing God's will" by murdering the victims in this case. (28RT 6216-6217.) Dr. Tucker concluded that appellant wished to do the right thing, but was confused. (28RT 6217.)

4. Dr. John Chamberlain

Dr. Chamberlain interviewed appellant at the Martinez detention facility seven times between February and September 2004. Each meeting lasted between two and three hours. (28RT 6280.) Based on the symptoms appellant reported, appellant's demeanor, family history, and medical records, Dr. Chamberlain diagnosed appellant with schizoaffective disorder/bipolar type, and methamphetamine, marijuana, and alcohol abuse. (28RT 6281-6282, 6285-6287.) He believed appellant was suffering from the same mental illness at the time the crimes in this case were committed. (28RT 6323-6324, 6336.) Dr. Chamberlain explained that schizoaffective

disorder is schizophrenia (e.g., patient experiences hallucinations, delusions, and/or paranoia) with one of two emotional components: depressive or bipolar (manic depressive). (28RT 6282.)

Regarding appellant's symptoms of schizophrenia, Dr. Chamberlain observed during their meetings delusions of grandeur and delusions of reference, both of which were based in religion.[47] (28RT 6326-6328.) He noted evidence of delusions as well as depression in appellant's past, particularly during appellant's Mormon mission in Brazil in the early 1990's.[48] (28RT 6330; 29RT 6371 [discussion of appellant's journal]; see also 28RT 6331 [appellant's belief he could speak to insects].) Appellant consistently reported hearing voices or receiving special messages. (28RT 6351.) During their interviews, appellant would be easily distracted; he would turn to listen to something that Dr. Chamberlain could not hear. (*Ibid.*) Appellant distinguished between messages that "popped" into his

---

[47] For example, appellant's delusions of grandeur included his belief that he had evolved beyond the human race and was becoming a God with special divine powers and divine insight/wisdom. (28RT 6326-6327.) An example of appellant's delusions of reference was that appellant believed he could see "signs" or connections between things that were not connected. (28RT 6328.) Dr. Chamberlain also noted that appellant read scriptures in an unusual way, piecing unconnected passages together to suit his interpretations. (28RT 6343-6346; 29RT 6369-6370.)

[48] On cross-examination, Dr. Chamberlain clarified it was not his opinion that at the time appellant went on his Mormon mission he was psychotic. Rather, he noted characteristics present in appellant that were "prodromal symptoms of . . . schizoaffective disorder," i.e., they were precursors to the disorder. (29RT 6546.)

head (which Dr. Chamberlain characterized as delusions) with audible, multiple voices he heard occasionally (which were characterized as hallucinations). (*Ibid.*)

To support his diagnosis of bipolar type, Dr. Chamberlain pointed to several symptoms appellant had either reported, or Dr. Chamberlain observed: significant grandiosity (appellant repeatedly characterized himself as superior, incredibly intelligent, and had been put on a divine mission; he compared himself to Jesus Christ), and a concomitant sense of betrayal; decreased need for sleep (referenced in the journal appellant kept during his Mormon mission);[49] pressured speech; flight of ideas/racing thoughts; easily distracted; an increase in goal-directed activity but with no follow through; and excessive involvement in pleasurable activities that have a high potential for painful consequences (including drug abuse, and promiscuity or the desire to have sexual contact with multiple partners). (28RT 6289-6319.) During their interviews, appellant's mood was unstable, vacillating between happy and polite to irritable and angry. (28RT 6356.) Several of appellant's schemes (e.g., select several women from Brazil to enter into two-year contract for sex), including "Children of Thunder," were consistent with someone suffering from schizoaffective disorder. (29RT 6381-6387.)

---

[49] Dr. Chamberlain admitted it was difficult to get a good sense of appellant's current sleep habits. (28RT 6300.)

Dr. Chamberlain testified that in his opinion, appellant was not malingering a mental illness. He testified that racing thoughts and other symptoms of mania are difficult to fake. (28RT 6310; 29RT 6375.) The fact that appellant may not have appeared mentally ill to those around him may have been the result of psychotropic medications to address the problem, or appellant abusing drugs such that people would simply believe appellant's conduct was the result of the drugs.[50] (29RT 6376.) Nor does the fact that appellant told people he was faking necessarily mean he was malingering. Rather, it could mean that appellant struggled with the reality that he had a mental illness. (29RT 6377.) Further, appellant admitted that although he had considered the possibility that he was mentally ill he did not view himself as ill, which Dr. Chamberlain viewed as inconsistent with malingering because malingerers want to be viewed as ill. (28RT 6334; see also 28RT 6353.) Finally, Dr. Chamberlain tested appellant and the results were inconsistent with malingering. (28RT 6322.)

[50] Dr. Chamberlain added that a person's intelligence may also mask a disorder to a degree. The person may be able to seem in control, or be in control, for short periods of time. (29RT 6379.) Appellant's IQ was tested in August 2004; his score was 108 – the high end of the average range of adult intelligence. (28RT 6321.)

ARGUMENT

I. THE TRIAL JUDGE CORRECTLY DENIED THE DEFENDANTS' MOTION TO SUPPRESS EVIDENCE BECAUSE THE SEARCHING OFFICERS CONFINED THEIR SEARCH AND SEIZURE TO EITHER THE TWO VALID MARIN COUNTY WARRANTS OR THE PLAIN VIEW DOCTRINE; IN ANY EVENT, SEIZED ITEMS WOULD HAVE BEEN INEVITABLY DISCOVERED UNDER THE CONTRA COSTA COUNTY SEARCH WARRANT

In Ground One, appellant argues that the defendants' motion to suppress evidence obtained from the Saddlewood residence pursuant to the two Marin County search warrants should have been granted because officers seized items that were not specifically named in those warrants. He argues that suppression of all evidence obtained from the residence should have been ordered because the officers acted in flagrant disregard for the terms of the Marin County warrants, and the same evidence would not have been inevitably discovered under the Contra Costa County warrant. He requests reversal of his conviction and remand to the trial court to withdraw his guilty plea. (AOB 201-208, 293-318.)

Appellant concedes that the two Marin County warrants were patently valid, supported by probable cause, and sufficiently particularized. (AOB at 201.) He takes issue only with the Marin County officers' seizure of items pursuant to those warrants: that some items seized were not specifically listed in the warrant, and that Detective Nash and the collecting officers acted in flagrant disregard for the itemized list in the warrants. On the contrary, all of the items seized by officers pursuant to the two Marin

County warrants were either specifically enumerated in those search warrants, or they were properly seized under the plain view doctrine. Assuming, however, that neither the search warrants nor the plain view doctrine supported the seizures, all of the items would have been inevitably discovered under the Contra Costa County search warrant, which was served on the morning of August 8 – the day after the two Marin County search warrants were served.

Contrary to appellant's argument, the mere volume of items seized is not proof that officers flagrantly disregarded the terms of the warrant by either searching areas outside the scope of the warrants or by seizing items not enumerated in the warrants or within plain view. Given the items listed in the warrant, officers were authorized to search every part of the Saddlewood residence, and it is evident from Detective Nash's suppression hearing testimony that officers took pains to ensure that they seized only items they were authorized to seize.

For these reasons, Marin County officers did not exceed the scope of the valid warrants or otherwise violate appellant's Fourth Amendment rights in their search of the Saddlewood residence and their seizure of items

from the residence.[51] Thus, the relief requested in Ground One must be denied.

A. Relevant Facts

1. "Omnibus notice of motion and motion to suppress evidence and traverse various search warrants"

On November 19, 2002, Godman filed an "Omnibus Notice of Motion and Motion to Suppress Evidence and Traverse Various Search Warrants," points and authorities in support thereof, and no less than eighteen exhibits. (8CT 3000-3279; 1RT 173-174.) In it, Godman challenged eight different searches[52] on a variety of grounds. (8CT 3000-

---

[51] Appellant has argued that a harmless error analysis cannot be applied, but assuming it could the error here was not harmless beyond a reasonable doubt. (AOB 317-318.) Where a defendant pleads guilty following the erroneous denial of a section 1538.5 motion, the harmless error doctrine is inapplicable. (See *People v. Miller* (1983) 33 Cal.3d 545, 550-556 [reaffirming *People v. Hill*]; *People v. Hill* (1974) 12 Cal.3d 731, 768-770 [holding that harmless error analysis is inapplicable following erroneous denial of motion to suppress and subsequent guilty plea], overruled on other grounds by *People v. Devaughn* (1977) 18 Cal.3d 889, 896 fn. 5; see also *People v. Rios* (1976) 16 Cal.3d 351, 357-358 [following *People v. Hill*].) The fact that evidence that should have been suppressed may be relevant only to certain counts is a "distinction without a difference" because the disposition of "unrelated" counts is not independent from the disposition of "related" counts. (*People v. Miller*, *supra*, at p. 553.)

[52] The searches will be referred to by their corresponding numbers as specified in Godman's Motion. Searches 1, 2, and 3 were for subscriber information and telephone numbers from various cell phone carriers. Searches 4 and 5 were pursuant to two Marin County search warrants for the Saddlewood residence. Search 6 was pursuant to a Contra Costa (continued...)

3021.) Search 4 was challenged on the bases that the first Marin County search warrant was issued without probable cause, was overbroad, and was based on material misrepresentations and information unlawfully obtained during prior unlawful searches ("fruit of the poisonous tree"). (8CT 3002, 3011-3014.) Search 5 was challenged on all the same bases as well as on the grounds that it exceeded the scope of the issuing court's jurisdiction and that items seized pursuant to the warrant were outside its scope. (8CT 3002-3003, 3015-3019.) Godman argued that such unlawful searches and seizures violated her state and federal constitutional rights. (8CT 3003-3004.) During a November 26, 2002 hearing, appellant orally joined in the motion, and later filed a written request to do so. (9CT 3415; 1RT 200.) The People filed a response to the Motion. (9CT 3476-3491.)

2. Rulings on searches 1 through 4, 7 and 8

The first hearing on the Motion was held on January 31, 2003. The trial judge addressed the searches in turn. After allowing both sides to argue (1RT 251-2555), the trial judge ruled that Searches 1 (GTE - warrantless), 2 (Cellco dba Verizon Wireless – warrant no. M00-293; 9CT

(...continued)
County search warrant for the Saddlewood residence. Search 7 was for the safe recovered from Debra McClanahan's apartment. Search 8 was for a gray nylon duffel bag found in Godman's vehicle. (8CT 3000-3003, 3009.)

3022-3034; 8SCT 1603-1619)[53] and 3 (Pac Bell – warrantless) – all for phone records – were either not searches (Searches 1 and 3) or did not exceed the issuing court's authority (Search 2) and, thus, denied the motion to suppress evidence obtained during those searches. (1RT 255-256.)

Moving to Search 4, the initial search of the Saddlewood residence[54] pursuant to the first Marin County search warrant (no. M00-294; 9SCT 1846-1874), the trial judge found it to be valid. Preliminarily, the trial judge rejected the "fruit of the poisonous tree" argument based on her rulings regarding Searches 1 through 3. (1RT 262.) Both sides offered arguments on whether sufficient probable cause for the warrant existed and whether Detective Nash made material misrepresentations in his affidavit supporting the warrant. (1RT 262-279.) On the issue of probable cause, the trial judge reasoned that "the [issuing] magistrate had a substantial basis for concluding that probable cause existed. I believe, based upon what was before the magistrate in Marin, that there was a fair probability that evidence regarding the Woodacre murders could be found at Saddlewood Court in Concord." (1RT 280.) On the issue of material misrepresentations

---

[53] "SCT" refers to the Supplemental Clerk's Transcript. "SSCT" refers to the Second Supplemental Clerk's Transcript. "Add. SSCT" refers to the Addendum to the Second Supplemental Clerk's Transcript. "2 Add. SSCT" refers to the Second Addendum to the Second Supplemental Clerk's Transcript.

[54] Both Marin County search warrants included appellant's and Helzer's vehicles as locations to be searched.

in the affidavit, the trial judge found that the affidavit did not contain statements that were deliberately false or made with reckless disregard for the truth and, even if some of the statements were questionable, there was still sufficient probable cause to support the warrant. (1RT 280-282.)

Regarding Search 5, arising out of the second Marin County search warrant (no. M00-295; 9SCT 1875-1936), also for the Saddlewood residence, the trial judge ruled that the warrant and resulting search were valid. The defendants challenged this warrant and search on five grounds: (1) evidence obtained was the unlawful "fruit" of the previous four searches; (2) the issuing court lacked jurisdiction to issue the warrant; (3) there was insufficient probable cause to support the warrant; (4) the search exceeded the scope of the warrant; and (5) the warrant amounted to an impermissible general warrant. (1RT 283.) Again, both sides were allowed to present extensive argument, and Godman presented five photographs showing the condition of the Saddlewood residence before and after the search in support of the "exceeds the scope" argument. (1RT 282-302.)

At the outset, the trial judge rejected the "fruit" argument based on her findings that Searches 1 through 4 were valid. (1RT 283.) The parties then argued the second and fourth points together. Godman's counsel argued that various items listed in the return for the warrant patently exceeded the scope of the warrant (e.g., beer bottles, television remote). (1RT 285-286.) Counsel argued moreover that officers collected evidence

relevant to the Stinemans and the Contra Costa County case under the Marin County warrant, which not only exceeded the scope of the warrant but it was also outside the Marin County magistrate's authority to issue a warrant for evidence of a crime not committed in her jurisdiction. (1RT 284-289.) The prosecutor responded that the officers relied on the plain view doctrine when seizing certain items and, because the officers were inside the residence pursuant to a lawful warrant, they could seize those items with sufficient probable cause even if the items were not specifically enumerated in the warrant. (1RT 294.) Additionally, at some point the investigations of both the Marin County Sheriff's Department (into the Woodacre Murders) and the Concord Police Department (into the Stinemans' disappearance) became "inseparable and were inextricably interrelated." (1RT 293.) Both agencies were present at the Saddlewood residence from the beginning of the searches. (1RT 290-293.) Moreover, a vast amount of information developed during the investigation, i.e., leads were followed up on as they were found during the search and gym bags began to surface in the Mokelumne River beginning the first day of the search (August 7), and officers collected evidence in plain view that could have been "the fruits or instrumentalities of the crime then being investigated." (1RT 294.) The prosecutor argued it was the defendants' burden to point to specific items they believed were outside the scope of the

warrants; the defense argued it was the prosecutor's burden to justify every item that was seized. (1RT 289, 294-295.)

The trial judge made several findings on these, as well as the remaining, defense challenges: (1) regarding the issuing magistrate's authority, there was enough information in the affidavit to connect the Saddlewood residence to the Woodacre Murders and Selina's disappearance, particularly in light of the application of the plain view doctrine and appellant's flight, such that the magistrate would have sufficient basis to believe evidence relating to the Woodacre Murders and Selina's disappearance would be found in the residence; (2) even assuming the Marin County magistrate exceeded her jurisdiction, the *Leon*[55] good faith exception would save the search and seizure; (3) there was sufficient probable cause for the warrant; (4) regarding the scope issue, evidence of motive, identification, etc. was relevant because the investigation into the Woodacre murders and search for Selina was ongoing, and *People v. Gallegos* (2002) 96 Cal.App.4th 612 provides that, "When officers, in the course of a bona fide effort to execute a valid search warrant, discover articles which, although not included in the warrant, are reasonably

---

[55] In *United States v. Leon* (1984) 468 U.S. 897, 922-925 [104 S.Ct. 3405, 82 L.Ed.2d 677], the United States Supreme Court held that evidence obtained pursuant to a warrant that a reasonable officer objectively would believe is valid will be admissible even if the warrant itself is later invalidated.

identifiable as contraband, they may seize them whether they are initially in plain sight or come into plain sight subsequently as a result of the officers' efforts"; moreover, "The incriminating nature of the item is apparent when the police have probable cause to believe it is contraband or evidence of a crime; officers need not know to a near certainty, that the item is evidence of a crime";[56] and (5) regarding the general warrant argument, the trial judge noted that the California Supreme Court "has recognized . . . that in a complex case resting upon the piecing together of many bits of evidence, the warrant properly may be more generalized than would be the case in a more simplified case resting upon more direct evidence[,]" citing *People v. Bradford* (1997) 15 Cal.4th 1229, 1291, and found that given the Woodacre Murders and the fact that Selina was still missing, the warrant was not overbroad or general. (1RT 302-306.) The trial judge declined to go through the Return to the warrant herself and identify items that may be outside the scope of the warrant. (1RT 303-304.)

With regard to Search 6, arising from the Contra Costa County search warrant (no. M00-230; 8SCT 1672, 1722-1724, 1730-1738, 1739-1845; 9SCT 1937-2052; 1RT 259-260 [Peo's Exh. 4]), the trial judge rejected the "fruit" argument, once again based on her prior rulings, but reserved ruling on the scope issue. (1RT 307-311.) At the defendants'

---

[56] Later in the hearing, the trial judge vacated her ruling on the scope issue and agreed to revisit it at the defendants' request. (1RT 310-312.)

request, the trial judge also vacated her ruling on the scope issue relative to Search 5 and the second Marin County warrant (no. M00-295), and agreed to revisit it after the parties presented evidence. (1RT 310-312.)

The trial judge rejected the defendants' challenges to Searches 7 (no. M01-086; 9SCT 2053-2107; 1RT 260 [Peo's Exh. 5]) and 8 (no. M00-381; 10SCT 2108-2163; 1RT 260 [Peo's Exh. 6]) based on her prior rulings and the evidence before her. (1RT 312-315.)

3. Further hearings on searches 5 and 6

On February 21, 2003, Godman's counsel revisited the second Marin County warrant (Search 5), suggesting how to go about addressing the items they believed exceeded the scope of the warrant. (1RT 321.) The prosecutor responded that, as it was left at the previous hearing, they had agreed to wait until trial and address only those items the prosecution wished to introduce into evidence. (1RT 323.) The prosecutor also advised counsel that the evidence room was open to all defense counsel during normal business hours if they wished to go through the evidence collected, and that he would have an evidence list for trial ready shortly. (1RT 324.) The trial judge set another date to address the scope arguments relative to Searches 5 and 6, and ordered the defendants to review the items of evidence in person and return with a specific list of challenged items. (1RT 332.) Prior to the next hearing, Godman's counsel filed a supplemental

pleading with a list of the challenged items. (See 5SCT 1038-1087.)[57] Although the trial judge had already ruled on Search 4 – the first Marin County warrant – this list challenged items seized under *both* Marin County warrants. (See 5SCT 1043 [Box #4, item Y: receipts under first warrant], 1047 [Box #28].)

On June 13, 2003, the parties returned and continued to argue the Motion. (2RT 469.) Godman's counsel argued that based on the "sheer volume of the items seized outside the specific list of items in the warrant," which demonstrated "the flagrant disregard for the terms of the warrant," all the evidence collected from the Saddlewood residence should be suppressed. (2RT 472-476.) The trial judge stated she wanted to address specific items first. (2RT 481.)

Godman's counsel classified the evidence into groups: (1) items specifically mentioned in the warrants; (2) indicia; and (3) items not specifically mentioned and could not be characterized as indicia. (See 2RT 482-486.) The prosecutor argued that, as stated in his responsive brief, there were several justifications authorizing seizure of the challenged items, including the warrants themselves, the plain view doctrine, and inevitable discovery. (2RT 489-490; see also 9CT 3476-3491.) The timing of the

---

[57] Attached to this supplemental pleading appears to be an inventory of all the items seized, organized by box number. (See 5SCT 1049-1087.) Concord Police Department ("CPD") and Marin County Sheriff's Office ("MSO") assigned evidence numbers for each item appear to be provided.

seizure of the items relative to when officers became aware of certain information, down to the minute, was difficult to establish because the investigation lasted over several days and, ultimately, it would not matter because all of the significant information, including the financial fraud information, was known to the officers before the returns to the warrants were served. (2RT 492.)

The parties then addressed some of the specific items challenged in Godman's supplemental pleading. (5SCT 1040-1048; 2RT 493-508.) In the process, the prosecutor reiterated that the second Marin County search warrant authorized not only seizure of indicia but also of trace evidence. (2RT 496.) Furthermore, as information developed, particularly information about dismembered bodies surfacing in the Mokelumne River, officers had probable cause to seize several items not specifically listed in the warrant. (2RT 497-499.) At the end of the hearing, the trial judge requested the prosecutor to file a response to each of Godman's challenges with his justification for seizure of each item, and to be prepared to provide testimony from officers during the next hearing. (2RT 508-509.) Prior to the next hearing, the prosecutor filed a response with justifications for all of the challenged items (3SCT 654-666; 2d. Add. SSCT 291-296 [later marked Court's Exh. 1]), and Godman's counsel filed a short reply (10CT 3985-3987).

On June 27, 2003, the hearing continued with testimony from Marin County Sheriff's Detective Steve Nash and Concord Police Detective Stephen Chiabotti. (2RT 525-679.)

a. Saddlewood residence search pursuant to first Marin County warrant (search 4; no. M00-294)

Detective Nash testified that, as lead investigator into the Woodacre Murders, his attention was drawn early to the Saddlewood residence. (2RT 526.) He sought and obtained a search warrant for the Saddlewood residence, appellant's car, and Helzer's pickup truck, that specifically listed eight categories of items: (1) a 9mm semi-automatic hand gun; (2) 9mm fully copper-jacketed ammunition; (3) expended 9mm cartridges; (4) receipts and documents related to 9mm hand guns and ammunition; (5) a woman's light-colored short-sleeved t-shirt with small flowers; (6) dark colored pants or jeans; (7) indicia of ownership of the vehicles; and (8) indicia of occupancy or ownership of the Saddlewood residence. (9SCT 1846-1848; 2RT 526, 627.) The warrant was signed by a Marin County magistrate on August 7, 2000, and served at 6:00 am that same day. (9SCT 1848; 2RT 526, 616.) Prior to service, Detective Nash held a briefing with the other officers. (2RT 528.)

Following service of the warrant,[58] Detective Nash "did a cursory exam of the entire residence[,]" designated rooms for other officers to begin searching for the above items[59] and, based on what he had seen in plain view (e.g., commercial carpet dryers), he left the premises to obtain a second warrant. (2RT 607-608, 618, 626.)

Detective Nash testified that members of both the Marin County Sheriff's Department and the Concord Police Department were at the Saddlewood residence on August 7, 2000, when the first warrant was served,[60] and officers from both agencies searched together for several days

---

[58] Events leading up to the service and execution of the first Marin County search warrant, and shortly thereafter, including appellant's flight out a back bedroom window, his detention, his subsequent flight out of the window of Detective Inskip's car, his unlawful entry into the homes of William Sharp and Mary Mozzochi, his assault of Mozzochi, and his ultimate capture are set forth in the Statement of Facts, *supra*.

[59]Detective Nash explained that evidence numbers were assigned to items collected based on the room number, the collecting officer's initials, and the order in which the items was collected from that room. (2RT 611.) Under the first warrant, the collecting officer used his/her own initials. (2RT 547, 612.) Under the second warrant, all items were assigned numbers with Detective Nash's initials except those items found in the garage, which were assigned numbers using the initials of the searching officer, Deputy Crain. (2RT 612; 2 Add. SSCT 141-144.) "RY" was used for items collected from the rear yard, "H" was used for items from the hall area, and "SAT" was used for items from appellant's car. (2RT 612; 2 Add. SSCT 136-138, 160-161.)

[60] There were at least ten officers on site between Marin County and the Concord SWAT Team. (2RT 615.) The SWAT Team entered to secure the residence and detain the occupants. (*Ibid.*)

after the Contra Costa County warrant had been served.[61] (2RT 528, 529-530, 621.) The two agencies worked collaboratively, and shared information across departments.[62] (2RT 528.) There were joint briefings at least twice daily that began on the morning of August 8, 2000. (*Ibid.*) Detective Nash oversaw the search and processing of the scene for Marin County,[63] conducted some of the search himself, and coordinated assigning

---

[61] The second Marin County warrant was served at 1:00 pm that same day – August 7, 2000. (9SCT 1878; 2RT 574, 614, 618.) The Contra Costa County search warrant was served the next morning – August 8, 2000. (2RT 651, 669.) Marin County officers ceased searching the residence on August 15, 2000. (2RT 530.)

[62] Detective Nash testified that during collection, if officers could clearly identify the item as being called for under the Contra Costa County warrant, it would get a Concord Police Department number. If it overlapped the two warrants, Marin County would collect it. If there was some doubt about which warrant the item fell under, it would go to Marin County until it was sorted out. (2RT 592.)

[63] Officers did not record the exact time any given item was collected under any of the warrants. (2RT 613.) However, the order of the Marin County search was generally as follows: (1) fireplace/formal living room (designated room 7) and entry hallway; (2) hallway leading to bedrooms; (3) Helzer's bedroom (room 1); (4) Godman's bedroom (room 2); (5) appellant's bedroom (room 4); (6) family room/kitchen area (room 5; evidence from kitchen designated "KI"); (7) back to the formal living room (room 7); (8) finished Godman's bedroom (room 3); (9) den/office area (room 6); (10) hallway bathroom (room 3); (11) garage; and (12) rear yard. (2RT 632-638.) The search of one room was not necessarily completed before moving onto another room: "[T]here was some points where we would stop and move to another area and then come back[.]" (2RT 635.)

officers to follow up on leads as they developed at the scene.[64] (2RT 531.) He fielded questions from searching officers about whether certain items were covered by the search warrants, but whether an item was seized (after all three warrants for the Saddlewood residence had been served) was a group decision. (2RT 532, 622.) He testified that they made a conscientious effort to discriminate among the physical evidence and seized only items listed in the search warrant and items they believed they had probable cause to seize as the fruits or instrumentalities of the crimes.[65] (2RT 532.)

Initially, under the first warrant, if an officer believed they found something called for in the warrant, "we'd come take a look at it," and "most of the time we'd take photographs." (2RT 608.) Sometime thereafter, the item would be collected, packaged, and placed in a U-Haul truck. (*Ibid.*) If an item contained biological evidence (under the second Marin County warrant), it was transported immediately. (*Ibid.*) Otherwise,

---

[64] Using a receipt as an example, Detective Nash testified that he often prepared a lead sheet to have officers follow up on information before physically collecting an item of evidence. (2RT 628-629.) He did this to avoid possible destruction of evidence. (2RT 630.)

[65] Detective Nash explained they would evaluate the information obtained from the investigators during the briefings "or we would look at it in the total picture of is this related or possibly related to this series of homicides or the financial information that we were developing." (2RT 623.) "[W]e wouldn't just arbitrarily say yeah, that's related. We would actually have information at some point in there that we felt that was related to the series of crimes." (2RT 624.)

once the truck was full (after three to four days) it transported the items to the Marin County Sheriff's Department. (2RT 608-609.) Only one trip was made with the U-Haul truck; regular vans were used thereafter. (2RT 609.) On August 15, Detective Nash turned the residence over to the Contra Costa County crime lab to conduct some specific chemical testing. (2RT 531.)

Items seized pursuant to the first Marin County warrant included: a receipt for the purchase of a firearm and ammunition (BER185983), a set of black handcuffs with keys, an unopened roll of duct tape, bundles of narrow nylon rope, a bag of assorted ammunition, two shotguns, a length of yellow nylon rope, a bag with three sets of handcuffs and 2 leg "cuffs,"[66] a VHS videotape, a carpet cleaning receipt, newspaper article, receipt for leg "cuffs," Safeway receipt, insurance ID card, Copeland Sporting Goods receipt, Long's receipt, Home Depot receipt, Saturn receipt, and a GTE wireless receipt. (9SCT 1866-1867; 2 Add. SSCT 35-42.) Detective Nash testified that all of the receipts and the insurance identification card could be characterized as indicia. (2RT 569.) All of the items were seized prior

---

[66] Detective Nash testified that the leg irons were discovered before the receipt for them was. (2RT 569.) The leg irons were not specifically enumerated in the search warrant, but were seized under the plain view doctrine. (2RT 571.) The receipt was thereafter seized for "evidentiary value" and for indicia. (2RT 569.)

to the joint briefing with Concord Police on the morning of August 8. (2RT 613-614.)

b. Saddlewood residence search pursuant to second Marin County warrant (search 5; no. M00-295)

Based on additional information developed on August 7, 2000, Detective Nash sought and obtained a second search warrant for the Saddlewood residence, appellant's car, and Helzer's truck. (2RT 526; 9SCT 1875-1878.) This warrant specified 13 categories of items to be seized: (1) forensic evidence; (2) carpeting from the residence; (3) blood, and objects with apparent blood on them; (4) anything with apparent human tissue, bone, or hair on them; (5) a man's long-sleeve stripped shirt removed from a garbage can in the garage of the residence; (6) a pair of men's low-cut work boots with small dark stains removed from a garbage can in the garage of the residence; (7) a pair of latex gloves removed from a garbage can in the garage of the residence; (8) access to the residence by law enforcement personnel for purposes of taking photos, videos, and scientific evidence tending to establish the identity of the person(s) responsible for the death and/or disappearance of Selina; (9) items of identification that tend to establish who might have been within the residence; (10) diaries and other written materials, audio/video cassettes, answering machines, communications, and any other materials expressing threats, anger, or violence toward the victims; (11) electronic storage

devices, data, assorted hardware, and documentation and material describing operation of any computer, software and/or peripherals; (12) indicia of ownership of the vehicles, and (13) indicia of occupancy or ownership of the residence. (9SCT 1875-1878.) This warrant was signed by the same Marin County magistrate on August 7, 2000, and was served at 1:00 pm that same day by Detective Nash. (9SCT 1878; 2RT 574, 614, 618.) Upon Detective Nash's return to the Saddlewood residence, copies of the warrant were passed out to officers and there was a briefing. (2RT 574.) A Concord deputy district attorney and some Concord Police officers were present at that time "because somebody saw something related to Stinemans and . . . . that's when we started making some links at that point." (2RT 622.)

Late in the afternoon or in the evening on August 7, but "definitely by the 8th," Detective Nash received information that body parts had surfaced in the Mokelumne River. (2RT 534, 614.) Detective Nash suspected that the remains belonged to Selina and the Stinemans. (2RT 534.) That evening, along with several others, he participated in giving an oral affidavit in support of a Contra Costa County search warrant. (2RT 527.) At that time, Detective Nash became aware of a transfer of approximately $100,000 in the form of two checks drawn on the Stinemans' accounts payable to Selina Bishop, and deposited by Godman identifying herself as "Jackie" at the Cal Fed Bank in Walnut Creek. (*Ibid.*)

He also heard information about Impact America. (2RT 594.) On August 8, officers had followed a lead obtained from the search of the Saddlewood residence and discovered a receipt for a jet ski rental from Cool Rides Water Craft, signed by Helzer. (2RT 537.) By August 9 or 10, Detective Nash had received information that striations on the victims' bones suggested that a power reciprocating saw had been used to dismember the bodies. (2RT 534-535.) A day or two later, he received information that Annette's organs had been removed. (2RT 535.) Around the same time, he was also made aware of Concord Police Department's efforts to identify the person who had purchased leg irons from Not Too Naughty based on a receipt found in the kitchen area, and that a videotape of the transaction was recovered from the establishment. (2RT 540-541.)

While the search was ongoing, officers received information that the victims' mandibles and teeth were found loose among the other body parts, and that a piece of skin containing a tattoo had been sliced off of Selina's left shoulder blade. (2RT 536.) Officers had interviewed Furman, who provided some information about appellant's plans, including Impact America, his need for a "core" of three people, and his plans to sell Ecstasy. (2RT 539, 544.) Detective Nash was also informed of Selina's attendance at a rave on July 30, her most recent appearance (she had dyed her hair red) and habits, and her plan to go camping with appellant on July 31. (2RT 542, 544.)

The Return to the search warrant included numerous Marin County Evidence/Property Reports. (9SCT 1904-1931.) Each report corresponded to a particular room in the residence. (2RT 547.) Detective Nash testified that most receipts recovered from Saddlewood were classified as indicia "because we track people all the time down [*sic*] by receipts to identify who made the purchases." (2RT 567-568.) The bathtub was seized for purposes of forensic evidence and testing (item no. 1 on the warrant), and was found to contain blood. (2RT 579-577.) Floorboards were also seized as forensic evidence and as evidence containing blood or apparent blood (item no. 3 on the warrant). (2RT 578.) Detective Nash testified he was concerned about preserving the stains in light of the "extensive cleaning" that had occurred. (*Ibid.*) At least two pairs of eyeglasses were recovered. (2RT 591.) Detective Nash testified they were seized as indicia of occupancy, and also as indicia of who had been present in the residence (item no. 9 on the warrant).[67] (2RT 591-592.)

In the garage, which was searched close to last, various posters (depicting dragons, skulls, a warlock, a marijuana leaf), two staffs, and a book on Dungeons and Dragons were collected. (See 2RT 583-584 [collected following issuance of the Contra Costa County warrant], 597

---

[67] From Detective Nash's testimony, it appears the eyeglasses were collected after Contra Costa County had obtained their warrant. (See 2RT 591-592.)

[book assigned Concord PD evidence number], 614.) Detective Nash testified that the posters were seized in plain view and after officers had been informed of some occult-type activities relative to the victims (i.e., Annette's organs had been removed from her body).[68] (2RT 584-587.) The Dungeons and Dragons book was seized earlier,[69] but for the same reasons. (2RT 600-601, 619.) The marijuana leaf poster, also seized in plain view, "goes to show the drug usage. It's kind of a gateway drug[.]" (2RT 590.)

Rocks and stepping stones from the rear yard were seized after officers received information that the gym bags had contained grey and red stepping stones or rocks. (2RT 625.)

Ultimately, with one exception, Detective Nash agreed with the prosecutor's justifications for each of the challenged items (3SCT 657-662; 2 Add. SSCT 291-296).[70] (2RT 604.) The exception was the Viagra bottle, which was collected as indicia because Detective Nash believed they could track the prescription code to determine the owner. (2RT 604-605.)

---

[68] Although the prosecutor was permitted to introduce this (and other) occult-type evidence to the jury, ultimately the trial judge found the evidence insufficient for the prosecutor to argue to the jury that such activities motivated the murders in this case. (29RT 6532-6533.)

[69] The book was collected following service of the second warrant on August 7, and probably sometime during August 7 or 8. (2RT 619.)

[70] "PV" indicated the item was seized under the plain view doctrine. "SW" indicated it was seized pursuant to a warrant. (2RT 604, 606 [list marked as Court's Exh. 1].)

c. Saddlewood residence search pursuant to Contra Costa County warrant (search 6; no. M00-230)

On the evening of August 7, 2000, Concord Police Detective Stephen Chiabotti, the lead detective of Concord's investigation into the Stinemans' disappearance, sought and obtained a search warrant for the Saddlewood residence, appellant's vehicle, and Helzer's vehicle from a Contra Costa County judge.[71] (9SCT 1937-1938; 2RT 649-651.) This warrant authorized the seizure of: (1) various pieces of property stolen from the Stineman residence;[72] (2) two men's suits; (3) lime green women's clothing; (4) women's tan driving gloves; (5) gold-colored cowboy hat, receipt for such a hat, or photo of such a hat; (6) receipt for purchase or rental of a wheelchair; (7) handwriting/handprinting exemplars for appellant, Helzer, and Godman; (8) documentation of names and account

---

[71] The search warrant was supported by an oral affidavit, the transcript of which is included in the record. (9SCT 1946-2052.) Testifying individuals included Detective Nash, Detective Chiabotti, Corporal Bob Grimes (crime scene investigation), Detective Judy Elo (Concord PD), Officer Tiffany Delatorre (Concord PD), Detective Russ Norris (Concord PD), and Corporal Darrell Graham (Concord PD). (9SCT 1949-1950; 2RT 527.) Contra Costa County Deputy District Attorney Bob Hole and Marin County Assistant District Attorney Ed Berberian were also present. (9SCT 1949.)

[72] These items included various credit cards, identification cards, checks, account statements, documents from the wallet/purse of the Stinemans, any notation of various phone numbers or the Stinemans' address, the missing answering machine tape, a rectangular suitcase, an insulin kit, two hardcover books with cloth covers, and social security cards. (9SCT 1939.)

information of persons who have accounts with Morgan Stanley Dean Witter; (9) documentation (letters, notes, journals, etc.) tending to prove a connection between appellant and Selina, and documentation showing the nature of the connection; (10) latex gloves; (11) hair dye; (12) forensic testing; (13) any item that may show where the Stinemans were located; (14) latent print testing; and (15) any footwear with a "waffle" type pattern. (9SCT 1939-1940.) The warrant was served by Concord Police Detective Judy Elo on the morning of August 8. (2RT 651, 669.)

Beginning on August 8, Detective Chiabotti attended daily briefings that included both Concord and Marin County officers to discuss information that was developing, he created a "lead sheet" to write up different leads and assign them out, information was shared between the agencies, and efforts were made to communicate information as it developed to the searching officers. (2RT 652-653, 668, 671.) Detective Chiabotti and the searching officers maintained constant contact and he relayed information to them throughout the day. (2RT 647.)

Prior to obtaining the warrant, Detective Mike Warnock interviewed Kelly Lord, who said she knew appellant, Godman, and Helzer, that she had attended a wicca meeting with appellant, that she had conversations with appellant about making money for Impact America by carjacking and robbery, that appellant had solicited Lord's help in a robbery, that appellant had himself declared legally insane to collect disability and to avoid legal

consequences, and that appellant had told her that if anyone should betray him he would kill them. (2RT 653-656.)

Also prior to obtaining the warrant, on August 7, Officer Tiffany DeLaTorre interviewed George Calhoun, who worked with appellant at Morgan Stanley Dean Witter. (2RT 657.) Calhoun told her about the call he received on July 31, 2000, at around 6:00 am from a woman identifying herself as Annette Stineman. (*Ibid.*) The woman instructed him to liquidate the Stinemans' assets, and that it was an emergency situation. (*Ibid.*) Calhoun told Officer DeLaTorre that the woman sounded distraught. (*Ibid.*) The value of the Stinemans' stock assets was $100,000. (2RT 658.) Officers also informed Detective Chiabotti that a neighbor, Clint Carter, had seen two White men dressed in suits with long hair, carrying briefcases, approach the Stinemans' door the night they were last seen. (*Ibid.*)

On August 14, while Concord officers continued to search the Saddlewood residence, Detective Warnock spoke with an agent of Concord Insurance, who informed him that on August 1, Helzer had called about adding coverage for a jet ski that he had rented. (2RT 658.) Appellant and Helzer came to the insurance office the evening of August 1. (2RT 659.) They told the agent that they were going to take the jet ski to the Rio Vista area of the Delta. (*Ibid.*)

Overall, Detective Chiabotti instructed officers to seize "anything that was related to instrumentality of the crimes that we were investigating, evidence that would tend to show who committed the crimes, how the crimes were committed, evidence which went to state of mind rather, planning, preparation." (2RT 660.) Detective Judy Elo took a heavy role in collecting evidence from the residence. (2RT 661.)

The Return to this warrant, dated September 20, 2000, enumerated the following evidence that had been collected pursuant to the warrant: handwriting/handprinting exemplars for appellant, Helzer, and Godman; four men's suits; two men's dress pants; one men's jacket; women's brown leather driving gloves; numerous pieces of green women's clothing; credit and cash receipts for retail purchases; several pairs of shoes with waffle-type soles; several boxes of hair color; documentation containing information for Morgan Stanley Dean Witter customer accounts; and a green felt cowboy-type hat. (8CT 3215-3216.) Items seized by Concord officers in plain view that constituted evidence of crime included: leather briefcase; miscellaneous textbooks; indicia for Furman; indicia for Carma Helzer; miscellaneous VHS videotapes, miscellaneous newspaper articles; ladies' Birkenstock sandals; household kitchen items; miscellaneous "adult" paraphernalia; Halloween-type costumes; utility bills for the Saddlewood residence; assorted board and computer games; numerous cassettes and CDs; home decorations; indicia for appellant; indicia for

Helzer; and indicia for Godman. (8CT 3217.) A specific, itemized list of items collected was assembled in a Concord Police Department Offense Report, dated August 30, 2000, authored by Detective Elo. (2 Add. SSCT 165-176.)

The Concord Police Department relinquished control of the Saddlewood residence around August 22, 2000. (2RT 674.)

4. Trial judge's rulings on searches 5 and 6

Following the hearing, Godman filed a supplemental pleading in reply to the prosecution's evidence (10CT 3988-3991), and the prosecutor filed a response (10CT 3992-3994.) On July 25, 2003, following review of the court's files, Godman's motions, the supplemental pleadings, the search warrants and supporting affidavits, the trial judge's notes regarding testimony from Detectives Nash and Chiabotti (3RT 690), and extensive argument from both sides (3RT 691-714),[73] the trial judge ruled as follows: (1) the previous rulings denying Godman's motion as to Searches 1-4, 7 and 8 would stand; (2) Detectives Nash and Chiabotti were both credible witnesses; (3) following the first Marin County search warrant (Search 4; no. M00-294), which had been upheld, Detective Nash saw in plain view "new and different evidence" that, in conjunction with the information that Selina was still missing, gave him cause to seek and obtain a second

[73] Appellant's counsel did not present her own arguments, but joined in Godman's counsel's remarks. (3RT 703.)

warrant; (4) the second Marin County search warrant (Search 5; no. M00-295) included forensic and trace evidence, which permitted the searching officers to "look for trace evidence . . . virtually in every nook and cranny of [the residence]"; (5) all of the items collected were either within the scope of the search warrant or "within plain view . . . because of the incriminating nature in connection to the case"; and (6) in any event, the challenged items would have been inevitably discovered pursuant to the Contra Costa County search warrant (Search 6; no. M00-230). (3RT 715-719.)

Addressing specific examples argued by the parties, the trial judge reasoned that receipts that could be traced back to a business to determine the purchaser were properly characterized as indicia. (3RT 717.) Eyeglasses found in plain view at the Saddlewood residence, when it was known that the victims wore eyeglasses, were properly seized. (3RT 717-718.) "Lifestyle" evidence, such as the posters, were properly seized in plain view because officers had received information that suggested the defendants were involved in occult-type activities. (3RT 718.) Forensic evidence included any evidence that would be found in pipes under the bathroom floor or in the yards, and seizure of the tub and plumbing "was reasonable in this case because they felt the bodies had been dismembered in the tub." (3RT 718-719.)

In conclusion, the trial judge denied the Motion in its entirety. (3RT 719.)

B. Standard of Review

This Court's review of the trial court's suppression ruling is governed by "'well-settled principles. In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.]'" (*People v. Ayala* (2000) 23 Cal.4th 225, 255, quoting *People v. Alvarez* (1996) 14 Cal.4th 155, 182; accord *People v. Tully* (2012) 54 Cal.4th 952, 979; *People v. Lomax* (2010) 49 Cal.4th 530, 563.) The trial court "sits as a finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences." (*People v. Laiwa* (1983) 34 Cal.3d 711, 718; accord *People v. Carrington* (2009) 47 Cal.4th 145, 166 [quoting same]; *In re Arturo D.* (2002) 27 Cal.4th 60, 77; *People v. Tully*, *supra*, at p. 979; *People v. Woods* (1999) 21 Cal.4th 668, 673.)

On appeal, "'[t]he court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to

independent review.'" (*People v. Ayala*, *supra*, 23 Cal.4th at p. 255, quoting *People v. Alvarez*, *supra*, 14 Cal.4th at p. 182 [internal quotation marks omitted]; accord *People v. Carrington*, *supra*, 47 Cal.4th at p. 166; *People v. Tully*, *supra*, 54 Cal.4th at p. 979.) The evidence must be viewed "'in a light most favorable to the order denying the motion to suppress [citation], and "[a]ny conflicts in the evidence are resolved in favor of the superior court's ruling."'" (*People v. Tully*, *supra*, at p. 979.) Indeed, this Court "'must accept the trial court's resolution of disputed facts and its assessment of credibility.'" (*Ibid.*, quoting *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 823.)

In California, it is the federal Constitution, as interpreted by the United States Supreme Court, that controls claims of unlawful search or seizure. (*In re Lance W.* (1985) 37 Cal.3d 873, 890, 896; see also *Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223; *People v. Carrington*, *supra*, 47 Cal.4th at p. 166; *People v. Carter* (2005) 36 Cal.4th 1114, 1141; *People v. Ayala*, *supra*, 23 Cal.4th at p. 254.)

C. Applicable Law

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(U.S. Const. 4th Amend; accord Cal. Const. Art. 1, § 13.) Where the search and seizure of items is pursuant to a valid warrant, sufficient in particularity and supported by probable cause, the Fourth Amendment is satisfied. Moreover, the seizure of items not enumerated in a valid search warrant that come within plain view during a lawful search passes constitutional muster if certain conditions are met. (See *Arizona v. Hicks* (1987) 480 U.S. 321, 326 [107 S.Ct. 1149, 94 L.Ed.2d 347]; *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 465-471 [91 S.Ct. 2022, 29 L.Ed.2d 564] (plurality opn.).)

The plain view doctrine is not an independent exception to the warrant requirement,[74] "but simply is an extension of whatever may be the prior justification for the officers' 'access to an object.'" (*People v. Bradford*, *supra*, 15 Cal.4th at p. 1295, quoting *Texas v. Brown* (1983) 460

---

[74] Indeed, a "plain view" search is not a search at all for purposes of the Fourth Amendment. "The rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search' within the meaning of the Fourth Amendment – or at least no search independent of the initial intrusion that gave the officers their vantage point." (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 375 [113 S.Ct. 2130, 124 L.Ed.2d 334].) Mere observation of non-warrant items in plain view does not "meaningfully interfere" with a person's possessory interest in the items. (See *Arizona v. Hicks*, *supra*, 480 U.S. at pp. 324, 328; accord *Horton v. California* (1990) 496 U.S. 128, 133 [110 S.Ct. 2301, 110 L.Ed.2d 112] ["If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy. [Citations] A seizure of the article, however, would obviously invade the owners possessory interest."].)

U.S. 730, 738-739 [103 S.Ct. 1535, 75 L.Ed.2d 502] (plurality opn.); accord *Horton v. California* (1990) 496 U.S. 128, 135-137 [110 S.Ct. 2301, 110 L.Ed.2d 112] ["'The [plain view] doctrine serves to supplement the prior justification – whether it be a warrant for another object, . . . – and permits the warrantless seizure.'"], quoting *Coolidge v. New Hampshire*, *supra*, 403 U.S. at pp. 465-466.)

"The plain-view doctrine permits, in the course of a search authorized by a search warrant, the seizure of an item not listed in the warrant, if the police lawfully are in a position from which they view the item, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object." (*People v. Bradford*, *supra*, 15 Cal.4th at pp. 1293-1294, 1295, citing *Horton v. California*, *supra*, 496 U.S. at pp. 135-137, *Texas v. Brown*, *supra*, 460 U.S. at p. 739, and *Minnesota v. Dickerson* (1993) 508 U.S. 366, 374-375 [113 S.Ct. 2130, 124 L.Ed.2d 334]; accord *People v. Carrington*, *supra*, 47 Cal.4th at p. 166; *People v. Kraft* (2000) 23 Cal.4th 978, 1041, 1049 [same].)

Whether the "incriminating character is immediately apparent" is based on whether there is probable cause to believe that the items seized are related to a crime. (See *Arizona v. Hicks*, *supra*, 480 U.S. at p. 328; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1290.) "[P]robable cause is a flexible, commonsense standard. It merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief,' [citation],

that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required. [Citation.]" (*Texas v. Brown*, *supra*, 460 U.S. at p. 742; accord *Illinois v. Gates* (1983) 462 U.S. 213, 238, 243-244, fn. 13 [103 S.Ct. 2317, 76 L.Ed.2d 527].)

Moreover, the probable cause may be for *any* crime, not necessarily the crime being investigated under the warrant. (*People v. Gallegos*, *supra*, 96 Cal.App.4th at p. 623, citing *Arizona v. Hicks*, *supra*, 480 U.S. at p. 325 [rejecting argument that "because the officers' action directed to the stereo equipment was unrelated to the justification for their entry into respondent's apartment, it was *ipso facto* unreasonable. That lack of relationship *always* exists with regard to action validated under the 'plain view' doctrine; where action is taken for the purpose justifying the entry, invocation of the doctrine is superfluous"] and *People v. Kraft*, *supra*, 23 Cal.4th at p. 1043 [if items not listed in warrant are seized pursuant to plain view doctrine, "it is sufficient that the investigators have probable cause to believe the item is evidence of *some* crime," and it is not necessary that the items be associated with a *particular* crime], original italics.)

Finally, there is no requirement that the discovery of evidence under the plain view doctrine be inadvertent. (*People v. Bradford*, *supra*, 15

Cal.4th at p. 1294, citing *Horton v. California*, *supra*, 496 U.S. at p. 130.) Indeed, a searching officer's subjective state of mind in executing a valid search warrant – namely, his hopes of finding evidence of other offenses – does not render his conduct unlawful. (See *People v. Bradford*, *supra*, at p. 1294 ["'[O]nce probable causes exists, and a valid warrant has been issued, the officer's subjective intent in conducting the search is irrelevant.'"].) "Courts must examine the lawfulness of a search under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved." (*People v. Carrington*, *supra*, 47 Cal.4th at p. 168.) In other words, "[t]he court simply asks 'whether the police confined their search to what was permitted by the search warrant.'" (*Ibid.*, quoting *United States v. Ewain* (9th Cir. 1996) 88 F.3d 689, 694.)

If a court finds that the original justification for a search is invalid, items and information seized pursuant to the original justification may still be admissible if the State can demonstrate by a preponderance of the evidence that the evidence would have been inevitably discovered through some other lawful means. (See *Nix v. Williams* (1984) 467 U.S. 431, 444 [104 S.Ct. 2501, 81 L.Ed.2d 377]; *People v. Boyer* (2006) 38 Cal.4th 412, 448.) Additionally, "suppression is not necessarily required *even if* the evidence would not have come to light *but for* an infringement of the defendant's Fourth Amendment rights. (*Wong Sun v. United States* (1963) 371 U.S. 471, 487-488, 83 S.Ct. 407, 9 L.Ed.2d 441 [].)" (*People v. Boyer*,

supra, at p. 448, original italics.) Rather, the pertinent inquiry is "'whether the evidence was obtained by the government's exploitation of the illegality or whether the illegality has become attenuated so as to dissipate the taint.'" (*Ibid.*)

"Relevant factors in this 'attenuation' analysis include the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence, the presence of intervening circumstances, and the flagrancy of the official misconduct." (*People v. Boyer*, *supra*, 38 Cal.4th at p. 448, citing *Brown v. Illinois* (1975) 422 U.S. 590, 603-604 [95 S.Ct. 2254, 45 L.Ed.2d 416].)

D. All of the Items Seized During the Execution of the Two Marin County Search Warrants Were Either Enumerated in the Warrants or Seized under the Plain View Doctrine; Thus, the Trial Judge Correctly Denied the Motion to Suppress

Appellant does not take issue with the validity of the two Marin County search warrants on their face. (AOB 201 [these warrants "were supported by probable cause and were particularized on their face"].) Nor does he challenge the scope of the searches in terms of the areas or parts of the residence and vehicles that were searched. He attacks only the scope of the items seized, arguing that officers (quizzically) both intentionally and negligently ignored the terms of the warrants in collecting items, while also exploiting certain terms of the warrants. In doing so, he himself disregards the terms of the warrants, brushes aside the plain view doctrine, and

completely ignores the timeline of events and testimony given about how information developed during the searches and how that information provided probable cause for plain-view seizure. He confuses a general warrant prohibited by the Fourth Amendment with a broad search authorized by a concededly valid search warrant in arguing that blanket suppression was a necessary remedy. And in summary fashion he attempts to avoid the conclusion that, in any event, all of the challenged items would have been inevitably discovered following service of the Contra Costa County search warrant.

1. Searching officers did not ignore or exploit the terms of the two Marin County warrants, and seized only items that were called for in the warrants or that they had probable cause to believe were evidence of the crimes

The first Marin County search warrant was served at 6:00 am on August 7, 2000. (9SCT 1848; 2RT 526, 616.) The warrant authorized the seizure of, among other things, a 9mm handgun and any ammunition or expended cartridges, receipts and documents related to 9mm handguns, indicia of ownership of the Nissan pickup truck and the Saturn car, and indicia of ownership or occupancy of the Saddlewood residence. (9SCT 1864-1865.) Authorization to search for these items meant that officers could enter the Saddlewood residence and the two vehicles, and search in any areas and in any containers in which a gun, paperwork, or keys could be found. (See 9SCT 1865; *Horton v. California*, *supra*, 496 U.S. at p. 141

["Police with a warrant for a rifle may search only places where rifles might be"], quoting *Coolidge v. New Hampshire*, *supra*, 403 U.S. at p. 517; *United States v. Ross* (1982) 456 U.S. 798, 823 [102 S.Ct. 2157, 72 L.Ed.2d 572) ["A container that may conceal the object of a search authorized by a warrant may be opened immediately . . . ."], *id.* at 825 ["If probable cause justifies the search . . . it justifies the search of every part of the vehicle and its contents that may conceal the object of the search"].) Given that a gun, ammunition, keys, or paperwork could be found anywhere, even in the smallest places, officers could lawfully be present and search in any part of any room within the residence, the attached garage, and the yards. (See 9SCT 1847 [search warrant for Saddlewood residence includes "all rooms, attics, and other parts therein, *garages*, storage rooms, and outbuildings . . . ."], italics added; *United States v. Cannon* (9th Cir. 2001) 264 F.3d 875, 880-881 [warrant extended to areas within residence's curtilage]; *Rutherford v. Cupp* (9th Cir. 1974) 508 F.2d 122, 122-123 [warrant for residence, reasonably interpreted, included surrounding yard].)

Items ultimately seized under this warrant (as shown in the Return to the warrant) included paperwork for the purchase of a 9mm firearm and ammunition, a bag of ammunition, two shotguns, handcuffs and leg irons, duct tape, nylon rope, a VHS videotape, a newspaper article, an insurance ID card, and various receipts (carpet cleaning, leg irons, Safeway, Copeland Sporting Goods, Long's, Home Depot, Saturn, GTE Wireless). (9SCT

1866-1867; 2 Add. SSCT 35-42.) Many of these items were not challenged in the defendants' Motion to Suppress and, as such, they cannot be challenged on appeal.[75] (See 5SCT 1040-1048; *People v. Schmitz* (2012) 55 Cal.4th 909, 934 ["'"Defendants who do not give the prosecution sufficient notice of [the] inadequacies [of its justification for a challenged search] cannot raise the issue on appeal. "[T]he scope of issues upon review must be limited to those raised during argument. . . . This is an elemental matter of fairness in giving each of the parties an opportunity adequately to litigate the facts and inferences relating to the adverse party's contentions."'"], quoting *People v. Williams* (1999) 20 Cal.4th 119, 128-

[75] The defendants did not challenge the following items in the trial court: paperwork for the purchase of the gun, two shotguns, handcuffs and leg irons, the VHS videotape, and the San Francisco Chronicle newspaper article dated August 5, 2000, collected from the kitchen counter (see 9SCT 1866). (See 5SCT 1040-1048; 2d. Add. SSCT 291-296.) The paperwork for purchase of the gun was among the items specifically listed in the warrant. (See 9SCT 1864-1865; 2d. Add. SSCT 162-164.) The shotguns were properly seized in plain view. Given that Villarin and Gamble were shot to death, there was probable cause to believe the shotguns were also involved in criminal conduct. The handcuffs and leg irons – both means of restraint – could have been used to kidnap and hold Selina against her will. The newspaper listed as item A from Box #9, as depicted in Exhibit B (photo 27) to the People's Supplemental Brief (2RT 517-524), is not the same one listed in the Return to the first warrant. (Compare 9SCT 1866 [newspaper is item "SLL2"] with 5SCT 1044 [newspaper is item "1178" and described as "mythology newspaper"; see also 5SCT 1058 [newspaper 1178 described as "Witchcraft (?) newspaper"], 1043 [other items from first search with "LL#" designations challenged].) Absent any argument in the trial court identifying the content of either the newspaper or the VHS tape, it is impossible to counter any arguments regarding the justifications for their seizure.

130 [failure of a party to bring an issue to attention of trial court or opposing party forfeits right to raise issue on appeal].)

Defendants did, however, challenge the bag of ammunition, duct tape, nylon rope, several of the receipts and the insurance identification card collected by Marin County Sheriff's Detective Lellis. (See 5SCT 1043-1044, 1047; 9SCT 1866-1867.) The Saturn receipt identified appellant as the customer (2d. Add. SSCT 41) and the insurance card belonged to Godman (see 5SCT 1043; 2d. Add. SSCT 293); both were indicia of occupancy of the residence and the Saturn receipt was indicia of ownership of the Saturn. Further, the G.T.E. Wireless receipt could be characterized as "telephone records," and also amounted to indicia. (See 9SCT 1865.) Moreover, Detective Nash testified that in general, retail receipts could be traced back to the customer, thus constituting indicia of occupancy of the residence. (2RT 567-569.) As such, the receipts and insurance card were properly collected under the terms of the search warrant. Alternatively, the receipts, insurance card, and rest of the challenged items were properly seized in plain view and with probable cause to believe they were related to a crime.

The seizure of items under the plain view doctrine requires that police be lawfully in a position from which they view the item, the item's incriminating character is immediately apparent, and officers have a lawful right of access to the object. (See *People v. Bradford*, *supra*, 15 Cal.4th at

pp. 1293-1295.) Given the uncontested validity of the search warrants in this case, and the first Marin County warrant's authorization to search in every part of the residence and vehicles, it goes without saying that the officers were lawfully in a position to view the other items that were seized and that they had a lawful right of access to the items. The only remaining inquiry is whether the incriminating nature of the items was immediately apparent – that is, whether officers had probable cause to believe the items were related to a crime. (See *Arizona v. Hicks*, 480 U.S. at p. 328; *People v. Gallegos*, *supra*, 96 Cal.App.4th at p. 623.)

At the time the first warrant was obtained and served, Detective Nash was aware that: (1) Jennifer Villarin and James Gamble had been gunned down at the Redwood Drive residence in the early morning hours on August 3, 2000; (2) several expended 9mm casings and a 9mm fully jacketed copper round were found within and around Villarin's and Gamble's bodies; (3) the residence, an apartment, was leased to Villarin's daughter, Selina; (4) Selina's whereabouts remained unknown; (5) Selina's pager contained a phone number with false subscriber information that was believed to belong to appellant, and when traced, was discovered to have called a number assigned to Helzer; (6) Helzer resided at the Saddlewood residence; (7) Helzer owned a 1995 Nissan pickup truck; (8) Helzer purchased and registered a 9mm semi-automatic pistol, Beretta Model 92FS, on May 5, 2000; (9) appellant owned a 1998 Saturn car; (10)

appellant's car and Helzer's truck had been seen in the driveway of the Saddlewood residence; (11) appellant had been seen leaving from and returning to the Saddlewood residence, and thus he would have access to Helzer's gun; (12) appellant was identified as Selina's boyfriend "Jordan"; (13) appellant had a key to Selina's apartment; (14) Selina's journal writings suggested she and appellant were having relationship troubles on August 1, 2000; (15) Selina's journal writings on August 1 also indicated that appellant had cancelled plans with her because "he had something better planned"; (16) Selina was seen at Cal Fed Bank in San Anselmo on August 2, 2000, and was last seen with appellant at the Bison Brewery in Berkeley that same day; (17) on August 3, 2000, Selina's co-worker received a phone call from appellant, who was agitated and upset with Selina and made disparaging remarks about her; and (18) Selina and Villarin strongly resembled each other. (9SCT 1849-1863.) After the warrant was served, while officers were securing the residence, appellant fled. (See 9SCT 1882.) During the search, appellant fled again, unlawfully entered other peoples' homes, and threatened at least one occupant. (See 9SCT 1884.) At the very least, appellant's conduct demonstrated to officers some level of consciousness of guilt.

Given what was known to Detective Nash, there was probable cause to believe that the ammunition, duct tape, nylon rope, and receipts were related to the crimes they were investigating. Detective Nash knew that

Villarin and Gamble had been the victims of a shooting with a 9mm gun. Helzer had a 9mm gun registered to him. During the search of the residence where Helzer lived, officers observed two shotguns. Because a gun similar to the one owned by Helzer was used to kill Villarin and Gamble, there was probable cause to believe that other firearms and related ammunition found at the Saddlewood residence could have been involved in criminal activity. The nylon rope and duct tape – both means of restraint – could have been used to effectuate Selina's disappearance and/or to hold her against her will. Thus, there was probable cause to seize those items. The Not Too Naughty receipt for the leg irons (9SCT 1866; 2d. Add. SSCT 35-36) – another means of restraint – also evidenced instrumentalities of kidnapping or holding Selina against her will. The Home Depot receipt for duct tape and poly sheet (5SCT 1043; 9SCT 1866; 2d. Add. SSCT 35, 40) – one a means of restraint, the other a possible means of disposal – evidenced instrumentalities of holding Selina against her will and getting rid of her remains. The Copeland's Sports receipt for the purchase of a "1 hole mask" (2d. Add. SSCT 35, 38) – a means to avoid detection – also evidenced instrumentalities of a crime. And the fact that appellant was using a cell phone, not registered to him but fraudulently placed in the name of another to avoid detection, would have given officers probable cause to seize the G.T.E. Wireless receipt (9SCT 1866; 2d. Add. SSCT 42).

Once Detective Nash was inside the Saddlewood residence and observed the commercial carpet dryers operating in the hallway entry area, the non-commercial carpet cleaner, recently cleaned carpets in the living room, and the impression of a body in one of the bedroom carpets (2RT 626; 9SCT 1879-1886) – all evidencing an intent to clean up possible biological evidence – he had probable cause to seize the receipts for carpet cleaning and those containing purchases for carpet cleaning products and deodorizers. (See 2d. Add. SSCT 37, 39.)

Thus, it is evident that all of the challenged items seized under the first Marin County warrant were either specifically named in the warrant or were seized under the plain view doctrine during lawful execution of the valid warrant.

The second Marin County search warrant was issued on August 7, 2000, and served at 1:00 pm that afternoon by Detective Nash. (9SCT 1875-1878; 2RT 618.) This warrant authorized seizure of, among other things, forensic and biological evidence including blood, hair fibers, gunpowder residue, objects with human tissue, bone or hair, access to the residence for purposes of taking photos and collecting forensic evidence, writings, photos, audio and video materials expressing threats or violence toward the victims, electronic storage devices, documentation concerning electronic storage devices, indicia of ownership of the vehicles, and indicia of occupancy or ownership of the residence. (9SCT 1880-1881.) This

warrant also authorized seizure of items of identification that might tend to establish the identity of persons who might have been within the residence. (9SCT 1880 [item no. 9].) Again, given the items that were authorized to be seized, particularly forensic and biological material, officers could lawfully go into any part of the Saddlewood residence and vehicles.

The issue under the plain view doctrine is whether the officers had probable cause to seize items not specifically listed in the warrant. In addition to the information about the Woodacre murders and Selina's disappearance described above, at the time he sought the second warrant Detective Nash also knew that: (1) appellant fled the residence through a back bedroom window upon service of the first Marin County warrant; (2) upon his detention, appellant identified himself as "Jordan" and he knew that Selina was missing; (3) Helzer and Godman had been inside the house and had also been detained; (4) while searching for the 9mm handgun, he observed in the family room hallway entry area the carpet pulled up at the seam with a large commercial carpet dryer operating; (5) also in the hallway was a non-commercial carpet cleaner, recently used; (6) in the printer tray in the office/den, he observed MapQuest printouts; (7) the family room carpet had been recently cleaned; (8) in a bedroom there was an impression in the carpet in the shape of a human body; (9) the carpet in this bedroom had been recently cleaned; (10) he had observed duct tape and rolls of rope in the master bedroom (appellant's bedroom); (11) he had

observed used latex gloves, a man's long-sleeved work shirt, and a pair of boots with two small dark stains in a garage garbage can; (12) he had observed a document containing Selina's phone numbers in the Saturn car; (13) a receipt for the purchase of a 9mm Beretta handgun had been found, although the gun itself was still being sought; (14) while appellant was speaking with Detective Inskip, he fled her vehicle and entered the home of a woman whom he threatened with a kitchen knife; he was subsequently caught and taken into custody; and (15) Selina's day planner was not found at the Redwood Drive residence, and Detective Nash believed it might be located at the Saddlewood residence or within the vehicles. (9SCT 1879-1886.)

Between service of this warrant at 1:00 pm on August 7, and service of the Contra Costa County search warrant the following morning, Detective Nash became aware of additional information about Selina's disappearance, the Stinemans, and a connection between the two: body parts had begun to surface in the Mokelumne River; $100,000 in the form of two checks had been drawn on the Stinemans' accounts and deposited into Selina's bank account; Godman had deposited the checks; and information about Impact America was developing. (2RT 527, 534, 594, 614.)

Following service of the Contra Costa County warrant on August 8, and over the next seven days that Marin County officers searched the

Saddlewood residence, information continued to develop. On August 8, after the victims' body parts began to surface, Detective Nash learned that Helzer had rented a jet ski from Cool Rides Water Craft. (2RT 537.) Within the next day or two (August 9 or 10), he received information that there was evidence on the remains that a reciprocating saw was used to dismember the bodies. (2RT 534-535.) A day or two after that (August 11 or 12), he learned that Annette's organs had been removed. (2RT 535.) He also received information while the search was ongoing that: the victims' jaws and teeth had been removed, and a patch of skin bearing a tattoo had been removed from Selina's shoulder blade (2RT 536); appellant's plan "Impact America" required a "core" of three people, and he had plans to sell Ecstasy (2RT 539, 544); and Selina had recently dyed her hair red, and had planned to go camping with appellant on July 31 (2RT 542, 544).

When confronted with the defendants' list of challenged items during the suppression hearing and the prosecutor's justifications for each item (Court's Ex. 1), Detective Nash agreed with the justifications, whether the item was specifically named in the search warrants or seized in plain view and with probable cause with one exception, which he clarified for the trial court. (3SCT 657-662; 2 Add. SSCT 291-296; 2RT 533, 604, 606.) Detective Nash testified that he made a conscientious effort to discriminate among the physical evidence and seize only those items either listed in the warrant or those they had probable cause to seize. (2RT 532.) The trial

judge credited Detective Nash's testimony. (3RT 715-716.) Appellant fails to point to any clear evidence in the record that suggests Detective Nash was not a credible witness and, absent such evidence, this Court must defer to the trial judge's credibility finding. (See *People v. Tully*, *supra*, 54 Cal.4th at p. 979.)

Respondent will not address each challenged item on the defendants' list. (See *People v. Tully*, *supra*, 54 Cal.4th at p. 979 [evidence must be viewed in light most favorable to order denying suppression motion].) But on appeal, appellant points to a few select items, arguing they were not listed in the warrants. He argues that these examples demonstrate that Detective Nash and his officers disregarded the terms of the warrants, and specifically ignored the limited purposes for which "indicia" could be seized. For example, he complains that items identifying people whose presence in the home was transitory (e.g., the eyeglasses) and the retail receipts were not listed in the first warrant. (AOB 297-299.) The eyeglasses are not listed in the Return to the first warrant. (See 9SCT 1866-1867.) Because the second warrant was served only seven hours after the first, and the search lasted a total of eight days, it is entirely possible, and even probable, that the eyeglasses were seized following service of the second warrant, which specifically called for seizure of items of indicia showing occupancy or items identifying individuals who had been within the residence. (See 2RT 591-592 ["certainly I would have taken it . . . for

indicia to show who actually was in that residence at any time"].) As for retail receipts, as noted above, Detective Nash testified that they could use receipts to track the purchaser and, thus, they amounted to indicia of an owner or occupant of the Saddlewood residence or the vehicles. (See 2RT 567-568.) A receipt for Cool Rides Water Craft seized from the kitchen of the Saddlewood residence under the second Marin County warrant (see 9SCT 1914; 2d. Add. SSCT 127, 147) was traced back to Helzer.[76] (2RT 537.) These items were plainly enumerated in a valid search warrant.

Appellant describes no other way in which Detective Nash or his officers misconstrued or exploited the "indicia" clauses of either Marin County warrant. The scope of a warrant is determined by its language,

---

[76] This receipt was found in Godman's dayplanner. (See 9SCT 1914.) Search of the dayplanner and seizure of various receipts following service of the first warrant (see 9SCT 1866) was authorized by the first warrant's "indicia of owner or occupant" clause for the residence. Further search and seizure of the dayplanner and its contents following the second warrant (see 9SCT 1914) was also authorized under the same clause of that warrant. Additionally, information was developing that gave officers probable cause to seize certain receipts under the plain view doctrine. For example, the surfacing of body parts in the Mokelumne River beginning August 8 gave officers probable cause to seize a Kmart receipt for duffel bags (2d. Add. SSCT 123), Copelands' Sports receipts for water gloves (2d. Add. SSCT 124-125), and a Sears receipt for saw-related items (2d. Add. SSCT 133). The discovery on August 7 that Godman was in a wheelchair when she went to fraudulently deposit money into Selina's bank account gave officers probable cause to seize a receipt for Bacon East Pharmacy for the rental of a wheelchair that bore Godman's name. (2d. Add. SSCT 135; see *Arizona v. Hicks*, *supra*, 480 U.S. at p. 325 [plain-view seizure is justified based on probable cause to believe item is related to *any* crime]; *People v. Kraft*, *supra*, 23 Cal.4th at p. 1043 [same].)

reviewed under an objective standard. (See *Whren v. United States* (1996) 517 U.S. 806, 813 [116 S.Ct. 1769, 135 L.Ed.2d 89]; *Scott v. United States* (1978) 436 U.S. 128, 137–138 [98 S.Ct. 1717, 56 L.Ed.2d 168]; *United States v. Ewain, supra*, 88 F.3d at p. 694.) To satisfy the objective standard, the officer's interpretation must be reasonable. (*People v. Balint* (2006) 138 Cal.App.4th 200, 207.) Here, both warrants authorized the seizure of indicia of ownership "including *but not limited to*" a list of items. (See 9SCT 1847-1848, 1877-1878, italics added.) They also authorized seizure of indicia of ownership/occupancy "consisting of" a list of items. (See *ibid.*) Such boilerplate "dominion and control" clauses have been upheld against overbreadth challenges. (See *People v. Alcala* (1992) 4 Cal.4th 742, 799–800; *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1003–1004.) Further, the list of items following "consisting of" "may reasonably be interpreted as nonexclusive and merely descriptive of examples of items likely to show who occupied the residence." (*People v. Balint, supra*, at p. 207 [referring to "including"], citing *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101 [the word "including" in a statute is "ordinarily a term of enlargement rather than limitation"].) As the *Balint* court reasoned, this interpretation accounts for different forms of evidence but restricts the items seized to those reasonably expected to show dominion and control of the residence. (*People v. Balint, supra*, at pp. 207-208.) And following the reasoning in *People v. Rogers, supra*, at page

1009, Detective Nash "could not be expected to divine in advance . . . the precise nature of such evidence. . . . Nor could [Detective Nash] be expected to know the precise location where such evidence would be located. To require such prescience from [Detective Nash] would be patently unreasonable." Thus, the seizure of receipts and other items as "indicia" under either Marin County search warrants was reasonable.

Appellant further argues that the "discussions of the numerosity and the bulk of the items seized that the prosecutor did not include on his list as well as the number of listed items that are not described in any warrant" also demonstrate Detective Nash's disregard for the terms of the warrant. (AOB 304.) A response to this argument is not possible without at least some identification of the items to which appellant refers or of the "discussions of numerosity." In any event, even if this Court were to find that the "numerosity" of seized items included items that might be outside the scope of the warrants, or that there was a lack probable cause to justify a plain view seizure, suppression is warranted only for those specific items that can be found to have been unlawfully seized. (See *People v. Bradford*, *supra*, 15 Cal.4th at p. 1295; see also *People v. Kraft*, *supra*, 23 Cal.4th at p. 1043 [no requirement that items in plain view be associated with a particular crime as long as officers have probable cause to believe the item is evidence of some crime].)

Appellant also points to the fact that neither of the Marin County warrant applications disclose a purpose to gather evidence of financial crimes or of the Stinemans' murders, or to develop documentary evidence of witchcraft, as further demonstrating Detective Nash's intentional disregard for the terms of the warrants. (AOB 305.) None of the Evidence/Property reports attached to either of the Marin County search warrant Returns describe the collection of financial records or anything specific to the Stinemans' murders. (See 9SCT 1906-1917; 2d. Add. SSCT 35-164.) If Marin County officers did collect such evidence at some point, which if they did was likely following service of the Contra Costa County search warrant the morning after the two Marin County warrants were served, the seizure would have been under the plain view doctrine. During the evening of August 7, while the search was suspended,[77] Detective Nash became aware that Godman had deposited two checks totaling $100,000, drawn on the Stinemans' accounts, into Selina's bank account. (2RT 527, 534, 594, 614.) This information established a connection between the Stinemans and Selina, and provided probable cause for officers to search for evidence of financial crimes. The following day, at the latest, body parts began surfacing in the Mokelumne River. (2RT 534, 614.)

---

[77] The Marin County searches were suspended overnight from August 7 to August 8 due to darkness and fatigue. (9SCT 2042-2043.) The Contra Costa County warrant was served at the same time the Marin County search resumed on the morning of August 8. (*Ibid.*)

Information from the coroner's office about the state of the bodies (e.g., their identities, how they were likely dismembered, how they were packaged and weighted down, that jaws, teeth, and organs had been removed) was relayed to Detective Nash during the first several days of the search. (See, e.g., 2RT 534-535.) This developing information provided officers probable cause to seize evidence in plain view of the methods, instrumentalities, and motives for the murders. The state of the bodies was also probable cause for the officers to seize what Detective Nash characterized as "lifestyle" evidence of occult activities.

Instead of squarely addressing the applicability of the plain view doctrine to the Saddlewood searches, appellant chastises Detective Nash for failing to halt the search and seek subsequent search warrants. (AOB 305-306.) Such an approach is untenable for all practical purposes, particularly in a case where a person is missing and information is constantly developing, and particularly where officers may continue a lawful search pursuant to a valid warrant and seize evidence in plain view as probable cause to do so develops. Indeed, there is no constitutional requirement to obtain a warrant for items properly seized under the plain view doctrine; such a requirement would render the plain view doctrine superfluous. (See, e.g., *People v. Superior Court (Chapman)* (2012) 204 Cal.App.4th 1004, 1017-1019 [warrantless re-entry of homes to seize plain-view evidence previously observed during lawful entry does not violate Fourth

Amendment].) Further, there was no need for Detective Nash to seek a warrant for items related to the Stinemans because Concord Police Department had done so by the beginning of the second day of the search.

Appellant also argues that Marin County officers exceeded the warrants by conducting the searches for purposes and objects Detective Nash did not disclose to the issuing magistrate. In other words, Detective Nash withheld his subjective intent to search for items related to the Stinemans when obtaining the warrants. (AOB 306.) Appellant relies on two federal circuit court cases to support his argument. (AOB 306-307.) Both cases are contrary to clear United States and California Supreme Court authority (see *Horton v. California*, *supra*, 496 U.S. at p. 130; *People v. Carrington*, *supra*, 47 Cal.4th at p. 168; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1294), and neither are binding on this Court (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 835 ["Lower federal court decisions . . . may be entitled to great weight but they are not binding on this court."]; *People v. Crittenden* (1994) 9 Cal.4th 83, 120 fn. 3 ["we are not bound by decisions of the lower federal courts, even on federal questions"]). Additionally, both cases appellant cites are easily distinguishable.

In *United States v. Rettig* (9th Cir. 1979) 589 F.2d 418, as here, officers executed a valid search warrant. (589 F.2d at p. 422.) But the Ninth Circuit concluded that searching officers did not, in good faith,

confine their search to the objects specified in the warrant. (*Id.* at p. 423.) The court based its conclusion on the fact that the affiants for the warrant did not disclose to the issuing magistrate their failed attempt the previous day to obtain a warrant for purposes of investigating an elaborate cocaine conspiracy, and that some of the items recovered were specific to that conspiracy (e.g., four pounds of white powder, a triple beam balance scale, and several wine bottles).[78] The court found that "while purporting to execute [the warrant], [agents] substantially exceeded any reasonable interpretation of its provisions." (*Ibid.*)

In the present case, as discussed above, Marin County officers reasonably interpreted the terms of the warrants in their search. There is no evidence in the record to suggest when he applied for the two search warrants Detective Nash had any motive or intent to search the Saddlewood residence for evidence of crimes other than the Woodacre Murders and Selina's disappearance. Unlike *Rettig*, Detective Nash had not previously failed to secure a warrant to search the Saddlewood residence for evidence of crimes unrelated to the crimes identified in the search warrant. Indeed, as noted, he had little information regarding the Stinemans until the evening of August 7, after both Marin County warrants had been obtained. Further,

---

[78] The conspiracy involved dissolving cocaine in wine bottles, shipping the bottles, and then recovering the cocaine once it was imported. (*United States v. Rettig*, *supra*, 589 F.2d at p. 421.)

notably missing from *Rettig* is any discussion of the plain view doctrine. Nor did *Rettig* involve an ongoing investigation with developing information as was the case here.

In *United States v. Sedaghaty* (9th Cir. 2013) 728 F.3d 885, a valid search warrant was issued for a limited set of documents (financial records and correspondence related to preparation of a tax return), yet searching agents emerged with documentation well beyond what was described. (728 F.3d at p. 910.) Agents had relied on the affidavit in support of the warrant to expand the scope of the seizures authorized in the warrant. (*Id.* at pp. 911-912.) The Ninth Circuit held that where the intent of incorporating the affidavit was to give context to the offenses and to establish probable cause (rather than supplement the list of items to be seized), and where the items to be seized were clearly delineated, using the affidavit to expand the scope of the items seized was not permissible. (*Id.* at pp. 912-913.) The terms of the limited warrant controlled the scope of the search, *regardless of the subjective state of mind of the officers* who believed the affidavit took precedence over the warrant. (*Id.* at pp. 913, 914, italics added.)

The warrants at issue in this case were not as limited as the one in *Sedaghaty*. And, like *Rettig*, *Sedaghaty* was not a case involving an ongoing investigation and developing facts, nor did the Ninth Circuit address the applicability of the plain view doctrine. In *Sedaghaty*, as in *Rettig*, the federal court limited its holding to searches under the terms of

the warrants. That is not the case here. The Ninth Circuit correctly noted, however, that the subjective state of mind of the officers executing the warrant was not relevant to their analysis. (*United States v. Sedaghaty*, *supra*, 728 F.3d at p. 914.) Likewise, this Court has repeatedly held the same. (See *People v. Carrington*, *supra*, 47 Cal.4th at p. 168; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1294.) Appellant's argument that Detective Nash's subjective state of mind in either obtaining or executing the search warrants at issue should factor into this Court's analysis of the constitutionality of the searches is without merit.

Appellant next argues it "would be wholly unreasonable to assume that the Marin Detectives explored only the same places they would have explored within the home had they confined themselves to the objects of the Marin warrants." (AOB 307.) As explained above, both Marin County warrants authorized a broad search in terms of areas to be searched. The first warrant listed documents, a gun, indicia, and keys as items to be sought and seized. The second warrant included forensic and biological evidence. Under the terms of the warrants, officers were authorized to search in any and all areas of the Saddlewood residence and the two vehicles where any of these (and other) items might be found. In other words, they could search in virtually every "nook and cranny" of the residence under the terms of the warrants. Appellant's argument that officers were somehow more limited under the warrants simply is not true.

In sum, two valid search warrants and the plain view doctrine, supported by substantial probable cause, justified the seizure of all items collected from the Saddlewood residence and the two vehicles. The subjective intent of Detective Nash and other Marin County officers in obtaining and executing the two warrants is irrelevant to the Fourth Amendment analysis. There is no objective evidence in the record to indicate that Detective Nash ignored the terms of his warrants, defined terms in the warrant more broadly than constitutionally permitted, or seized items either outside the scope of the warrants or without probable cause to do so.

2. Marin County officers' conduct did not amount to a "general search," requiring blanket suppression of all evidence

Appellant argues that Detective Nash and his officers flagrantly disregarded the terms of the warrant, specifically the list of items to be seized, justifying full suppression of all evidence seized from the Saddlewood residence. In doing so, he attempts to distinguish his case from *People v. Bradford*, *supra*, 15 Cal.4th 1229, arguing that the trial judge's ruling here did not suppress any evidence and was premised on mistaken recollection of testimony about the scope of the second Marin County warrant, the trial judge here did not have a description of all items seized but only the items the prosecutor was going to use at trial despite the defendants' repeated requests to review all the items seized from the

Saddlewood residence, the prosecutor failed to sufficiently prove that all of the seized items (or even those challenged by the defendants) were described in a warrant or found in plain view, and that unlike in *Bradford*, officers here seized evidence of lifestyle, ideas, and beliefs. (AOB 308-313.) He goes on to rely, once again, upon federal circuit court authority and argue that officers here "effected a 'widespread seizure of items that were not within the scope of the warrant'" and it was done without good faith. (AOB 313-316.)

First, throughout Ground One appellant confuses a general warrant prohibited by the Fourth Amendment with a valid warrant, sufficiently particular but broad in areas to be searched and items to be seized. Again, he does not challenge the validity of either of the two Marin County warrants on their face. Thus, his attempts to analogize his case to ones involving impermissible general warrants fail from the outset. Moreover, as discussed in detail above, Marin County officers confined themselves to the locations permitted by the two search warrants, and seized only those items that were either specifically listed in the warrants or those in plain view for which they had probable cause to seize. Appellant failed to carry his burden in the trial court of pleading with particularity all of the items he believed should have been suppressed, and on appeal weakly attempts to shove the burden off onto the prosecutor and the trial judge. Finally, he is

unable to demonstrate on appeal, as he failed to do so in the trial court, that blanket suppression is an appropriate remedy here.

The purpose of the "particularity" requirement in the warrant clause of the Fourth Amendment is to avoid general and exploratory searches and seizures. (See *Stanford v. Texas* (1965) 379 U.S. 476, 485 [85 S.Ct. 506, 13 L.Ed.2d 431]; *Steele v. United States* (1925) 267 U.S. 498, 503 [45 S.Ct. 414, 69 L.Ed. 757] [reasoning that a warrant is sufficiently particular in places to be searched "if the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended"]; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1296.) However, "[a] warrant that permits a search broad in scope may be appropriate under some circumstances, and the warrant's language must be read in context and with common sense." (*People v. Eubanks* (2011) 53 Cal.4th 110, 134, citations omitted.) For example, "in a complex case resting on the piecing together of 'many bits of evidence,' the warrant properly may be more generalized than in a simpler investigation resting on more direct evidence." (*People v. Kraft*, *supra*, 23 Cal.4th at p. 1041, quoting *Andresen v. Maryland* (1976) 427 U.S. 463, 480, 481, fn. 10 [96 S.Ct. 2737, 49 L.Ed.2d 627] and *People v. Carpenter* (1999) 21 Cal.4th 1016, 1043.)

Where a warrant is deemed to be an impermissible "general warrant," most federal circuit courts have recognized the remedy of blanket suppression of all evidence obtained pursuant to the warrant. (See *People*

v. Kraft, *supra*, 23 Cal.4th at p. 1044; *People v. Bradford*, *supra*, 15 Cal.4th at pp. 1304-1307.) This Court has also assumed, without deciding, that blanket suppression may be an appropriate remedy in "extreme circumstances." (*People v. Kraft*, *supra*, at p. 1044, citing *People v. Bradford*, *supra*, at pp. 1304-1307 [assuming availability of blanket suppression remedy].) But few courts in recent history have been confronted with facts suggesting a general warrant was used. More frequent is the argument that officers "flagrantly disregarded" the terms of an otherwise valid warrant, thereby conducting a "general search" and seizure of items not listed in the warrant. Yet this Court has found that an otherwise lawful search does not become "general" simply because officers seize items not named in the warrant. (See *People v. Kraft*, *supra*, at p. 1043 ["the mere fact a large number of items were seized, many of which were not listed in the warrant, does not establish that the search was an illegal general search"]; *People v. Bradford*, *supra*, at p. 1296; *People v. Diaz* (1992) 3 Cal.4th 495, 563.) Indeed, this Court has held that where there is ample support in the record for a trial court's conclusion that all items seized were either taken pursuant to the valid warrant or under the plain view doctrine supported by probable cause, blanket suppression was not warranted. (*People v. Kraft*, *supra*, at p. 1044, citing *People v. Bradford*, *supra*, at pp. 1304-1307 [concluding the defendant failed to establish that searching officers acted in flagrant disregard of warrant].)

In cases where the facts demonstrate that officers disregarded the authorized scope (in terms of locations and areas to be searched) of a warrant, the United States Supreme Court has held that blanket suppression of all evidence resulting from the search was not required, but "merely those items as to which there was no probable cause to support seizure[.]" (*People v. Bradford, supra*, 15 Cal.4th at p. 1296, quoting *Waller v. Georgia* (1984) 467 U.S. 39, 43-44, fn. 3 [104 S.Ct. 2210, 81 L.Ed.2d 31] and *Andresen v. Maryland, supra*, 427 U.S. at p. 482, fn. 11; *id.* at p. 1305 [same].) This is particularly so "where the officers have not exceeded the scope of the warrant in the *places* searched, but only in seizing items unconnected to the investigation or prosecution of the crime. In such circumstances, when all items unlawfully seized are suppressed, 'there is certainly no requirement that lawfully seized evidence be suppressed as well.'" (*People v. Bradford, supra*, at p. 1296.)

Here, appellant does not argue nor does the record suggest that the two Marin County warrants were overbroad in the areas to be searched, or that officers searched in areas not authorized by the warrants. Absent some demonstration that either of these scenarios occurred in this case, blanket suppression of all items seized under either of the Marin County warrants is neither authorized nor warranted. (See *Waller v. Georgia*, 467 U.S. at pp. 43-44, fn. 3; *Andresen v. Maryland*, 427 U.S. at p. 482, fn. 11; *People v.*

Kraft, *supra*, 23 Cal.4th at p. 1044; *People v. Bradford*, *supra*, 15 Cal.4th at pp. 1296, 1304-1307.)

Second, appellant's arguments again ignore the applicability of the plain view doctrine. As discussed above, all of the items seized from Saddlewood were either listed in the search warrants or were properly seized in plain view. Particularly, the occult-type evidence (posters, staffs, a Dungeons and Dragons book, etc.) was seized after Detective Nash received information that Annette's organs had been removed. (2RT 584-587.) This information provided probable cause to seize these items, which were in plain view. The probable cause inquiry is simply whether the facts available would "'warrant a man of reasonable caution in the belief' . . . that certain items *may* be . . . useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false." (*Texas v. Brown*, *supra*, 460 U.S. at p. 742.) As it turned out, the trial judge found that the occult-type evidence presented was insufficient for the prosecutor to argue that witchcraft or sorcery was involved in these murders (29RT 6532-6533), but that finding is irrelevant to the Fourth Amendment inquiry.

Third, it was appellant's burden to first *plead* in his motion to suppress (or to augment Godman's motion) the factual basis for the motion – that is, to identify those items he believed were not authorized to be seized so that the prosecutor could properly respond. (§ 1538.5, subd.

(a)(2).) Instead, appellant laid at the prosecutor's and trial judge's doorsteps the ominous task of going through each and every item seized and either justifying the seizure or ruling on it. (See 1RT 294-295, 304.) This was plainly contrary to the procedure set forth in section 1538.5. Once provided with a list of challenged items from the defendants (see 5SCT 1040-1048), the prosecutor presented testimony from Detectives Nash and Chiabotti, who provided justifications for the seizures of items they were specifically asked about. They both were asked about items not only on direct examination, but also under the cross examination of all three defense attorneys. In broader terms, Detective Nash was asked about the prosecutor's response to all of the challenged items (5SCT 1040-1048 [Exh. A to Defendant's Supplemental Motion]; 2d. Add. SSCT 297-269 [Court's Exh. 1 - prosecutor's response]), and he responded, with one exception, that he concurred with all the justifications provided by the prosecutor. (2RT 604.) And he explained his justification for the exception. (2RT 604-605.) Appellant complains this manner of justifying the challenged items was somehow insufficient (AOB 310-312), but given the number of items challenged, this was most efficient. If any counsel had questions about particular items, and apparently they did, they cross-examined the detectives specifically about them. And the trial judge had an opportunity to review most of the items (at least photographs of the items) before making her rulings. (See 2RT 517-524.)

Appellant cites specifically to the search and seizure of Godman's day planner as an item that was not justified by the prosecutor. (AOB 312-313.) It is debatable whether appellant even has standing to challenge the search of a personal day planner belonging exclusively to Godman. (See *People v. Jenkins* (2000) 22 Cal.4th 900, 972 ["The defendant must assert a reasonable expectation of privacy in '"the *particular area searched or thing seized* in order to bring a Fourth Amendment challenge."'"], quoting *People v. McPeters* (1992) 2 Cal.4th 1148, 1171, original italics.) But in any event, the day planner was likely to contain identifying information (as most do) which itself would be indicia of occupancy of the Saddlewood residence, Detective Nash testified that retail receipts (like those found in the day planner) were indicia because they could be used to track the purchaser, and both search warrants authorized the seizure of indicia of occupancy of the residence. Thus, search of the day planner was authorized by both warrants. Once inside the day planner, officers could lawfully look through the contents. (See *United States v. Stoltz* (8th Cir. 2012) [search warrant for "receipts," which "might be found in a wallet"]; *United States v. Issacs* (9th Cir. 1983) 708 F.2d 1365, 1368-1369 [warrant for rent receipts, proper to flip through journals].) As described above, the information known to Detective Nash up to and following his entry and

walk-through of the Saddlewood residence would have provided probable cause to seize the day planner and its contents.[79]

To the extent appellant argues on appeal, as he did in the trial court, that the mere volume of items seized demonstrated flagrant disregard for the terms of the warrant, this court has already rejected that argument. In *Kraft*, the defendant "vaguely assert[ed], 'It is not any single item that presents the problem, but the overall array of items taken and the failure to present any substantial reason for seizing many items that highlights the overall legal problem.'" (*People v. Kraft*, *supra*, 23 Cal.4th at pp. 1049-1050.) This Court found that the argument was so lacking in specificity that it "virtually defies review[,]" and that defendant's argument that the burden is on the State to justify the seizure of items in plain view is contrary to rule that "on appeal[,] all presumptions favor the judgment." (*Id.* at p. 1050.) The court also concluded that "the mere fact a large number of items were seized, many of which were not listed in the warrant, does not establish that the search was an illegal general search." (*Id.* at p. 1043.) The same must be said here.

Fourth, as should be apparent from what has already been discussed above, Detective Nash and his officers did not act in flagrant disregard for the terms of either search warrant. Detective Nash, the officer who

---

[79] Several items, receipts, and the day planner itself were seized under the *second* Marin warrant. (See 2d. Add. SSCT 120-135.)

prepared both Marin County search warrant applications and whose affidavit supported both applications, clearly knew and understood the terms of the warrants. Just prior to service of the first warrant, officers gathered and there was a briefing. (2RT 528.) Prior to service of the second warrant, copies of the warrant were made and distributed to officers, and there was a briefing. (2RT 574.) Following service of the second warrant, there were daily briefings to discuss developments and to share information with the Concord Police Department. (2RT 528.) The warrants were sufficiently particular in the locations to be searched and the items to be seized, and appellant does not contend otherwise. Thus, as in *Bradford*, where this Court upheld the search and seizure, "[t]he record does not demonstrate that the officers had not been briefed or prepared as to the objects of the search [citations], or that their search amounted to a 'fishing expedition.' [Citation.] Nor was the behavior of the officers so unconscionable as to amount to a due process violation. [Citation]" (*People v. Bradford, supra*, 15 Cal.4th at pp. 1306-1307.)

For these reasons, appellant's contention that Detective Nash and his officers' conduct warranted blanket suppression of all evidence seized from the Saddlewood residence should be rejected.

E. Even Assuming Either the Warrants or Application of the Plain View Doctrine is Found to be Invalid, the Items Would Have Been Inevitably Discovered under the Contra Costa County Search Warrant

Appellant argues that rejection of any inevitable discovery argument is appropriate because "it is not possible for the court 'to identify after the fact *the discrete items of evidence which would have been discovered had the agents kept their search within the bounds permitted by the warrant.*'" (AOB 316, original italics.) He concedes that it is "certainly possible that Concord Police could have obtained a warrant for Saddlewood without Nash's testimony about his discoveries inside the home," but he states that Concord would not have conducted as intensive a search as Detective Nash did. (*Ibid.*)

"'Evidence need not be suppressed as "fruit of the poisonous tree," though actually procured as the result of a Fourth Amendment violation against the defendant, if it inevitably would have been obtained by lawful means in any event.'" (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1092; accord *Nix v. Williams*, *supra*, 467 U.S. at p. 444; *People v. Boyer*, *supra*, 38 Cal.4th at p. 448.) Indeed, suppression is not per se required "*even if* the evidence would not have come to light *but for*" the Fourth Amendment violation. (*Wong Sun v. United States*, *supra*, 371 U.S. at pp. 487-488, original italics; accord *People v. McCurdy*, *supra*, 59 Cal.4th at p. 1092; *People v. Boyer*, *supra*, 38 Cal.4th at p. 448.) The relevant question is

whether the challenged evidence "was obtained by the government's exploitation of the illegality or whether the illegality has become so attenuated so as to dissipate the taint." (*People v. McCurdy*, *supra*, at p. 1093; *People v. Boyer*, *supra*, at p. 448.) To answer the question, courts consider "the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence, the presence of intervening circumstances, and the flagrancy of the official misconduct." (*People v. McCurdy*, *supra*, at p. 1093; *People v. Boyer*, *supra*, at p. 448.)

Although the proximity of the alleged violation (seizing items outside the scope of the Marin County warrants and without probable cause to support plain-view seizure) to the seizure of items was obviously close in time, intervening circumstances and the lack of flagrant misconduct (see discussion above) establish sufficient attenuation such that any taint had dissipated. Appellant is correct that it was possible (indeed, probable) that Concord Police would have obtained a warrant for the Saddlewood residence even without Detective Nash's testimony. Concord Police, led by Detective Chiabotti, were conducting their own investigation into the Stinemans' disappearance. The Contra Costa County search warrant was for the Saddlewood residence and garage, Helzer's pickup truck, and appellant's car, and was issued at 11:48 p.m. on August 7, 2000. (9SCT 1937.) It authorized seizure of property that had been stolen from the Stinemans, men's suits, women's lime green clothing, women's tan driving

gloves, cowboy hat, receipt for a wheelchair, handwriting exemplars for the defendants, Morgan Stanley Dean Witter account information, documentation showing any relationship between Selina and appellant, latex gloves, hair dye, processing of property for blood that may belong to the Stinemans, any item showing where the Stinemans were including documentation, processing of property for latent prints, and footwear with a waffle pattern. (9SCT 1939-1940.)

Detective Nash was only one of seven people who contributed information to the oral affidavit in support of the Contra Costa County warrant. (9SCT 1949-1950; 2RT 527.) Even without Detective Nash's information (but see *Wong Sun v. United States*, *supra*, 371 U.S. at pp. 487-488 [suppression not required even if evidence not discovered without the violation]), Concord Police still had all the information they had gathered about the Stinemans' disappearance, including: a description of the Stinemans and their last reported sighting; Nancy Hall's missing persons' report for her parents, items missing from the Stinemans' home (including financial records), and the results of a consensual search of the home conducted the day before the oral affidavit (including discovery of blood on the garage floor and on the washing machine); the sighting of Helzer's pickup truck and Godman near the Stinemans' home and Godman's interaction with neighbors on the night the Stinemans disappeared; the observation of appellant and Helzer dressed in suits walking toward the

Stinemans' residence the night they disappeared; interviews with approximately a dozen neighbors and friends of the Stinemans; recovery of the Stinemans' missing van in Oakland (with waffle-shaped shoe prints in the headliner); information from Cal Fed Bank about activity on the Stinemans' accounts (including two checks totaling $100,000 drawn on the Stinemans' accounts, made out to Selina); a description of Godman when she came to the bank to deposit the checks (including wearing light green clothing and a cowboy hat, and sitting in a wheelchair); Cal Fed Bank checking into the validity of the checks; the creation of and activity on Selina's Cal Fed Bank account; account activity on the Stinemans' Washington Mutual bank account; observation by Saddlewood neighbors of jet skis in front of the Saddlewood residence on or about August 4; observation by Saddlewood neighbors that Godman had changed (dyed) her hair; and statements made by appellant to Detective Chiabotti about Selina and the Stinemans and that Helzer and Godman were not "responsible." (9SCT 1981-2043.)

All of this information would have provided sufficient probable cause for issuance of the Contra Costa County search warrant, and that warrant provides the attenuation (i.e., the intervening circumstance) needed to remove any taint from the Marin County searches. Further, contrary to appellant's bald conclusion (see AOB 316), there is nothing in the record to suggest that Concord Police would not have conducted a similarly intensive

search as Marin County Sheriffs did. They had independent information providing probable cause to search for documents (financial fraud) and biological evidence (blood found in the Stinemans' garage), and independent information connecting Godman to the financial fraud, to the Stinemans, and to Selina. Thus, the areas within the Saddlewood residence authorized by the Contra Costa County search warrant were at least as broad as those authorized by the Marin County warrants.

In addition, while the Contra Costa County search was ongoing, the same information would have continued to develop. For example, the remains of the Stinemans and Selina would have surfaced in the Mokelumne River just as they had; no Fourth Amendment violation would have affected that event. After that event, given the condition of the bodies (dismembered with a saw, teeth and jaws dismantled, organs removed) and the items used (e.g., duffel bags, plastic garbage bags, twist ties, rocks, jet skis), Concord Police Department would have had probable cause to seize (under the plain view doctrine) all of the same items collected under the Marin County warrants.

Thus, even assuming a Fourth Amendment violation occurred in the execution of the Marin County search warrants, the challenged evidence would have been inevitably discovered by Concord Police. For this additional reason, the trial judge correctly denied the defendants' Motion.

Based on the foregoing, this claim and appellant's request for relief should be denied.

II. THE TRIAL JUDGE'S RULING EXCUSING PROSPECTIVE JUROR WOLF FOR CAUSE WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND DID NOT VIOLATE APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS

In Ground Two, appellant claims the trial judge erred in excusing Prospective Juror Wolf for cause. He argues that her statements confirmed her willingness to engage in the process and impose the death penalty if she believed it appropriate, and that the trial court's belief that she was "not very likely" to impose the death penalty did not amount to substantial impairment, qualifying her to be excused for cause. (AOB 319-332.)

The trial judge properly excused Prospective Juror Wolf for cause because there was substantial evidence in the record that she could not put aside her moral beliefs and vote to impose the death penalty in an appropriate case.

A. Relevant Facts

1. Prospective Juror Wolf's questionnaire

In her written questionnaire, Prospective Juror Wolf stated her belief that life in prison without parole "would be a terrible sentence to receive." (10JQCT 3683 [question 101].)[80] She also was "not sure that I believe in the death penalty[,]" and felt that the death penalty was imposed "too

[80] "JQCT" refers to the Clerk's Transcript of Jury Questionnaires.

often." (*Ibid.* [question 102].) In response to the question whether she would be willing to listen to all of the evidence and the law, and give honest consideration to both possible sentences before reaching a decision, Prospective Juror Wolf checked "Yes," but annotated it with "I think?" and "Hopefully." (10JQCT 3683 [question 106], 3684 [question 111].) She previously indicated that she would have difficulty applying the law as given by the trial judge if the law differed from her beliefs. (10JQCT 3674 [question 59].) She indicated she was "moderately against" the death penalty (10JQCT 3685 [question 114]), and concluded that "I think I lean toward being against the death penalty I'm just not sure what I would decide." (10JQCT 3686 [question 121].)

2. Voir dire of prospective Juror Wolf

During open-court voir dire, Prospective Juror Wolf was asked about several of her questionnaire answers. The trial judge asked about her annotations to her response about listening to the evidence and following the law. She replied, "Still I think it would be difficult[]" and "I really believe in the system that we have, and probably – I would have to do it." (12RT 2948.) Regarding whether she could consider both penalties as a juror in this case, she stated that "I thought about it, you know, I have to say that if I had to vote on the death penalty I would vote against it. That being said, could I just – don't know what I would do." (12RT 2953.)

The prosecutor, during his turn at voir dire, explained there was a difference between being inclined against the death penalty and being unable to impose it in an appropriate case. (12RT 2962-2963.) Further, he described a difference between someone "intellectually," or in the abstract, being in favor of the death penalty, but not willing to assume the responsibility of actually voting to impose it on a person they have seen nearly every day for over a month. (12RT 2963.) The prosecutor asked Prospective Juror Wolf:

> You will have the evidence. The Court will give you these instructions. You'll apply the evidence to the – to the [sic] those instructions, and there it will be, and you believe in the system, so you'll do what the system requires of you, right. That's what you're going to do, right? I can see you think already that's a trick question?

(12RT 2965.) She replied, "No. I'm thinking that I would like to say that I would, you know, you just don't know until the time comes, you know, what you're going to." (*Ibid.*) The prosecutor explained that he was asking this because "the law never tells you you have to impose the death penalty." (*Ibid.*) He further explained that jurors were not required to "park" their emotions, morality, or beliefs "at the door"; that they would be given factors to consider when determining penalty and they would have to decide whether the factors in aggravation were so substantial in comparison with those in mitigation that it would warrant the death penalty. (12RT 2965-2967.) He stressed the point by adding that jurors would be

instructed that they could consider the moral or sympathetic value of the evidence in deciding penalty. (12RT 2967.) Then he asked Prospective Juror Wolf:

> So if your moral compass says, I'm opposed to the death penalty, and the Court tell[s] us you can use your moral compass for purposes of making a decision in that context, kind of inconsistent with whether you are [able] to vote for the death penalty, wouldn't it?

(*Ibid.*) She responded, "Yes, it would." (*Ibid.*) In response to, "would you agree that it would be very difficult, if not impossible for you, given your belief structure, to ever impose the death penalty[,]" Prospective Juror Wolf said, "I would say 1% chance . . . that I would." (12RT 2967-2968.) The prosecutor confirmed her answer: "So 99 times out of 100 you would not? Would that be based upon your moral or philosophical beliefs about the death penalty[?]" (12RT 2968.) She responded, "Yes." (*Ibid.*)

Appellant's counsel also had an opportunity to ask Prospective Juror Wolf some questions. Appellant's counsel confirmed that Prospective Juror Wolf had "strong reservations about the imposition of the death penalty[.]" (12RT 2995.) When asked if she "[c]ould . . . see [herself] *in an appropriate case* imposing the death penalty[,]" Prospective Juror Wolf stated, "I couldn't see myself." (*Ibid.*, italics added.) She stated she understood that the law did not require her to impose death, and that she would deliberate, but that in deliberating she "just [didn't] know what [she] would do" in terms of considering the death penalty as an option. (*Ibid.*)

Unprompted, she added, "But I sincerely doubt that I would." (12RT 2996.) She believed she could keep an open mind, but "doubt[ed]" that she could impose the death penalty in an appropriate case. (*Ibid.*) She "just [didn't] know." (*Ibid.*)

3. Arguments for cause and ruling

Outside the presence of the prospective jurors, the prosecutor asked that Prospective Juror Wolf be excused for cause. (12RT 3005.) Appellant's counsel submitted without argument. (*Ibid.*) The trial judge stated: "I do believe that Ms. Wolf has a bias against the death penalty such that I think she said in one percent she might have been thinking – considering it, but in all reasonable likelihood, not very likely. I will excuse Ms. Wolf for cause." (*Ibid.*)

B. Standard of Review and Applicable Law

The Sixth and Fourteenth Amendments guarantee a state criminal defendant the right to a fair trial, which includes the right to be tried by a panel of "impartial 'indifferent' jurors." (*Irvin v. Dowd* (1961) 366 U.S. 717, 722 [81 S.Ct. 1639, 6 L.Ed.2d 751].) In the context of capital trials, where prospective jurors are excluded "simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction[,]" a conviction resulting from a jury so chosen does not pass constitutional muster. (*Witherspoon v. Illinois* (1968) 391 U.S. 510, 521-523 [88 S.Ct. 1770, 20 L.Ed.2d 776].) On the other

hand, the State has a "legitimate interest in excluding those jurors whose opposition to capital punishment would not allow them to view the proceedings impartially, and who therefore might frustrate administration of a State's death penalty scheme." (*Wainwright v. Witt* (1985) 469 U.S. 412, 416 [105 S.Ct. 844, 83 L.Ed.2d 841]; accord, *Uttecht v. Brown* (2007) 551 U.S. 1, 9 [127 S.Ct. 2218, 167 L.Ed.2d 1014] ["[T]he State has a strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes"].)

A prospective juror whose views about capital punishment "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath" may be dismissed for cause. (*Adams v. Texas* (1980) 448 U.S. 38, 45 [100 S.Ct. 2521, 65 L.Ed.2d 581]; accord, *Gray v. Mississippi* (1987) 481 U.S. 648, 657-58 [107 S.Ct. 2045, 2046, 95 L.Ed.2d 622]; *Wainwright v. Witt*, *supra*, 469 U.S. at p. 424, quoting *Adams* in reaffirmation; *People v. Williams* (2013) 58 Cal.4th 197, 276; *People v. Duenas* (2012) 55 Cal.4th 1, 10.) The prospective juror's bias against the death penalty need not be proven with "unmistakable clarity"; instead, an excusal may be warranted if the trial court "'is left with the definite impression that a prospective juror would be unable to faithfully and impartially apply the law[.]'" (*People v. Martinez* (2009) 47 Cal.4th 399, 425, quoting *People v. Abilez* (2007) 41 Cal.4th 472, 497-498.) The dismissal of such a prospective juror comports with constitutional

guarantees. (See *People v. Edwards* (2013) 57 Cal.4th 658, 752; *People v. Friend* (2009) 47 Cal.4th 1, 56.)

"As with any other trial situation where an adversary wishes to exclude a juror because of bias, then, it is the adversary seeking exclusion who must demonstrate, through questioning, that the potential juror lacks impartiality." (*Wainwright v. Witt*, *supra*, 469 U.S. at pp. 423-424.) "It is then the trial judge's duty to determine whether the challenge is proper." (*Ibid.*) The trial court's ruling is reviewed for abuse of discretion. (*People v. Martinez*, *supra*, 47 Cal.4th at p. 426; *People v. Abilez*, *supra*, 41 Cal.4th at pp. 497-498.) A trial court's findings as to the prospective juror's state of mind are binding on appellate courts if supported by substantial evidence. (See *Uttecht v. Brown*, *supra*, 551 U.S. at p. 9 ["Deference to the trial court is appropriate because it is in a position to assess the demeanor of the venire, and of the individuals who compose it, a factor of critical importance in assessing the attitude and qualifications of potential jurors."]; *People v. Edwards*, *supra*, 57 Cal.4th at p. 752 [""On appeal, we will uphold the trial court's ruling if it is fairly supported by the record, accepting as binding the trial court's determination as to the prospective juror's true state of mind when the prospective juror has made statements that are conflicting or ambiguous'"]; *People v. Duenas*, *supra*, 55 Cal.4th at p. 10; *People v. McKinzie* (2012) 54 Cal.4th 1302, 1328-29; *People v.*

Pearson (2012) 53 Cal.4th 306, 327-328; *People v. Wilson* (2008) 44 Cal.4th 758, 779.)

C. The Trial Judge's Ruling to Excuse Prospective Juror Wolf for Cause is Supported by the Record

Here, although Prospective Juror Wolf stated both in writing and during voir dire that she would be able to listen to the evidence with an open mind, she also stated it would be difficult for her to apply the law as instructed, and she intimated that her morals and beliefs would substantially impair her ability to impose the death penalty *in an appropriate case*. In writing, she was "not sure" she believed in the death penalty, but believed it was imposed "too often." (10JQCT 3683.) She also indicated that if the judge's instructions on the law to be applied differed from her beliefs, she would have difficulty applying the law. (10JQCT 3674.) During voir dire, she confirmed to the trial judge that, after thinking about it, she would *not* be able to consider both penalties and, rather, would vote against the death penalty if she had to vote. (12RT 2953.) She confirmed to the prosecutor that her "moral compass" was inconsistent with voting for the death penalty, and that it would be extraordinarily difficult for her to vote for death. (12RT 2967-2968.) As an example, she said that her moral or philosophical beliefs would prevent her from voting for death 99 percent of the time. (*Ibid.*) To appellant's counsel, Prospective Juror Wolf stated that she could keep an open mind, but that *even in an appropriate case* she

could not see herself voting for the death penalty. (12RT 2995-2996.) Her responses, both written and during voir dire, demonstrated that her beliefs would prevent or substantially impair her ability to apply the law and vote for the death penalty in an appropriate case.

Admittedly, some of Prospective Juror Wolf's responses demonstrated uncertainty and equivocation – she believed she would not be able to vote to impose the death penalty but would not know for sure until confronted with the task. (See 10JQCT 3685-3686 ["I think I lean toward being against the death penalty I'm just not sure what I would decide"]; 12RT 2953 ["I thought about it, you know, I have to say that if I had to vote on the death penalty I would vote against it. That being said, could I just – don't know what I would do"]; 12RT 2965 ["I'm thinking that I would like to say that I would [do what the criminal justice system requires of jurors], you know, you just don' t know until the time comes . . . what you're going to"]; 12RT 2995 [she "just [didn't] know what [she] would do" when it came to considering the death penalty as an option]; 12RT 2996 [she "just [didn't] know"].) This simply demonstrates that Prospective Juror Wolf was deeply conflicted between her moral beliefs, which were opposed to the death penalty under any circumstances, and the law, which provided the death penalty as an option in an appropriate case.

The trial judge's finding about Prospective Juror Wolf's state of mind – that is, that her beliefs against the death penalty made it not

reasonably likely she would be able to vote for it – is entitled to deference because, as demonstrated above, there is substantial support for it in the record despite her equivocation. (See *People v. Edwards*, *supra*, 57 Cal.4th at p. 752; *People v. Duenas*, *supra*, 55 Cal.4th at p. 10.) For example, in *People v. Clark* (2011) 52 Cal.4th 856, 896-897, prospective juror L.C. gave conflicting and equivocal responses, both in writing and during voir dire, about his ability to actually impose the death penalty. Although, toward the end of voir dire, the juror expressed more certainty in his ability to impose death, the trial court found that his statements were contradicted by his equivocal responses and his demeanor. (*People v. Clark*, *supra*, at pp. 896-897.) After observing him during voir dire, the trial court believed L.C. "'would find it difficult, if not impossible, to impartially apply the law.'" (*Id.* at p. 897.) On appeal, this Court deferred to the trial court's determination of the prospective juror's state of mind, concluding the trial court's ruling was "amply" supported by the record. (*Ibid.*) The trial court:

> 'supervised a diligent and thoughtful voir dire[,]' [citation] which enabled the court to engage with L.C., hear his responses, and observe his demeanor. [Citation.] Although at the end of the voir dire questioning L.C. expressed greater certainty concerning his ability to vote for the death penalty in an appropriate case, the court was entitled to find those assurances were severely undercut by his demeanor and his hesitant, inconsistent, and equivocal responses. Those answers, 'combined with the court's firsthand assessment of [his] responses and demeanor could give rise to a "definite impression" on the part of the court that [L.C.'s] views would substantially impair the performance of [his] duties as a juror.' [Citations].

(*Ibid.*)

Here, as in *Clark*, following a "diligent and thoughtful voir dire" where both parties were given the opportunity to ask questions of the prospective jurors, the trial judge below found that Prospective Juror Wolf would find it difficult, if not impossible, to apply the law and impose death in an appropriate case. More so than the prospective juror in *Clark*, Prospective Juror Wolf's responses about her ability to impose the death penalty were equivocal and remained so throughout voir dire. That equivocation, combined with the trial judge's observations of Prospective Juror Wolf's demeanor, could provide the trial judge with a "definite impression" that she was substantially impaired by her beliefs such that she could not perform her duties as a capital juror. Affording the trial judge the deference due to her assessment of Prospective Juror Wolf's state of mind, and given the support for that assessment in the record, the trial judge did not abuse her discretion in excusing Prospective Juror Wolf for cause.

In response to the prosecutor's challenge for cause, appellant's defense counsel submitted the matter without argument. (12RT 3005.) Although counsel's failure to object may not have forfeited the right to raise the issue on appeal, "'it does suggest counsel concurred in the assessment that the juror was excusable.'" (*People v. Hawthorne* (2009) 46 Cal.4th 67, 82.) Despite the substantial evidence in the record supporting Prospective Juror Wolf's excusal for cause, and trial counsel's apparent

agreement, on appeal appellant challenges her excusal. He argues that she "clearly affirmed her willingness to engage in the weighing process and impose death if she thought it appropriate." (AOB 325.) For support he cites *People v. Stewart* (2004) 33 Cal.4th 425, 427, in which this Court distinguished between a juror whose beliefs would make it very difficult to impose the death penalty, and a juror whose beliefs made them "unwilling or unable to follow the trial court's instructions by weighing the aggravating and mitigating circumstances of the case and determining whether death is the appropriate penalty under the law." (AOB 325.) Contrary to appellant's argument, Prospective Juror Wolf did not affirm any willingness to follow the law and impose the death penalty if appropriate.[81] Indeed, she was the latter type of juror discussed in *Stewart*. Although Prospective Juror Wolf stated that she could listen to the evidence and try to keep an open mind, she also stated in response to several questions that she would find it difficult – near impossible – to apply the law allowing her to impose the death penalty in an appropriate case because it conflicted with her own moral beliefs against the death penalty. (See, e.g., 10JQCT 3674; 12RT 2953, 2967-2968, 2995-2996.) This was not a situation where a juror could listen to all the evidence, apply the law given,

[81] Prospective Juror Wolf's written responses that she would not automatically vote for death or life imprisonment, and that she had no feelings that would prevent her from ever voting for life or death (10JQCT 3684) were clearly contradicted by her responses during voir dire.

and begrudgingly vote to impose the death penalty despite their personal views because the mitigating factors were substantially outweighed by the aggravating factors. Rather, Prospective Juror Wolf expressed that it would be practically impossible for her to vote to impose the death penalty – regardless of the outcome of any weighing process – because the law so conflicted with her personal beliefs.

Appellant also relies on *People v. Pearson*, *supra*, 53 Cal.4th at page 332, quoting in part, "So long as a juror's views on the death penalty do not prevent or substantially impair the juror from 'conscientiously consider[ing] all of the sentencing alternatives, including the death penalty where appropriate [citation], the juror is not disqualified by his or her failure to enthusiastically support capital punishment." (AOB 325-326.) Again, this was not a case where Prospective Juror Wolf simply disagreed with capital punishment; she could not see herself ever imposing it, *even in an appropriate case*. (See 12RT 2995 ["I couldn't see myself" "in an appropriate case imposing the death penalty"].) Her inability to follow the law as given, and her inability to vote to impose the death penalty in an appropriate case amounted to substantial impairment and disqualified her from service as a capital juror.

Appellant points out that Prospective Juror Wolf's statement that "I would say 1% chance . . . that I would [impose the death penalty]" (12RT 2967-2968) "reaffirmed her readiness to conscientiously consider doing

so." (AOB 326.) First, her belief that in one out of a hundred cases she may vote to impose death is hardly a resounding affirmation of her willingness to apply a law that was in conflict with her belief system. Second, this scrap of willingness to impose death tossed to the prosecutor during his voir dire of her pales in comparison with the several other times discussed above when she expressed unwillingness to follow the law. The trial judge was clearly unpersuaded by Prospective Juror Wolf's "1%" response, and there is ample support in the record to support that skepticism.

Appellant also relies on *People v. Martinez*, *supra*, 47 Cal.4th at pages 435-437, and argues that in upholding the trial court's ruling dismissing a prospective juror for cause, this Court focused on the facts that the juror displayed signs of upset and irritation, and was resistant to the prosecutor's questioning. In fact, the Court's resolution of the claim was based more so on the prospective juror's belief that the trial court should allow a juror who would never impose the death penalty to sit on a capital jury:

> I am very concerned with any [juror] who will state in an unequivocal way that she . . . disapprove[s] of a law that would allow the court to excuse someone who is emphatically opposed to the death penalty in all circumstances and wouldn't vote for it, no matter what the evidence showed at a penalty trial[.]

(*People v. Martinez*, *supra*, at pp. 436-437.) Ultimately, this Court held that the prospective juror was not excused simply because of her opposition

to the death penalty, but based on a number of circumstances. (*Id.* at p. 438.)

Here, although the record is bereft of any specifics regarding Prospective Juror Wolf's emotional responses, her hesitation during voir dire is apparent from the record both in terms of being able to set aside her beliefs and vote for death in an appropriate case, and in responding to questions. (See, e.g., 12RT 2953 ["I thought about it, you know, I have to say that if I had to vote on the death penalty I would vote against it. That being said, could I just – don't know what I would do"]; 12RT 2965 ["I'm thinking that I would like to say that I would [do what the criminal justice system requires of jurors], you know, you just don't know until the time comes . . . what you're going to"]; 12RT 2995 [she "just [didn't] know what [she] would do" when it came to considering the death penalty as an option]; 12RT 2996 [she "just [didn't] know"].) Moreover, the trial judge, having listened to Prospective Juror Wolf's responses and observed her demeanor while answering questions, believed she would not be able to put aside her beliefs and vote for death. (See 12RT 3005.) *Martinez* does not demand reversal based upon this record.

Affording the trial judge's determination of Prospective Juror Wolf's state of mind the deference it is due, the judge did not abuse her discretion in granting the challenge for cause to Prospective Juror Wolf. The prospective juror's belief system substantially impaired her ability to vote

to impose the death penalty in an appropriate case; thus, there were constitutionally valid grounds to excuse her for cause. Relief on this claim must, therefore, be denied.

III. THE TRIAL JUDGE EXERCISED PROPER DISCRETION IN LIMITING DEFENSE COUNSEL TO QUESTIONS ABOUT THE GENERAL FACTS OF THE CASE AND DID NOT CATEGORICALLY PROHIBIT INQUIRY INTO A SUBJECT LIKELY TO BE OF GREAT SIGNIFICANCE IN DECIDING PENALTY; MOREOVER, THE PROSPECTIVE JURORS WERE INFORMED OF THE DISMEMBERMENT EVIDENCE; IF ERROR OCCURRED, IT WAS HARMLESS

In Ground Three, appellant claims that the trial judge abused her discretion and violated his federal constitutional rights by not permitting him to inform prospective jurors of the dismemberments that occurred in this case and voir dire them about whether that fact would prevent them from imposing a life sentence. (AOB 333-336, 356-366.) He argues the error requires reversal.

The trial judge's ruling requiring the parties to limit their case-specific questions to the general facts of the case did not categorically prohibit inquiry into a subject likely to be a great significance in determining penalty and was a proper application of the law and an appropriate exercise of her discretion. The dismemberment evidence alone was not such that it would have been of greatly significant to deciding penalty, and more extensive inquiry into the facts of the dismemberments would have only caused jurors to prejudge the case. In any event, counsel

was not categorically prohibited from inquiring about the dismemberments because prospective jurors were informed of several case-specific facts, including the existence of dismemberment evidence. However, even assuming error occurred, it was harmless.

A. Relevant Facts

After Godman entered her guilty plea and before the case was severed, counsel for both defendants and the prosecutor worked together on drafting a juror questionnaire (3RT 789), and the trial judge set a hearing to discuss it. (3RT 789-790.) On February 20, 2004, the trial judge had before her documents entitled "Contested Questions Removed Questionnaire," "Contested Questions," and "Response to People's 'Objectionable Questions'" (submitted by Helzer's attorney). (7SCT 1593-1596; SSCT 26-32; 3RT 890, 920.) Among other objectionable questions, the prosecutor objected to two questions[82] on the grounds that they invited the prospective jurors to prejudge the evidence. (3RT 935-936.) Helzer's attorney argued that the questions went to the heart of a "for cause" challenge and appellant's counsel agreed. (3RT 937.) The prosecutor argued that the questions asked jurors to prejudge the evidence:

> [I]t is absolutely inappropriate for counsel, for instance, to inquire of the jurors whether they if they were to assume true

[82] Question #133 read: "What purpose do you think the death penalty serves?" (SSCT 30.) Question #134 read: "In what types of cases do you think the death penalty should be imposed?" (SSCT 31.)

> certain facts like, for instance, dismembering bodies, and in those circumstances would they impose the death penalty, absolutely requires them to prejudge the evidence, that is clearly an objectionable question. [¶] What is not objectionable, what they can ask, what this questionnaire does include, is inquiries into whether or not based upon the special circumstances themselves would those alone be enough or cause them to automatically vote for the death penalty in every case, okay, we agree with that. [¶] . . . . But this question invites because the jury is certainly not going to understand until they're told by the Court it's going to take more than the finding of special circumstances themselves, just that fact alone before they can impose the death penalty they're not going to understand that. This invites them to speculate in all kinds of areas where they even would or would not impose the death penalty.

(3RT 937-938.)

Helzer's counsel disagreed, arguing that the question did not ask about factual specifics of this case. Rather, he argued, these questions asked "[W]hat is your view? Do you think the death penalty should be always applied in some situations? What are they?" (3RT 941.) The trial judge turned to Question #135, which read: "Are there any circumstances where a person convicted of murder should automatically receive the death penalty?" (SSCT 31; 3RT 952.) The trial judge stated that she had seen similar questions in other questionnaires she had reviewed, and thought it appropriate. (3RT 952.) She offered a rephrasing: "Are there any types of factual circumstances for which you feel the death penalty should always be imposed? If yes, please explain." (3RT 957.) The trial judge concluded that she would not allow the first two questions, but she would allow

Question #135 either in the form proposed or in the form she suggested. (*Ibid.*)

At the next hearing on March 1, 2004, appellant's counsel represented that she believed, with the changes made at the previous hearing, they had a final version of the juror questionnaire (to be used at a joint trial). (4RT 1020.) The prosecutor and Helzer's counsel agreed. (4RT 1021.) On March 5, 2004, appellant changed his plea to guilty. (5RT 1339, 1355-1392.) On March 9, Helzer's severance motion was granted. (5RT 1429-1432.)

On September 17, 2004, appellant's counsel, the prosecutor, and trial judge met to finalize the juror questionnaire to be used in appellant's penalty trial. (6RT 1551.) Appellant's counsel stated that the parties were working from the questionnaire used in Helzer's trial. (6RT 1553; see 12CT 4651-4694.) Appellant proposed a question along the lines of "Would [viewing graphic photographs or videos] upset you or influence you so that you would be unable to remain impartial to either side in this case?" (6RT 1567-1568.) Recognizing that jurors needed to keep an open mind, but also that the issue was different than at Helzer's trial because there was no presumption of innocence attached to appellant's penalty trial (6RT 1568), the prosecutor argued that it was not inappropriate for jurors to have a negative reaction to photographs or testimony. (*Ibid.*) But the question, as phrased, suggested that even after seeing the photographs

jurors had to remain impartial. (*Ibid.*) "No they don't. They can start forming impressions. They have to keep an open mind, yes, because they have to be able to evaluate all the factors in aggravation and mitigation. . . . they do not have to remain impartial." (*Ibid.*)

Defense counsel disagreed to the extent viewing the photographs would cause a juror to be unwilling to consider any other evidence. (6RT 1568-1569.) The prosecutor offered that the question should be rephrased. (6RT 1569.) The trial judge agreed that jurors had to keep an open mind and consider all the evidence, and if a juror was "so blinded by one that they wouldn't consider the rest of the all, that would be improper." (*Ibid.*) But the judge also agreed that as phrased the question sounded like a pre-guilt question. (*Ibid.*) The trial judge recited the question asked in Helzer's trial: "As a juror, you may be required to view graphic photographs of the victims and the crime scenes. Would you be able to do this and continue to carry out your other duties in this case as a juror?" (6RT 1570; see 12CT 4676.) The prosecutor agreed with that phrasing. (*Ibid.*) Defense counsel expressed concern that jurors would not yet know what their duties were, and suggested the parties work together to come up with a compromise. (*Ibid.*)

Defense counsel also suggested the question, "Are there any factual circumstances for which you feel the death penalty should automatically be imposed?" (6RT 1576.) The prosecutor objected on the grounds that the

question asked jurors to prejudge the evidence: "[W]hat you're calling upon them to do is imagine certain facts and then say, 'Yeah, on those facts, I would automatically vote for the death penalty.'" (*Ibid.*) The trial judge excluded the question, stating "[A] lot of it is ignorance of the law. I think you've covered the circumstances of the robbery, kidnapping, more than one murder. The other circumstances don't apply." (6RT 1577.) In the questions about jurors voting automatically for death because of multiple murder, robbery, or kidnapping, the parties agreed to underline "automatically." (*Ibid.*) And the parties agreed to move the following question to immediately precede the "automatically" questions: "If you were a juror at a penalty phase, would you be willing to listen to all the evidence, as well as the judge's instructions on the law, and give honest consideration to both life in prison without parole and death before reaching a decision?" (6RT 1578-1579.)

In the final juror questionnaire that was used, the following information and questions were included: (1) the Stinemans were an elderly couple (see, e.g., 1JQCT 15 ["Pre-Trial Publicity" paragraph]); (2) "The dismembered remains of the Stinemans and Selina Bishop were found floating in gym bags along the Mokelumne River (Delta Region) in August 2000" (see, e.g., 1JQCT 15 [end of "Pre-Trial Publicity" paragraph]); (3) "During the course of this trial you will be required to look at photographs or videos of the people who were killed and the scene where it occurred.

Would that influence you so that you would be unable or unwilling to consider other evidence presented?" (see, e.g., 1JQCT 17 ["Jury Service in this Case" paragraph]); (4) "In a penalty trial, each juror will be required to consider evidence offered by both the prosecution and the defense. In addition, jurors will take into account a number of factors given by the judge in order to determine whether the appropriate sentence for [appellant] is life in prison without parole, or death" (see, e.g., 1JQCT 18 ["Explanation" second paragraph]); (5) "California law requires that each juror consider all evidence presented in mitigation (reasons for life) and aggravation (reasons for death)" (see, e.g., 1JQCT 18 ["Explanation third paragraph]); (6) "If you were a juror at a penalty trial, would you be willing to listen to all of the evidence, as well as the judge's instructions on the law, and give honest consideration to both life in prison without parole and death before reaching a decision?" (see, e.g., 1JQCT 19 [Question 106], 20 [Question 111]); and (7) "Would you <u>always</u> vote for the death penalty in a case involving more than one murder/murder committed during a robbery/murder committed during a kidnapping? In other words, would you <u>automatically</u> vote for a sentencing imposing the death penalty regardless of what the evidence was during the penalty trial?" (see, e.g., 1JQCT 20 [Questions 107-109]).

On September 24, 2004, defense counsel filed a "Memorandum of Points and Authorities Regarding Voir Dire." (15CT 6291-6317.) Among

the points made, defense counsel argued a right to voir dire on case-specific evidence of mitigation and aggravation. (15CT 6300-6311.) Counsel also filed a "Motion for Individual, Sequestered, and Attorney Conducted Voir Dire and Recommendations for Voir Dire Procedures" wherein she requested individual voir dire on "sensitive topics." (15CT 6318-6330.) Counsel stated that individual questioning would include both case-specific mitigation and case-specific aggravation. (15CT 6321-6322.) On September 30, 2004, the prosecutor filed a response arguing, in part, that voir dire using case-specific hypotheticals and information would lead jurors to prejudge the evidence. (15CT 6458-6462.)

On October 5, 2004, the trial judge held a hearing on appellant's motions. The trial judge asked defense counsel "how specific with regard to, you know, special circumstances and/or the facts were you wanting to get with the smaller groups when you voir dire?" (6RT 1660.) Counsel responded that, given the "gross and gruesome and horrendous and horrific nature . . . [of the] facts of this case . . . that the jurors have to have some preparation for what they're going to see." (6RT 1660-1661.) She argued that she should be allowed to voir dire about the content of the photographs the jury would be seeing. (6RT 1662.) The trial judge noted that during Helzer's voir dire prospective jurors were told they would have to view photographs of body parts. (*Ibid.*) But the trial judge was concerned about asking jurors if they would impose the death penalty based on a set of

specific facts, which would require jurors to prejudge the case. (6RT 1663-1664.) The judge noted that the questionnaire already contained questions about imposing the death penalty automatically given the special circumstances appellant had admitted (robbery, kidnapping, multiple murder), but that she was "nervous when it comes to asking them their opinions about the death penalty prefaced with a bunch of facts that may come out in the trial that are more than general." (6RT 1664.) Referring to one of the suggested questions from defense counsel's motion, "Can you give me an example of the kinds of factors that would make you feel that death was the correct punishment[,]" the trial judge characterized it as "loaded question all over." (6RT 1664-1665.) The trial judge expressed concern about asking jurors questions that counsel would take in a legal context but that jurors would have offered in a lay context. (6RT 1665.)

Counsel responded that prospective jurors' lack of information about the legal factors to consider in determining penalty was concerning. (6RT 1665.) The trial judge noted that jurors are put in that position every day – they hear the evidence without knowing the law beforehand – and all they are asked during voir dire is can they follow the law given to them. (6RT 1665-1666.) To switch the order simply because this was a penalty trial, to tell them everything they need to know and ask them what they think about it, would not be "proper or fair." (6RT 1666.) Counsel argued she should be allowed to inform prospective jurors about the dismemberments and ask

how they feel about that. (*Ibid.*) The trial judge retorted, "How would you imagine anybody would feel about that?" (6RT 1666-1667.) Counsel wanted to ask jurors, "Are you going to be able to sit here and say this man should live when you hear he desecrated and dismembered three people's bodies?" (6RT 1667.) The prosecutor interjected that there would be an objection to such a question. (*Ibid.*) The trial judge stated, again, such a question asked jurors to prejudge the case based upon that fact. (*Ibid.*) Counsel argued she meant to ask the opposite – could jurors put that fact aside and not prejudge the case. (*Ibid.*) The prosecutor argued that jurors were not required to put that fact aside because it was a circumstance in aggravation. (*Ibid.*) Counsel clarified that the intent of the question was to determine whether the jurors could "sit through all of that evidence and still go into the jury room and consider all the evidence." (*Ibid.*) The prosecutor did not object to asking jurors whether they could keep an open mind and not make any decisions about the case until they had all the evidence (*ibid.*), but he did object to asking "questions that are so specific that it requires the prospective jurors to prejudge the penalty phase issue based on a summary of the mitigating and aggravating evidence likely to be presented." (6RT 1667-1668.)

The trial judge stated that prospective jurors would be advised that they would have to observe photographs depicting body parts, and that the depictions would be "gory." (6RT 1668.) The information would be given

in order to determine whether the jurors would be "able to perform a duty of looking at graphic evidence -- . . . and being able to continue to sit and listen to evidence beyond that." (6RT 1668-1669.) The trial judge drew a distinction between asking jurors about issues (i.e., their ability to consider all of the evidence presented) and asking jurors about the facts of the case (i.e., whether the fact of dismemberment would cause them to automatically vote for death). (6RT 1669.) The latter would not be permitted. (*Ibid.*) In response to the cases cited by defense counsel in her motion, the trial judge stated she had read all of them and came away with the impression that the appellate courts did not condone the extensive questioning used in those cases, but found other ways to dispose of the issue. The trial judge did not "want to go as far as these cases allowed." (6RT 1670.) The judge concluded by telling the parties that her position should be well-known at that point, and that objections to oral voir dire questions would be addressed on a case-by-case basis. (*Ibid.*)

Voir dire began on October 12, 2004. (7RT 1746.) Prior to receiving the questionnaires, each panel of prospective jurors was advised that appellant had pled guilty to, among other things, murder and had admitted special circumstance allegations: murder committed while engaged in the crimes of kidnapping and robbery, murder committed to prevent the testimony of a witness, and multiple murder. (See, e.g., 7RT 1747-1749.) The trial judge advised prospective jurors that she would:

> instruct the jury on certain factors, of which the law requires the jury to consider and be guided by in decided between these two possible penalties. The proper frame of mind for a juror entering the penalty trial would be to have an open mind, a willingness to consider each of the two possible penalties in light of all the evidence and the Court's instructions on the law. It would be unacceptable for a juror to approach the penalty phase having ruled out one penalty or the other.

(7RT 1748-1749.)

On October 28, 2004, during attorney-conducted voir dire of prospective jurors who remained after hardships were considered, defense counsel informed a prospective juror that "[t]his is a case that involves extreme violence[,]" and asked whether, "[g]iven your feelings, do you think that you could still, if you felt it was appropriate, come back with life without the possibility of parole?" (11RT 2649.) The prosecutor objected. (*Ibid.*) The trial judge stated that, "[w]hen you say here are specific facts[] this case involves and could you vote a certain way, you are asking them to prejudge the evidence. If you say a case that involves extreme violence, is that going to cause a problem for you? . . . You can't ask him how specifically they're going to vote. You can't do that, based on facts that you've given in the hypothetical." (11RT 2649-2650.) The prospective juror ended up answering the question anyway. (11RT 2650.)

On November 1, 2004, defense counsel asked one prospective juror about his view that someone guilty of premeditated murder deserved the death penalty. (12RT 2878.) Counsel informed the juror (in the presence

of other prospective jurors) that appellant had pled guilty to five premeditated murders. (12RT 2879.) The juror was unaware that appellant had premeditated the murders when he filled out the questionnaire. (*Ibid.*) Counsel advised the juror that he could "infer that there was planning and premeditation that went into it[,]" and asked the juror whether, knowing that, he believed the death penalty was the appropriate sentence. (*Ibid.*) The prosecutor objected on the grounds that the question asked the juror to prejudge the evidence. (*Ibid.*) The trial judge agreed. (*Ibid.*) Counsel continued, asking the juror whether, "After seeing the crimes [appellant] has pled guilty to, do you think that death is the appropriate sentence?" (12RT 2879-2880.)

Shortly thereafter, defense counsel mentioned the dismemberment:

> [T]he reality is that you're going to spend six or seven or eight weeks seeing [appellant] every day in court. You know that he's pled guilty to five murders. You read the paragraph about the dismembered bodies. [¶] The question is . . . Could you, if you thought the case was appropriate, come back with a verdict of life without the possibility of parole[?]

(12RT 2894.) During the trial judge's questioning immediately following defense counsel's inquiry, a second juror stated he would have a hard time with the penalty given what he knew, which included the victims "being mutiliat[ed] or dismemberment of bodies[.]" (12RT 2898.)

Outside the presence of the prospective jurors, the trial judge heard challenges for cause. Defense counsel challenged the two jurors involved

in the above colloquies. (12RT 2899-2900.) In arguing against the challenges, the prosecutor pointed out the "danger of asking questions that directly invite or at least imply an assumption that the juror is then called upon to include in evaluating what their ultimate decision would be." (12RT 2900.) He further argued that by giving additional information about the case, it caused these two jurors to give answers different than those in their questionnaires. (12RT 2903-2904.) The trial judge, in determining that the second challenged juror could consider other evidence even though "considering other evidence after learning of dismemberment would be difficult for anybody[,]" denied the challenge for cause to that juror. (12RT 2905.) The first challenged juror, who had written in his questionnaire that he would impose death for premeditated murder, was excused for cause. (*Ibid.*)

The next day, defense counsel informed another prospective juror that appellant had pled guilty to five counts of murder, robbery, kidnapping, "and various other crimes surrounding those killings." (13RT 3044.) Counsel noted that the juror was having a reaction to hearing the information, and asked vaguely, "What's your feeling about that?" (*Ibid.*) The prosecutor objected on the grounds that the question asked the juror to prejudge the evidence. (*Ibid.*) The trial judge ruled the questions was vague as phrased, and clarified for everyone:

> [A]gain, we're not going to be asking you . . . how you would vote. We don't want to know that because you haven't heard the evidence yet. If you have certain feelings about certain issues in this case such as multiple murder, you need to let us know about that. We're not going to get into specifics here. I won't allow that. [¶] We can ask [the prospective juror] with regard to multiple murder or something like that, what her feeling is with regard to the death penalty.

(*Ibid.*)

B. Standard of Review and Applicable Law

"*Witherspoon-Witt* . . . voir dire seeks to determine only the view of the prospective jurors about capital punishment in the abstract. . . . The inquiry is directed to whether, without knowing the specifics of the case, the juror has an 'open mind' on the penalty determination." (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1120, disapproved of on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, quoting *People v. Clark* (1990) 50 Cal.3d 583, 597.) However, "because '"[a] prospective juror who would invariably vote either for or against the death penalty because of one or more circumstances likely to be present in the case being tried, without regard to the strength of aggravating and mitigating circumstances, is . . . subject to challenge for cause,"' the death qualification process 'must probe "prospective jurors' death penalty views as applied to the *general facts* of the case, whether or not those facts [have] been expressly charged."'" (*People v. Zambrano*, *supra*, at p. 1120, quoting *People v. Earp* (1999) 20 Cal.4th 826, 853, italics added.) Accordingly, this Court has held that

"[d]eath-qualification voir dire must avoid two extremes. It must not be so abstract that it fails to identify jurors whose death penalty views would prevent or substantially impair their performance as jurors. Likewise, it must not be so specific as to require prejudgment based on a summary of potential evidence." (*People v. Leon* (2015) 2015 WL 3937629, *8, citing *People v. Cash* (2002) 28 Cal.4th 703, 721-722.)

A trial court "may not *categorically* prohibit inquiry into a subject 'likely to be of great significance to prospective jurors' in deciding penalty" (*People v. Leon*, *supra*, 2015 WL 3937629, at p. *8, quoting *People v. Cash*, *supra*, 28 Cal.4th at p. 721, and *People v. Vieira* (2005) 35 Cal.4th 264, 286, italics added), but it retains "considerable discretion in determining the scope of voir dire" (*People v. Williams* (2006) 40 Cal.4th 287, 307; accord, *People v. Cash*, *supra*, at p. 722). Accordingly, rulings on the scope of voir dire are reviewed for abuse of discretion (*People v. Jenkins*, *supra*, 22 Cal.4th at p. 990), and limitations should be affirmed "unless the voir dire was so inadequate that the resulting trial was fundamentally unfair." (*People v. Leon*, *supra*, at p. *8, citing *People v. Carter* (2005) 36 Cal.4th 1215, 1250.)

C. The Trial Judge's Ruling Precluding Voir Dire on the Specifics of the Dismemberments Involved in this Case was a Proper Exercise of Discretion and Did Not Violate Appellant's Federal Constitutional Rights

Here, the trial judge's ruling prohibiting counsel from asking prospective jurors about whether specific facts involved in the case, namely the details of the mutilation and dismemberment of the victims' bodies, would cause them to automatically vote for one penalty or the other, was a proper exercise of her discretion. The details of the dismemberment evidence were not of the type to be greatly significant to prospective jurors when deciding penalty. In any event, the trial judge did not *categorically* prohibit inquiry into the subject matter. Rather, the voir dire that was allowed avoided the two extremes described in *Cash* in that the parties were permitted to voir dire using the general facts of the case, which included questioning prospective jurors about their ability or inability to maintain an open mind throughout the trial, even in light of photographic evidence of human dismemberment.

At the outset of voir dire, prospective jurors were advised that appellant had been charged with, among other things, the murders of five people, that several special circumstances attended the charges, and that appellant had pled guilty and admitted the special circumstances. (See, e.g., 7RT 1747-1749.) In the juror questionnaires, prospective jurors were given several pieces of case-specific information, including: (1) appellant

had pled guilty to the charges; (2) two of the victims were elderly; (3) three of the victims were dismembered and their body parts were found floating in gym bags in the Mokelumne River; and (4) penalty jurors would be required to look at photographs or videos of the victims and the crime scenes. (See, e.g., 1JQCT 15, 17, 18.) In both the pre-voir dire instructions given by the trial judge and in the juror questionnaire, prospective jurors were advised that sitting jurors would be required to consider all of the evidence offered by both sides and, taking into consideration the factors (i.e., the law) that would be provided by the trial judge at the end of the trial, they would be required to determine whether the appropriate sentence for appellant was life in prison without parole or death. (See, e.g., 1JQCT 18; 7RT 1748-1749.) Prospective jurors were advised numerous times throughout voir dire that sitting jurors were required to keep an open mind and consider all the evidence presented by both sides. In fact, they were asked *twice* in the questionnaire whether they would be "willing to listen to all of the evidence, as well as the judge's instructions on the law, and give honest consideration to both life in prison without parole and death before reaching a decision?" (See, e.g., 1JQCT 19, 20.) Thereafter, they were asked specifically whether they would "always vote for the death penalty" in a case involving either multiple murders, murder committed during a

robbery, or murder committed during a kidnapping.[83] (See, e.g., 1JQCT 20, original emphasis.) "In other words, would you automatically vote for a sentencing imposing the death penalty regardless of what the evidence was during the penalty trial?" (*Ibid.*, original italics.) And after being told that, as a sitting juror, they would be required to observe photographs of the victims and the crime scene, they were asked if viewing those photographs would "influence you so that you would be unable or unwilling to consider the other evidence presented?" (See, e.g., 1JQCT 17.)

The parties were permitted to voir dire prospective jurors on the general facts of the case – that is, that the case involved first-degree murder, that several murders were committed, and that the murders were committed during the course of a robbery or a kidnapping. Prospective jurors were repeatedly asked whether they could maintain an open mind and consider all the evidence presented by both sides *despite* these general facts. This was all that was constitutionally required. (See *People v. Zambrano*, *supra*, 41 Cal.4th at p. 1120; *People v. Cash*, *supra*, 28 Cal.4th at pp. 721-722.) The challenged limitation merely prohibited the parties from asking detailed questions about the dismemberments – questions that could cause prospective jurors to prejudge the evidence. (See 6RT 1663-1670.) This

---

[83] It is not clear why the questionnaire did not include a question involving the witness-killing special circumstance, a circumstance that appellant admitted during his plea colloquy. (See 5RT 1389.)

Court has held that such a limitation is appropriate. (See *People v. Coffman* (2004) 34 Cal.4th 1, 47 [finding that unlike in *Cash*, the trial court "merely cautioned Coffman's counsel not to recite specific evidence expected to come before the jury in order to induce the juror to commit to voting in a particular way"]; *People v. Burgener* (2003) 29 Cal.4th 833, 865.)

To the extent appellant argues that the evidence of mutilation and dismemberment of the victims' bodies should have been characterized as "general facts of the case," upon which the parties should have been allowed to voir dire prospective jurors, this Court has found otherwise in previous cases. First, although gruesome and probative of appellant's state of mind, the dismemberment evidence cannot fairly be characterized "general facts of the case." This case was not about appellant simply dismembering bodies. This was a case about appellant plotting to kidnap people and extort money, and then murdering the victims of the extortion, an innocent pawn, and any witnesses who could identify him. The dismemberment and disposal of the victims' bodies was a corollary to the crimes involved – the aftermath. And defense counsel's intent in asking about the specific details of the dismemberments – to ascertain whether, despite this evidence, jurors could consider all the evidence before deciding penalty (see 6RT 1667) – was served by all the other questions and advisements expressly asking that question. Whereas the only purpose served in allowing more extensive questioning about the specifics of the

dismemberments would have been to lead jurors to prejudge the case in favor of death.

Moreover, the details of the dismemberment evidence were not likely to be greatly significant in deciding penalty. Although the procedural posture and facts in *People v. Zambrano*, *supra*, 41 Cal.4th 1082, are different from this case,[84] it is still somewhat helpful. In *Zambrano*, prior to the guilt trial, the defendant wanted to ask in the juror questionnaire whether "the particularly gruesome facts" of the victim's dismembered remains would influence the prospective jurors' penalty attitudes. (*People v. Zambrano*, *supra*, at p. 1119.) The trial court refused the request, finding that how prospective jurors might be affected by the evidence would cause them to prejudge the case. (*Ibid.*) The defendant renewed his request prior to the penalty trial, and the trial court once again denied it. (*Ibid.*) On appeal, this Court held that the trial court's ruling was correct. The defendant had been allowed to explore several specific circumstances of the case: the victims' status in the community, prosecution claims of attempted murder and infliction of great bodily injury, the relationship between the defendant and a victim, the allegation that another victim had been killed to prevent him from testifying in another case, and what the prospective jurors

[84] Here, unlike in *Zambrano*, there was no guilt trial and the circumstances surrounding appellant's dismemberment of the Stinemans and Selina were uncontested. Moreover, unlike in *Zambrano*, the general topic of victim dismemberment was the subject of limited inquiry.

had heard, seen, or read about the case. (*Id.* at p. 1122.) This Court found that the dismemberment issue "was not one that could cause a *reasonable* juror – i.e., one whose death penalty attitudes *otherwise* qualified him or her to sit on a capital jury – *invariably* to vote for death, regardless of the strength of the mitigating evidence." (*Ibid.*, original italics.) Acknowledging, as the trial judge in appellant's case did, that "[a] normal juror could not fail to be affected by the condition in which [the victim's] body was found, as by any brutal circumstance of a criminal homicide[,]" the Court concluded that "the fact of dismemberment, in and of itself, does not appear so potentially inflammatory as to transform an otherwise death-qualified juror into one who *could not* deliberate fairly on the issue of penalty." (*Id.* at p. 1123, original italics.) The Court added that because the circumstances of the dismemberment were disputed (the prosecutor argued it was to cover up a cold-blooded murder, while the defendant argued it was done in a panic to delay discovery while he sought legal help), general voir dire on the issue was unfair. (*Ibid.*) And further, more specific voir dire on the issue would have led to an extensive discussion with prospective jurors about specific details of the case. (*Ibid.*)

Here, as in *Zambrano*, the parties were permitted to explore several circumstances involved in the case. Ultimately, as in *Zambrano*, the facts surrounding the dismemberments and the condition in which the victims' bodies were found in this case (while undoubtedly grotesque) would not

have caused an otherwise death-qualified prospective juror *invariably* to vote for death without regard to the mitigating evidence. In other words, the facts of the dismemberments by themselves were not so inflammatory as to make a prospective juror, previously willing to consider all the evidence presented on both sides, suddenly unwilling to do so. Thus, the evidence was not "likely to be of great significance to prospective jurors" in deciding penalty and voir dire into that subject was properly limited. (See *People v. Cash*, *supra*, 28 Cal.4th at p. 721.)

Appellant attempts to distinguish his case because, unlike any other case involving dismemberment, this case also involved feeding human flesh to a dog. (See AOB 361.) That information was, in fact, a *specific detail* of the dismemberments that occurred in this case. To have allowed defense counsel to question prospective jurors about the impact of this fact on their decision would have been to cross the line set out in *Cash*. This fact was "so specific as to require prejudgment based on a summary of potential evidence." (*People v. Cash*, *supra*, 28 Cal.4th at pp. 721-722.)

In any event, the general fact that dismemberments occurred was the subject of limited voir dire. Prospective jurors were informed about the dismemberments involved in this case (see 1JQCT 15) and asked specifically whether they could view graphic photographs of the victims, presumably in a dismembered state, and still keep an open mind and consider other evidence presented. (See 1JQCT 18.) Additionally, during

oral voir dire defense counsel reminded prospective jurors that the case involved dismembered bodies and that sitting jurors would have to view photographs of the crime scene and the dismembered bodies "blown up on this wall up here," and asked whether, despite this and other evidence in aggravation, prospective jurors would be able to consider evidence in mitigation (see, e.g., 10RT 2556), and whether they would be able to return a sentence of life without the possibility of parole (see, e.g., 12RT 2894). So although it was not the subject of extensive voir dire, prospective jurors were advised generally that the case involved victim dismemberment. (See *People v. Edwards*, *supra*, 57 Cal.4th at p. 749 [holding that where prospective jurors were aware of generalized facts, including facts of torture, burglary, sexual assault, and strangulation, limitation on questions that improperly sought prejudgment of facts was not improper]; *People v. Valdez* (2012) 55 Cal.4th 82, 165-167 [where trial court prohibited questioning prospective jurors about exact number of alleged murders, but allowed questioning about "multiple murders," the voir dire procedures were "adequate to enable defense counsel to determine whether that circumstance would affect the prospective jurors' ability to perform their duty"].)

The fact that prospective jurors were initially informed about the dismemberment as part of the "Pre-Trial Publicity" portion of the questionnaire is without consequence. For example, in *People v. Solomon*

(2010) 49 Cal.4th 792, this Court found that although prospective jurors were not informed about the nature of the defendant's prior sexual assaults or the condition in which the bodies were found – two of the subjects on which the defendant was not permitted to voir dire –

> a questionnaire item regarding pretrial publicity suggested to them that defendant may have committed other crimes. And although jurors were not informed that the murder victims had been bound and asphyxiated, they learned that some of the victims may have been prostitutes and that the bodies were found inside abandoned houses and buried in backyards. They were also asked how they would feel about viewing autopsy photographs of 'several dead women.'

(*People v. Solomon*, *supra*, at p. 839.) This Court found that the trial court had "struck the proper balance in death qualification voir dire" and had not abused its discretion in refusing counsel's request to "probe juror's attitudes" about the defendant's prior sexual assaults and the condition of the victims' bodies. (*Ibid.*) The same is true here, where prospective jurors were informed in some part of the questionnaire and at points during oral voir dire that this case would involve graphic photographs of dismembered bodies.

Because the questionnaire included information about dismembered bodies and asked prospective jurors whether being required to observe photographs or videos of dismembered remains would affect their ability to consider the rest of the evidence, and because prospective jurors were otherwise informed of and questioned repeatedly about keeping an open

mind throughout the trial, appellant cannot viably maintain the argument that the trial judge *categorically* prohibited inquiry into the subject matter, be it the dismemberments or the prospective jurors' abilities to consider the evidence. Again, parties were allowed to voir dire on the general facts of the case, and that was all that was required. (See *People v. Leon, supra*, 2015 WL 3937629, at p. *9 ["The gravamen of *Cash* and *Vieira* . . . is that the defense cannot be *categorically* denied the opportunity to inform prospective jurors of case-specific factors that could invariably cause them to vote for death at the time they answer questions about the views on capital punishment"], quoting *People v. Carasi* (2008) 44 Cal.4th 1263, 1287; *People v. Lucas* (2014) 60 Cal.4th 153, 258-259 [no abuse of discretion where, although trial court prohibited voir dire into defendant's 1973 rape conviction, it did not categorically bar questions concerning rape as an aggravating factor].) Allowing the parties to delve into more specific facts of the dismemberments (e.g., feeding flesh to a dog), without allowing for the complete presentation of evidence, would have gone beyond the purpose of voir dire in a capital case. (See *People v. Taylor* (2010) 48 Cal.4th 574, 636 ["The goal of voir dire in a capital case is to disclose whether prospective jurors hold views and attitudes that would prevent or substantially impair the performance of their duties as jurors in accordance with their instructions and oath"].)

To the extent appellant relies on *Cash* for its outcome (see AOB 363-364), *Cash* is factually distinguishable. In *Cash*, the defendant was convicted of special circumstance murder and attempted murder. During the penalty phase, the prosecution presented evidence that the defendant killed his elderly grandparents when he was 17 years old. The jury returned a death verdict. (*People v. Cash*, *supra*, 28 Cal.4th at p. 714.) On appeal, the defendant argued the trial court erred in preventing him from asking prospective jurors whether they would automatically vote for death if the defendant had previously committed murder. During jury selection, the court imposed a blanket rule restricting voir dire solely to the facts appearing on the charging document. (*Id.* at p. 719.) This Court concluded that the blanket restriction was error for two reasons: (1) a trial court cannot absolutely bar mention of any fact or circumstance solely because it was not expressly pled in the charging document; and (2) based on the evidence presented in this particular case, a prior murder was "a general fact or circumstance that . . . could cause some jurors invariably to vote for the death penalty, regardless of the strength of the mitigating evidence. . . ." (*Id.* at p. 721.)

Here, as already argued, the trial judge did not categorically prohibit questions on matters other than those appearing on the face of the Information. Nor, as discussed, was the dismemberment evidence such that could cause otherwise death-qualified jurors to automatically vote for

death. Thus the outcome in *Cash*, one of the few if not the only decision reversing a penalty determination on this basis, is not determinative of what the outcome should be in appellant's case.

Appellant also argues that the trial judge's ruling violated his federal constitutional rights to a jury willing to consider mitigation evidence. (AOB 364-366.) For all the reasons discussed above, the trial judge's limitation on voir dire did not hamstring defense counsel from ascertaining those prospective jurors who would be unwilling to consider mitigation evidence. Prospective jurors were informed of their duty to keep an open mind and consider all the evidence before deciding penalty, and were questioned about their ability to do so in a variety of ways (both in the juror questionnaire and during oral voir dire). They were even told that they would be required to view graphic photographs of dismembered remains, and they were asked if that would affect their ability to consider *all* the evidence. Nothing about the trial judge's ruling offended appellant's federal constitutional rights; indeed, this Court has upheld significantly more limited voir dire. (See, e.g., *People v. Leon*, *supra*, 2015 WL 3937629, *11 [holding that four pattern questions based on *Witherspoon* and *Witt*, without much more and without permitting follow-up questioning by attorneys, was "not so cursory as to render defendant's trail fundamentally unfair"]; *People v. Navarette* (2003) 30 Cal.4th 458, 487-488 [rejecting complaints about "hasty" voir dire]; *People v. Hernandez*

(2003) 30 Cal.4th 835, 855 [rejecting complaints of "perfunctory" voir dire].) The voir dire in appellant's case was not so unfair or unreasonable as to violate his federal constitutional rights.

Accordingly, for the reasons set forth above, the trial judge's ruling was not an abuse of her discretion and did not violate appellant's federal constitutional rights.

D. Harmless Error

Finally, even assuming the trial judge abused her discretion, any resulting error was harmless. The trial judge's ruling was "minimally restrictive" (*People v. Carpenter* (1997) 15 Cal.4th 312, 354, abrogated on other grounds by *People v. Diaz* (2015) 60 Cal.4th 1176, 1189-1190), appellant had 14 peremptory challenges remaining when he accepted the penalty jury, and he did not express dissatisfaction with the jury as sworn. (See 14RT 3269-3275.) Accordingly, any possible error could not have been prejudicial. (See *People v. Coffman*, *supra*, 34 Cal.4th at p. 47; *People v. Burgener*, *supra*, 29 Cal.4th at p. 866; *People v. Carpenter*, *supra*, 15 Cal.4th at p. 354.)

For all of the above reasons, relief on this claim must be denied.

IV. THE TRIAL JUDGE WAS WITHIN HER DISCRETION IN ALLOWING JURORS TO VIEW PHOTOGRAPHIC AND AUDITORY EVIDENCE OF DISMEMBERMENTS; APPELLANT WAS NOT DEPRIVED OF A FUNDAMENTALLY FAIR TRIAL; EVEN ASSUMING ERROR, IT WAS HARMLESS

In Ground Four, appellant argues that the trial court erroneously admitted photographs depicting the dismembered remains of the Stinemans and Selina, and erroneously allowed the prosecutor to activate a reciprocating saw during his closing argument, because the photographs and the sound of the saw were irrelevant to how the murders were committed.[85] Even assuming some relevance, appellant argues that they should have been excluded under Evidence Code section 352 as cumulative and unduly prejudicial, and under the federal Constitution as depriving him of a fundamentally fair trial. Finally, he contends the error was not harmless. (AOB 370-381.)

The trial judge properly exercised the broad discretion afforded her in allowing the jury to view the dismemberment photographs during the coroner's penalty-phase testimony and in permitting the prosecutor to activate a reciprocating saw during closing argument. The photographs were relevant to the circumstances of the crime, their probative value was not substantially outweighed by any possible prejudice, and they were not

---

[85] Although below appellant's trial counsel also argued for the exclusion of autopsy photographs of Villarin and Gamble (see, e.g., 15CT 6499, 6501; 6RT 1616-1617), his argument on appeal is limited to the photographs of the dismemberments.

cumulative. The reciprocating saw that was activated was similar to the one appellant used to dismember the victims and it was proper for the prosecutor to use it for illustration during argument. For these same reasons, the trial judge's exercise of discretion did not result in a fundamentally unfair trial such that appellant's federal constitutional rights were violated. However, assuming it was error to allow the photographs or activation of the saw, there was no prejudice.

A. Relevant Facts

At a hearing on March 2, 2004, the prosecutor submitted to the trial court 113 small color photographs of the dismembered victims and the crime scene in a small brown envelope, and 10 sets of small color photographs mounted on cardboard mats.[86] (11CT 4403.) On March 3, 2004, during the continued hearing, defense counsel for appellant objected to the presentation of the mounted photographs, marked People's Exhibits 4-C-1 through 4-C-10. (4RT 1171-1172.) Counsel offered to stipulate to "any evidence, any inference and every inference that the prosecutor is trying to prove by showing these photographs," noting that the photographs of remains were taken after the bodies had spent some time in water and she did not "see the benefit to anyone of having these photographs published to the jury, here in court." (*Ibid.*) The prosecutor rejected the

[86] This hearing occurred prior to the appellant's guilty plea (March 5, 2004), and the severance of the case (March 9, 2004).

offer, arguing that the condition of the victims' bodies in this case was a direct reflection of the intent of appellant and his co-defendants. (4RT 1175.) The prosecutor noted that the fact that the remains had been in the water had actually removed some of the blood and gore, revealing "the incisions, the cutting, the ripping, the tearing personally participated in" by appellant and his brother. (*Ibid.*) He argued that the photographs were "extremely probative of intent, of their maliciousness and disregard for the bodies – the beings that they were in the process of killing and dismembering. And therefore, it is extremely probative of the mental state accompanying the crime of murder." (*Ibid.*)

The trial judge went through all of the mounted photographs with the parties. (4RT 1174.) The prosecutor prepared one board for each bag of recovered remains (nine boards), and a tenth board depicting photographs of the reconstructed bodies. (4RT 1175.) He also tried to put the photographs on each board in chronological order of recovery of the bag and discovery of its contents.[87] (4RT 1175-1177.) He noted the limited

---

[87] "[F]or instance, People's Exhibit 4-C-1 photograph A is where the bag was recovered. It's still in the river. B is a photograph of the bag itself. You don't see the body parts. [¶] C is a photograph of the torso – it's Annette Stineman, with the black or very dark colored plastic bag still partially wrapped around the torso. [¶] D is a photograph of the – another photograph of the same gym bag where we can more closely see the slices in the side of the bag. . . . And E is a photograph of a stepping stone. One of the five photographs shows a body part. The only body part in that bag is the torso of Annette." (4RT 1175-1176.)

number of photographs actually depicting body parts; most depicted the gym bags, the plastic bags inside, and the stones used to weigh the bags down. Further, several photographs contained multiple body parts; the prosecutor did not seek to show jurors a single photo for each body part, nor did he include multiple photos depicting the same thing. (See 4RT 1175-1181; 3SCT 708-732 [People's Exhibits 4-C-1 through 4-C-9].) He further noted that People's Exhibit 4-C-10 – photographs of the reconstructed remains – was included "primarily because in addition to the complete disconsideration of the body that this represents and what it says about the people who did it. There's a meticulousness and methodical way about which the bodies were dismembered that don't come through with each photograph of each body part individually." (4RT 1181.) There was a single photograph for each of the three dismembered victims. (4RT 1181-1182; see 3SCT 733-735.) The prosecutor noted that not one of the boards contained an actual autopsy photograph – instead, he was "seeking to put before the jury the condition of the body parts as they . . . must have been in at the time they were placed [in the gym bags] . . . with the obvious exception that they are no longer as bloody as they undoubtedly were at the time." (4RT 1182.)

The prosecutor had provided the trial judge with a manila folder filled with two-inches worth of unscreened autopsy photos taken by different law enforcement agencies to demonstrate that "some discretion

and judgment was exercised in limiting the photographs that we're seeking to put before the jury." (4RT 1171, 1173.) The prosecutor stated it was not his intention to introduce any photographs other than what he had selected and mounted on the display boards (4RT 1182), and that he had provided the other photographs to trial judge for purposes of determining if there were less intrusive means of displaying this evidence to the jury. (*Ibid.*)

Defense counsel offered no further argument. (4RT 1182-1183.) Helzer's counsel lodged relevance objections to those specific photographs depicting body parts. (4RT 1184.) The prosecutor responded that the defendants' intent, which can be implied from the photographs, was relevant to deliberation of the murders. Further, the defendants' consciousness of guilt, apparent from their efforts to destroy the evidence of their crimes, was probative of their understanding of the difference between right and wrong. (4RT 1185.)

After acknowledging the gruesomeness of the case, particularly the disposal of the victims' bodies, the trial judge reasoned that:

> Intent is very much an issue here. And how the bodies were disposed of, which shows a preplanning, such as the bags used, the purchase of the bags, tying this in together to the meticulous plan of how the bodies were to be dissected, weighed and taken to a location and disposed of, goes not only to the details and the conspiracy, but also to the intent on the part of the parties.
>
> And so I do find them to be highly probative. They are rather gruesome, so the question is whether the probative value substantially is outweighed by any prejudice. And there's no doubt that the jury is going to learn from statements of the

> attorneys as well as witness statements what was the plan and who did it and how it was carried out. And I don't think that the prejudice does substantially outweigh the probative value of what all this shows and what it goes directly to, the heart of intent, which is at the heart of this case, especially for one Defendant.
>
> I don't feel that these are – obviously they're not duplicative. Mr. Jewett mentioned there's one photo which even includes several pieces as opposed to Annette's jaw, Selina's jaw, Ivan's jaw. One photo depicts all of those. As the photos are laid out on each of the photo boards, I find it to be the least offensive way possible for those to be shown or displayed.
>
> What I will do is go through the stack and/or any other photos that are handed to me to see if I can compare with the photos on the placards to see if there's something that shows it that isn't as grotesque as already shown.

(4RT 1186-1187.) The trial judge stated that given what she had seen so far, "[i]n my opinion [the photographs in the stack] are more gruesome than the ones on the placard. . . ." (4RT 1187.) She offered to review any other photographs submitted to her but, as of that point, she felt "that those that are on the board are admissible for the relevant purpose for which I have just stated. . . ." (4RT 1187-1188.) After objection by Helzer's attorney to the trial judge making any comparisons with the photographs submitted by the prosecutor, as opposed to *all* of the photographs in existence, the trial judge stated she was comfortable with her ruling and would not make any comparisons among the photographs. (4RT 1188.)

After appellant changed his plea to guilty, the two trials were severed, and Helzer's trial was over, defense counsel for appellant filed a

Motion to Limit Photographic Evidence. (15CT 6497-6503.) Counsel argued that the photographs depicting body parts should be excluded under Evidence Code section 352 because they were unduly prejudicial, they were not relevant to a disputed, material issue in that they did not "elucidate the cause of death or the nature and extent of the wounds inflicted," they were cumulative to witness testimony, and they would offend the victims' families. (15CT 6499-6502.) Alternatively, counsel argued that the displays of photographs should not be allowed to remain in the jury's view. (15CT 6502.)

The prosecutor filed a written response. (15CT 6522-6523.) Relative to the post-mortem photographs of the victims, he argued that they were "the best evidence of the methodical and cold-blooded manner in which [appellant] killed five people[,]" and what they depicted was related to "the enormity of the crimes committed." (15CT 6523.)

On October 5, 2004, the trial judge heard arguments on the motion. (6RT 1614.) Defense counsel argued that because appellant pled guilty, "there is no issue as to how the deaths occurred, the manner in which they occurred." (6RT 1616.) Further, the photographs of dismembered remains were "extremely inflammatory" and lacked probative value. (6RT 1617.) Counsel submitted on the photographs of the reconstructed remains (People's Exhibit 4-C-10) because "Mr. Jewett would have the ability or

the right to have at least some evidence of the way the bodies were dismembered." (*Ibid.*)

The prosecutor responded that although appellant had pled guilty, there was no actual evidence before the jury of the manner in which the crimes were committed. (6RT 1617.) He noted that the photographs showed a progression – a learning curve – with each dismemberment, and that the removal of teeth and jaws was done at appellant's direction. (6RT 1617-1618.) Accordingly, the photographs were "circumstantial evidence of what is inside [appellant]. And therefore, they are very probative of the enormity of the crime, which directly relates to the question of whether or not the evidence in aggravation is so substantial that it warrants imposition of the death penalty." (6RT 1618.)

In ruling, the trial judge cited *Payne v. Tennessee* (1991) 501 U.S. 808 [111 S.Ct. 2597, 115 L.Ed.2d 720], and identified the issue as "whether or not photographs of the manner in which the killings were conducted would be relevant at the penalty phase . . . ." (6RT 1620.) The judge noted that the photographs proffered by the prosecutor had been whittled down from a much larger group of photographs, and that the mounted photographs had been used at Helzer's trial. (6RT 1621.) Acknowledging that the photographs of the remains were "the hardest obviously to look at[,]" she noted that "as far as body parts go, they were cleaned up[,]" and in terms of time in the river, "you could imagine it being worse." (*Ibid.*)

The trial judge believed the photographs of the victims' faces were most difficult, "but I think that the fact that [the removal of teeth and jaws] was done is relevant to the case for this jury in deciding which penalty they should impose." (6RT 1622.) The judge concluded that,

> I think that each of these photos shows conduct on the part of the defendant and/or his accomplices as to what happened here and the jury is not just being shown a dead body. They're being shown body parts because these people were cut up and that's how they were disposed of. . . . And I think with regard to *Payne v. Tennessee* and/or Factor A, the circumstances of the crime, that is something relevant to the jury to consider in which penalty it is that they want to impose.

(*Ibid.*) The trial judge also cited *People v. Edwards* (1991) 54 Cal.3d 787, as holding that jurors need not divorce the injury from the acts, and that Factor A, the circumstances of the crime, allowed evidence on the specific harm caused. (6RT 1622-1623.) The trial judge once again found the photographs to be relevant and "that their probative value far outweighs any prejudicial effect that may [a]ffect the defendant in this matter." (6RT 1623.) The trial judge did, however, limit the amount of time the photographs would remain within jurors' view. (*Ibid.*)

During the penalty trial, the dismemberment photographs, among those marked People's Exhibits 4-C-1 through 4-C-10, were displayed only

during the testimony of the coroner Dr. Gregory Reiber.[88] (See 25RT 5475-5504.)

Prior to Dr. Reiber's testimony, defense counsel made an oral motion to exclude demonstrative evidence during testimony, namely the operation of a reciprocating saw. (24RT 5260.) After argument from both sides, the trial judge granted the defense motion to preclude activation of the saw, stating "it seems to me that seeing the body in pieces tells [the] story [of the amount of force and how the bodies were disposed of]. The doctor can talk about striations and we don't need to turn it on to show that." (24RT 5265.)

Prior to closing arguments, defense counsel again moved to preclude the prosecutor from activating the reciprocating saw, this time during his closing argument. (29RT 6534.) Counsel argued that the sound of the saw

---

[88] Marin County Sheriff's Sergeant Michael Crain was shown only select photographs from these exhibits, specifically those depicting the stepping stones. (See, e.g., 18RT 4122-4124 ["It's not my intention to display all of these photographs for you now. I just want to find a representative sample of something. [¶] In People's Exhibit 4C3, photograph C, immediately adjacent to what looks like a blue gym bag, there appears to be a concrete steppingstone, gray in color[]"].) Likewise, Concord Police Officer Nancy Vedder was shown only select photographs from these exhibits, specifically those depicting the gym bags. (See, e.g., 16RT 3751 ["And showing you just photograph A of People's Exhibit 4C3 – strike that 4C4, does that appear to be the bag from which – that we're calling bag number four . . . ."], 3755 ["Let me show you People's Exhibit 4C5, photograph B. Does that appear to be the canvas bag from which the contents of what we're calling here bag number four was removed?"], 3760 ["And showing you photograph B of People's Exhibit 4C6, can you say whether that at least appears to be bag number six?"].)

was not relevant and that it was unduly prejudicial. (29RT 6534, 6535.) The prosecutor argued the sound was relevant for purposes of closing argument, which is when the parties are given the opportunity to *argue* their respective cases. "[T]urning on the saw gets the jury closer to the reality of what happened in that bathroom." (*Ibid.*) Further, the saw was in evidence and turning it on would demonstrate how it moved and the care required to operate it, which was relevant to the enormity of harm. (29RT 6535.) The trial judge stated that when the issue was brought up relative to the coroner's testimony, activating the saw was not relevant to explain how the cuts were made: "[H]ow fast it ran or how loud it was [did not] explain the damage or the cuts to the body through the doctor's testimony." (29RT 6536.) However, for purposes of closing argument, the trial judge believed "it is relevant to show and demonstrate to the jury the gravity of the crime[,]" and it was "not overly prejudicial." (*Ibid.*) The judge ruled to allow the prosecutor to turn on the reciprocating saw briefly during closing arguments. (*Ibid.*)

During record correction, appellant's counsel filed a request to augment the record with, among other things, a settled statement regarding the "interval, if any, Mr. Jewett took advantage of the court's ruling" and "what else the prosecutor displayed to the jury if and when the saw was activated." (SSCT 4.) Following argument, the trial judge granted the request for a settled statement limited to the fact that a saw was activated;

to wit: "The prosecutor activated an electric saw during his closing argument to the jury."[89] (2d. Add. SSCT 23; SSCT 35-36.)

B. Standard of Review and Applicable Law

Relevant evidence includes all "evidence . . . having any tendency in reason to prove . . . any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) "Except as otherwise provided by statute, all relevant evidence is admissible." (Evid. Code, § 351.)

Section 190.3 provides that in determining the penalty in a capital case, the trier of fact "shall take into account any of the following factors if relevant: (a) [t]he circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to section 190.1."

Evidence Code section 352 precludes the admission of evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create

---

[89] Appellant's attempt to expand the appellate record by citing to information appended to an augmentation motion that was not adopted into the settled statement by the trial judge is unauthorized and should be disregarded. (AOB 371; see Cal. Rules of Court, rule 8.137(a)(2)(B); *People v. Tuilaepa* (1992) 4 Cal.4th 569, 585 [record settlement limited to oral proceedings at trial that were not transcribed]; *People v. Strickland* (1974) 11 Cal.3d 946, 957 [matters outside the appellate record cannot be considered on appeal].)

substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

A trial court generally has broad discretion to determine the admissibility of photographs challenged under Evidence Code section 352 as unduly gruesome or inflammatory. (*People v. Zambrano*, *supra*, 41 Cal.4th at p. 1149.) "In a capital case, however, the court's discretion to *exclude* such evidence is more circumscribed at the penalty phase than at the guilt phase." (*People v. Solomon*, *supra*, 49 Cal.4th at p. 841, citing *People v. Salcido* (2008) 44 Cal.4th 93, 158.) This is so because "'the sentencer is *expected* to subjectively weigh the evidence, and the prosecution is entitled to place the capital offense and the offender in a morally bad light.'" (*People v. Moon* (2005) 37 Cal.4th 1, 35, quoting *People v. Box* (2000) 23 Cal.4th 1153, 1201, original italics; accord *People v. Salcido*, *supra*, at p. 158.) "The prosecution has the right to establish the circumstances of the crime, *including its gruesome consequences*. . . ." (*People v. Bonilla* (2007) 41 Cal.4th 313, 353, italics added.)

"To determine whether there was an abuse of discretion, [a reviewing court must] address two factors: (1) whether the photographs were relevant, and (2) whether the trial court abused its discretion in finding that the probative value of each photograph outweighed its prejudicial effect. [Citation.]" (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 211–212; accord *People v. Moon*, *supra*, 37 Cal.4th at p. 34.)

Relative to demonstrations during closing argument, a trial court has broad discretion in determining the scope of the argument. (See *People v. Harris* (2005) 37 Cal.4th 310, 355 ["the trial court retains discretion to impose reasonable time limits and to ensure that argument does not stray unduly from the mark"]; *People v. Boyette* (2002) 29 Cal.4th 381, 463 [same]; *People v. Marshall* (1996) 13 Cal.4th 799, 854 [ruling limiting defense counsel argument was within trial court's discretion to control scope of closing argument].) It is entirely proper for a prosecutor to use objects similar to those connected with the commission of a crime for purposes of illustration. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1135, citing *People v. Brown* (1958) 49 Cal.2d 577, 587, and *People v. Stone* (1963) 213 Cal.App.2d 260, 266.)

A federal constitutional violation occurs only where the trial court's exercise of discretion was exercised "'in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.'" (*People v. Moon*, *supra*, 37 Cal.4th at p. 35, quoting *People v. Lawley* (2002) 27 Cal.4th 102, 158; see *People v. Lewis* (2009) 46 Cal.4th 1255, 1284 [defendant's constitutional rights are generally not implicated by the routine application of state evidentiary law].)

C. The Trial Judge Properly Exercised the Broad Discretion Afforded Her in Allowing the Prosecutor to Introduce Relevant, Highly Probative, Non-Cumulative Photographs of the Dismembered Remains of the Stinemans and Selina During Penalty-Phase Testimony, and in Allowing the Prosecutor to Turn on a Reciprocating Saw During Closing Argument

1. The photographs

The photographs of the dismembered remains of the Stinemans and Selina were relevant, highly probative, and not cumulative and, as such, it was not an abuse of discretion to allow the jurors to view them. First, they were relevant as circumstances of the crime under section 190.3. They depicted the injuries to appellant's victims – stab wounds, head trauma, bruising – in addition to the lengths appellant went to desecrate and dispose of their bodies – cuts made to remove organs, the organs themselves (including damage to the organs; i.e., the stab wound to Annette's heart), the removal of strips of skin, the removal of teeth and jaws, and the cuts to separate the body parts. The removal of teeth and jaws and a strip of skin containing a tattoo from Selina's shoulder, done to prevent identification of the victims' remains, demonstrated appellant's appreciation for the seriousness of the crimes he had committed and his consciousness of guilt. The fact that each victim's body parts were distributed among several gym bags, undoubtedly done to hamper identification, demonstrated the same guilty conscious. As the prosecutor argued, and as the trial judge agreed, these photographs depicted the seriousness of the crimes appellant had

committed and reflected a degree of moral culpability which, in turn, was relevant to the jury's determination of whether or not the aggravating circumstances of the case were so substantial as to warrant the death penalty. (See 15CT 6523; 6RT 1618, 1622.) Moreover, the photographs were relevant in assisting jurors to understand Dr. Reiber's testimony. They illustrated Dr. Reiber's testimony about how the dismembering cuts were made, about the care taken to make the cuts, and about the removal of organs from Annette's body. (See 25RT 5475-5520.)

Second, the probative value of the photographs was not substantially outweighed by any prejudicial effect. As noted, the photographs demonstrated appellant's state of mind during and immediately following the murders: consciousness of guilt and, more so, his malicious intent in committing the murders. The murders of the Stinemans and Selina were not spur-of-the-moment. They were well thought out all the way through to the disposal of the bodies. The photographs, depicting the meticulous nature of the dismemberments and the care taken to dispose of the bodies in such a way as they might never be found or identified, were a reflection of appellant's state of mind at the time of the murders. The removal of Annette's organs and the stab wound to her heart likewise was a reflection of appellant's state of mind. There was no other evidence presented that provided the jury with such an objective view of appellant's mindset at the time of the murders.

Thus, the photographs were highly probative of matters relevant to a penalty determination, whereas the possibility of undue prejudice was low. From the beginning of voir dire the jurors knew this case involved dismembered remains. They were told in their juror questionnaires that they would be required to view photographic evidence of the remains, and they were asked whether they could do that. (See, e.g., 1JQCT 17.) Godman and Nancy Vedder had both testified about the dismembered remains (Nancy Hall had mentioned their existence) before Dr. Reiber's testimony and the display of photographs to the jurors. (See 15RT 3493; 16RT 3747-3772; 20RT 4530-31; 21RT 4583, 4596-4599.) All of the photographs were "small" (11CT 4403) and were displayed chronologically in terms of discovery and inspection. The dismemberment photographs were placed among others depicting the gym bags, coroner's tags, rocks and stones – they were not placed in any way that would emphasize them. (See 3SCT 708-732; 4RT 1175-1181.) Single photographs contained multiple body parts, and there were no duplicate photographs of the same body part. (See 3SCT 708-732; 4RT 1175-1181.) And although the photographs were no doubt difficult to view, the body parts had been somewhat cleansed by the river water. (See, e.g., 4RT 1175; 6RT 1621; 3SCT 708-732.) As this Court has acknowledged, while unpleasant, post-mortem "'[v]ictim photographs . . . in murder cases always are disturbing. [Citation.]'" (*People v.* Ramirez (2006) 39 Cal.4th 398, 454, quoting

People v. Crittenden, *supra*, 9 Cal.4th at p. 134.) This does not necessarily mean they are "of such a nature as to overcome the jury's rationality." (*People v. Whisenhunt*, *supra*, 44 Cal.4th at p. 212; accord *People v. Heard* (2003) 31 Cal.4th 946, 976 ["[T]he photographs portray the results of defendant's violent conduct; that they are graphic and unpleasant to consider does not render the introduction of those images unduly prejudicial"].)

Finally, the trial judge took care in reviewing the photographs the prosecutor wanted to use, perused a stack of photographs the prosecutor could have used, and believed what the prosecutor presented was least offensive. (4RT 1186-1187.) A review of the photographs proves accurate the prosecutor's representations of the number of photographs actually depicting body parts, that some photographs contained multiple body parts, and that no body parts were presented in duplicate photographs. (See 4RT 1175-1181; 3SCT 708-732.) Nor, as explained above, were the photographs cumulative to any witness testimony because they were the best evidence of appellant's frame of mind at the time of the murders. And in any event, "'prosecutors . . . are not obliged to prove their case with evidence solely from live witnesses.'" (*People v. Solomon*, *supra*, 49 Cal.4th at p. 842, quoting *People v. Lewis*, *supra*, 46 Cal.4th at p. 1282.)

In *People v. Solomon*, *supra*, 49 Cal.4th 792, this Court addressed claims similar to those raised here. There, defense counsel argued that

photographs and videotapes of the murder victims when discovered, which showed various states of decomposition, should have been excluded under Evidence Code sections 350 and 352. (*People v. Solomon*, *supra*, at p. 841.) The trial court reviewed the photographs the prosecutor wanted to present, and others that had been excluded during the guilt phase. (*Ibid.*) Ultimately, several photographs were admitted. On appeal, the defendant argued that the admitted photographs lacked probative value, inflamed the jury, duplicated witness testimony, and rendered his penalty trial fundamentally unfair. (*Ibid.*) This Court held that the trial court did not abuse its discretion in admitting the photographs because the photographs,

> depicting the victims' bound, decomposing bodies were highly relevant to the circumstances of the crimes. They disclosed the manner in which the victims died and substantiated that defendant intended and deliberated the murders. [Citations] They demonstrated the callousness and cruelty of defendant's acts. [Citation] And they corroborated the pathologists' testimony and assisted the jury's understanding of it. [Citations].

(*Id.* at pp. 841-842.) Likewise here, the photographs substantiated appellant's state of mind at the time of the murders (including that he committed them with premeditation and deliberation), they demonstrated his cruelty toward the victims and his disregard for their humanity, and they assisted the jury in understanding Dr. Reiber's testimony.

Aside from *Solomon*, this Court has repeatedly upheld trial court rulings allowing graphic post-mortem photographs of victims during the

penalty phase of trial. (See, e.g., *People v. Salcido*, *supra*, 44 Cal.4th at p. 158 [upholding admission of photograph of murder victim that also suggested sexual molestation]; *People v. Zambrano*, *supra*, 41 Cal.4th at pp. 1149-1152 [admission of graphic dismemberment photographs was not abuse of discretion]; *People v. Moon*, *supra*, 37 Cal.4th at pp. 34-35 [although photos were excluded during guilt phase, they were allowed during penalty phase]; *People v. Box*, *supra*, 23 Cal.4th at p. 1201 [upheld admission of photographs despite fact they were "bloody and graphic"].)

Appellant contends that the dismemberment photographs were not relevant because they showed what happened *after* the murders had been committed, not *how* the murders had been committed. (See AOB 374-376.) But as this Court has recognized, "'[t]he circumstances of the crime' include what happened to the victims' bodies as a result of defendant's actions. [Citation] The consequences of criminal conduct often extend beyond the immediate result of an isolated act." (*People v. Solomon*, *supra*, 49 Cal.4th at p. 842.)

Appellant also argues that admission of the photographs amounts to a violation of his federal constitutional rights. (AOB 377-379.) Yet, for the reasons stated above, appellant fails to demonstrate that the trial judge exercised her discretion "'in an arbitrary, capricious, or patently absurd manner[.]'" (*People v. Moon*, *supra*, 37 Cal.4th at p. 35.) The routine application of state evidentiary law cannot be the basis for federal

constitutional error unless it rises to the level of depriving a defendant of a fundamentally fair trial (see *People v. Lewis*, *supra*, 46 Cal.4th at p. 1284), which for the reasons explained above did not happen here. He posits that displaying the photographs augmented the family's suffering for which jurors would hold him accountable, provoked disgust, and prevented consideration of mitigation evidence. (AOB 380-381.) Jurors were informed multiple times and instructed upon their duty to consider all the evidence before reaching a penalty determination. (See, e.g., 16CT 6866, 6868, 6916-6917.) Jurors are presumed to follow instructions. (See *People v. Bryant* (2014) 60 Cal.4th 335, 433 ["jurors are presumed to be intelligent and capable of understanding and applying the court's instructions"]; *People v. Boyette*, *supra*, 29 Cal.4th at p. 436.)

Relative to family suffering and provoking disgust, "[t]he photographs at issue here are gruesome because the charged offenses were gruesome, but they did no more than accurately portray the shocking nature of the crimes." (*People v. Ramirez*, *supra*, 39 Cal.4th at p. 454; accord *People v. Brasure* (2008) 42 Cal.4th 1037, 1054 [finding the "revulsion [the photographs] induce is attributable to the acts done, not to the photographs"].)

The jury must be protected from sensationalized illustrations of a crime, "'but the jury cannot be shielded from an accurate depiction of the charged crimes that does not unnecessarily play upon the emotions of the

jurors.'" (*People v. Zambrano*, *supra*, 41 Cal.4th at p. 1150, quoting *People v. Ramirez*, *supra*, 39 Cal.4th at p. 454; accord, *People v. Bonilla*, *supra*, 41 Cal.4th at p. 354 [holding jurors were entitled to view "the real-life consequences of [defendant's] actions. The prosecution was entitled to have the jury consider those consequences"].) The trial judge properly exercised her discretion in allowing the prosecutor to present limited photographs of the victims' dismembered remains to the jury.[90]

2. The reciprocating saw

Appellant also challenges the trial judge's ruling allowing the prosecutor to activate a reciprocating saw during closing argument, contending the sound of the saw was irrelevant and denied him his federal constitutional rights in the same way as the dismemberment photographs. Counsel's relevance argument is misplaced because the context is closing argument, not the evidence portion of the penalty trial. At the time of argument, the saw had already been admitted into evidence and trial counsel had not challenged its admission. In any event, the trial judge was within the broad discretion afforded her in determining the scope of

---

[90] The fact that the trial judge cited *Payne v. Tennessee*, *supra*, 501 U.S. 808, a case involving the admissibility of victim impact evidence, in her reasoning does not demonstrate an abuse of discretion or the erroneous application of law as appellant argues. (See AOB 373-374.) The trial judge also referred to Factor A, and found the photographs relevant to the circumstances of the crime. And as explained above, the admission of the photographs in this case was not an abuse of discretion.

argument because it had been established that appellant used a reciprocating saw to dismember the victims' bodies (see 21RT 4578; 25RT 5514-5516) and a similar saw had been admitted into evidence (see 24RT 5271 [People's Exh. 73A]; 16CT 6713). Moreover, activating the saw demonstrated how the saw moved and, perhaps more importantly, emphasized the care required to operate it and to make the cuts accomplished in this case. For these reasons, activating the saw was not unduly prejudicial. (See *People v. Barnett*, *supra*, 17 Cal.4th at p. 1136 [testimony concerning size and type of murder weapon provided sufficient basis for display of similar weapon during argument].) And for the same reasons admission of the photographs did not violate appellant's federal constitutional rights, activating the reciprocating saw during closing arguments did not do so either.

Accordingly, the trial judge properly exercised her discretion in allowing the prosecutor to present limited photographs of the victims' dismembered remains to the jurors, and in permitting the prosecutor to activate the reciprocating saw during his closing argument. As such, appellant's federal constitutional rights were not violated. However, assuming error occurred, it was harmless under any standard.

D. Any Error Was Harmless

"'Error in admitting or excluding evidence at the penalty phase of a capital trial is reversible if there is a reasonable probability it affected the

verdict.'" (*People v. Chism* (2014) 58 Cal.4th 1266, 1323, quoting *People v. Gay* (2008) 42 Cal.4th 1195, 1223; *People v. Boyette*, *supra*, 29 Cal.4th at p. 428 [*Watson* standard applies to prejudicial-error analysis for errors of state law]; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Appellant contends the trial judge's error rises to the level of a federal constitutional violation, and harmlessness should be evaluated under the standard in *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705]. Under either standard, any error was harmless.

The prosecution evidence demonstrated that appellant was the mastermind of an elaborate scheme to extort money from former clients, to murder those clients, to use an innocent third party (whom he would draw in by engaging in a romantic relationship) to facilitate the transfer of the money to him, murder her, dispose of the bodies by dismembering them and dumping the parts in the Mokelumne River, and killing anyone else who might be able to identify him.

He targeted an elderly couple, Ivan and Annette Stineman, who were former clients of his. He finagled his way into their home, where he bound and kidnapped them. He drove them to his home, forced them to write checks totaling $100,000, then drugged them with Rohypnol hoping an overdose would kill them. When the drugs did not work, he and his brother took the Stinemans into the bathroom where they tried other means of killing the couple: suffocation, slamming their heads on the floor, and

finally slitting Annette's throat. He cut open Annette's torso, removed her internal organs, and stabbed her heart. He then used a reciprocating saw to methodically cut up the bodies – decapitating both, removing their arms and legs, and dividing their torsos in half.

He then turned his attention to Selina – the innocent pawn he had started a romantic relationship with for the specific purpose of laundering the $100,000 he had extorted from the Stinemans. He brought her to his house where he tried multiple times to kill her. His brother first attempted to hit her over the head with a hammer in the bathroom. When that did not work, appellant tried to convince her to fall asleep in his room where she would be an easier target. When that did not work, he tried to drug her with Rohypnol. And finally, when that did not work, he seduced her with a back massage and, while she was relaxed, his brother bludgeoned her over the head with a hammer. They dragged her body to the kitchen where she continued to live for several minutes. Appellant returned to the kitchen and once again bludgeoned her over the head. Her body was taken into the same bathroom as the Stinemans, her throat was slit, identifying pieces of skin were removed, and her body was cut up in the same fashion as the Stinemans' bodies.

To make identification of the bodies more difficult, appellant directed Helzer and Godman to remove the teeth and jaws from the victims' heads, and to package them separately from the rest of the remains.

When appellant realized that Selina's mother could identify him, he traveled to Selina's apartment where he knew Villarin was staying and shot her several times in the face while she slept. He then turned on Gamble, who was sleeping next to Villarin, and shot him several times as he tried to escape. He knew of at least one other person who could identify him, but would "take care of her" at a later time.

Appellant returned to his home where the remains of Annette, Ivan, and Selina had been wrapped up and divided among nine separate gym bags. Following a predetermined plan for disposing of the evidence of their criminal conduct, appellant, Helzer, and Godman transported the bags out to the Mokelumne River where they launched a jet ski, loaded the bags by twos onto the ski, drove out, and dumped the bags into the river. Then they all drove home. Appellant directed Helzer and Godman to clean the house and to get rid of evidence while he packed and then left to attend a music festival.

Aside from these immediate circumstances of the crime, the prosecutor presented evidence that appellant had previously developed other illicit money-making schemes, including manufacturing and selling drugs, and pimping and pandering, and the steps taken to make those schemes a reality. There was evidence that appellant faked mental illness to avoid the legal consequences of his criminal conduct and to fraudulently

collect disability. The prosecutor also presented victim impact evidence from the friends and families of appellant's five victims.

The evidence challenged by appellant did not reveal information not otherwise known, nor was it more inflammatory than other evidence presented. For example, Godman testified in detail about all of the crimes, including about how the Stinemans were killed, and how Selina was attacked repeatedly with a hammer and had her throat cut. Thus, there is no reasonable probability of a different outcome had the trial judge excluded the photographs of the dismembered remains or disallowed the activation of the reciprocating saw during closing argument. (See *People v. Cole* (2004) 33 Cal.4th 1158, 1199 [not reasonably probable that admission of photographs of victim after fire (depicting burns and injuries) affected jury's verdict where photographs did not disclose to jury any information not otherwise presented and were no more inflammatory than witness testimony]; *People v. Heard*, *supra*, 31 Cal.4th at p. 978 [same]; see also *People v. Carter*, *supra*, 36 Cal.4th at pp. 1170-1171 [same].)

Although the *Watson* standard plainly applies here, for the same reasons articulated, any error in allowing the challenged evidence was harmless beyond a reasonable doubt. (*Chapman v. California*, *supra*, 386 U.S. at p. 24.)

Accordingly, for all the reasons set forth above, relief on this claim must be denied.

V. APPELLANT FORFEITED A PORTION OF THIS CLAIM BY FAILING TO OBJECT BELOW; IN ANY EVENT, NEITHER THE PROSECUTOR'S CLOSING ARGUMENT NOR THE INSTRUCTIONS GIVEN BY THE TRIAL JUDGE PRECLUDED APPELLANT'S JURY FROM CONSIDERING APPLICABLE MITIGATING CIRCUMSTANCES

In Ground Five, appellant contends that the prosecutor's closing argument wherein he argued that certain section 190.3 factors did not apply in appellant's case, in conjunction with the trial judge's refusal to give certain defense-proposed jury instructions on mitigating factors, violated his state and federal constitutional rights. He believes a timely objection in the trial court would have been futile, that the trial judge was obligated to *sua sponte* give curative instructions, and that the error was not harmless. (AOB 382-383, 390-410.)

Appellant forfeited his claimed error regarding the prosecutor's argument because defense counsel failed to object to it, and an objection would not have been futile. Assuming the merits of appellant's claim are reached, the prosecutor's argument was proper because it did not misstate the law or mislead jurors into believing they could ignore applicable mitigating factors. Indeed, in defense counsel's closing remarks she discussed evidence supporting the mitigating factors appellant argues the jury was precluded from considering. Further, the trial judge correctly refused defense-proposed jury instructions on certain mitigating factors because she was not required to define which factors were aggravating and

which were mitigating, the proposed instructions were argumentative, and they were duplicative of instructions that were given. However, in the event this Court finds error, it was harmless.

A. Relevant Facts

1. Jury instructions

Both sides submitted to the trial judge their requested or proposed jury instructions. The prosecutor submitted his requested instructions, all of which were standard CALJIC instructions. (16CT 6820-6861.) Appellant's defense counsel submitted 39 proposed jury instructions, most of which sought to modify the standard CALJIC instructions. (16CT 6719-6759.) After the prosecutor rested his case in chief, the parties and trial judge discussed the instructions.

Among many others, the prosecutor requested CALJIC No. 8.85, which instructed jurors that they must consider all of the evidence presented during the trial, and provided them with factors A through K to "consider, take into account and be guided by" in determining penalty. (16CT 6845-6846.) Defense counsel filed 22 different proposed instructions to modify this standard instruction. (16CT 6726-6748.) Among those were Defense Proposed Jury Instructions 15, 16, 20, and 21.

Defense Proposed Jury Instruction # 15, which counsel requested be inserted between factors C and D, informed jurors that they were not limited to the statutory mitigating factors, that they may consider any aspect

of appellant's character or record, and that they may consider specifically the circumstances surrounding the crime and appellant's background, history, and character. (16CT 6734.)

Defense Proposed Jury Instruction # 16 added substantial language to factor D, which informed jurors they could consider whether appellant was under the influence of mental or emotional disturbance at the time of the crime. The additional language informed jurors they could consider evidence of mental or emotional disturbance regardless of whether there was an excuse or explanation for it, explained that such disturbance is akin to heat of passion upon adequate provocation but that it need not rise to the same level to be considered mitigating, that such disturbance could be caused by anything including consumption of drugs and alcohol or mental illness, and that if they found that appellant suffered from such disturbance at the time of the crimes then they must regard it as a mitigating circumstance. (16CT 6735.)

Defense Proposed Jury Instruction # 20, a modification to factor H, sought to inform jurors that the mental impairment referred to in the standard instruction included "any degree of mental defect, disease, impairment, or intoxication" that jurors believed mitigated against death. (16CT 6739.) Defense Proposed Jury Instruction # 21, to have been read following factor H, requested jurors be instructed that mental disease or defect did not mean legal insanity, that jurors could consider whether

appellant was unable to fully comprehend the wrongfulness of his conduct or whether, knowing his conduct was wrong, he was nonetheless unable to fully conform his conduct to the law, and that the cause of such disease or defect could be the consumption of drugs or alcohol or any other reason. (16CT 6740.)

A hearing was held to discuss defense counsel's proposed instructions. The prosecutor objected to Defense Proposed Jury Instruction #15 as argumentative, duplicative of CALJIC No. 8.85, factor K, and incorrect insofar as it instructed jurors that appellant's background was per se mitigating. (25RT 5667-5668.) The trial judge ruled it was duplicative of factor K and on that ground refused the proposed instruction. (25RT 5668.)

The prosecutor objected to Defense Proposed Jury Instruction # 16 as argumentative, and defense counsel submitted without argument. (25RT 5668.) The trial judge agreed that the proposed instruction was argumentative and refused it. (*Ibid.*)

The prosecutor initially objected to Defense Proposed Jury Instruction # 20 as argumentative, but then submitted after defense counsel clarified that the proposed language "goes to more like a diminished capacity or an insanity . . . kind of argument." (25RT 5670-5671.) Noting that a very similar instruction had been given at Helzer's trial, the trial judge stated, "I don't really have any strong feelings either way, but I do

feel it can be given." (25RT 5671.) Rather than adding it into the language of CALJIC No. 8.85, the trial judge decided to make it its own instruction to immediately follow CALJIC No. 8.85. (25RT 5672.)

With regard to Defense Proposed Jury Instruction # 21, the prosecutor objected as argumentative and defense counsel submitted without argument. (25RT 5672.) The trial judge agreed that it was argumentative and refused it. (*Ibid.*)

At least twice during the hearing, in response to proposed language from defense counsel, the trial judge made clear that she was not going to instruct the jury that any particular evidence was either mitigating or aggravating. (See, e.g., 25RT 5658 ["[T]he court has read *Davenport* as well as *Fudge* as well as *Williams*, and in each of those cases the Court's not required to differentiate which of these factors is mitigating and which is aggravating, and I'm not going to."]; 5673 ["[T]he Court has already determined that it doesn't want to designate which is mitigating and which is aggravating."].)

Ultimately, appellant's jury was instructed with an only slightly modified version of CALJIC No. 8.85. (16CT 6908-6909.) In addition, the jurors were instructed with six additional instructions immediately following CALJIC No. 8.85. These instructions informed jurors: that not all the factors listed in CALJIC No. 8.85 may be relevant, that irrelevant factors should be disregarded, and that the absence of a statutory mitigating

factor does not constitute an aggravating factor (CALJIC No. 8.85.1; 16CT 6910); how to consider the circumstances of the crime (CALJIC No. 8.85.2; 16CT 6911); that specific harm caused (e.g., victim impact evidence) is not a separate aggravating circumstance but may be considered only as part of the circumstances of the crime (CALJIC No. 8.85.3; 16CT 6912); that mental impairment includes any degree of defect, disease, impairment, or intoxication that jurors consider to be mitigating (CALJIC No. 8.85.4; 16CT 6913); that jurors consideration of aggravating circumstances is limited to the enumerated factors (CALJIC No. 8.85.5; 16CT 6914); and that jurors may consider whatever sympathy arises from the evidence presented, including testimony from appellant's friends and family that bears upon his character (CALJIC No. 8.85.6; 16CT 6915).

2. Closing arguments

In his opening argument, after giving jurors a short history of the death penalty in California, the prosecutor argued that the jurors should be guided by the factors in section 190.3 in their decision-making. (See 30RT 6642-6643, 6645.) The relevant portions of the prosecutor's argument, for purposes of this claim, are:

> These are factors; factors A through K. And they make reference to circumstances in mitigation and aggravation. The only factors are factors A through K. The circumstances in aggravation and mitigation are innumerable in this case. [¶] . . . [¶] Ultimately, it's up to you to decide what is aggravating, what is mitigating, and perhaps more importantly, how much weight you give to [the circumstances].

(30RT 6645-6646.)

> What about Factor B? Factor B is talking about prior criminal history. That could be a circumstance in aggravation, if it applied, but we don't have it. Factor B doesn't apply. [¶] Factor C, similar, prior felony circumstances. We don't have any of that in this case. So factor C does not apply.

(30RT 6647.)

> Factor D, whether or not the defendant was under the influence of some extreme mental or emotional disturbance. Doesn't that apply? The Defense spent all of their time talking about mental illness. No, it doesn't. Those assertions don't apply. It applies down below, but not here. [¶] What this is talking about are things like . . . heat of passion, extreme anger, circumstances under which are not justifications but a person in a moment operating under some extreme disturbance. [¶] . . . [¶] A jury could say, you know, maybe they acted a little bit impulsive because of the use of methamphetamine. Maybe they were quick to anger because of the use of methamphetamine and would not have been so quick to anger, so impulsive if they hadn't used a drug, and consider this a circumstance in mitigation. [¶] You know what, folks? That doesn't apply in this case. Yes, the defendant was using methamphetamine. . . . Not only do you not have [evidence of a methamphetamine crash], this crime in this case is as far removed from impulsivity and anger as it could be. This is as cold-blooded and premeditated as it could possibly be. This case is not the product of extreme mental or emotional disturbance. Factor D does not apply.

(30RT 6647-6648.)

> H, you might think, "What about H?" . . . . Doesn't this apply? [¶] I mean, that's what we heard from the Defense, mental illness and intoxication, including drugs. . . . [¶] Doesn't this apply? No. Why not? There's some key language here. . . . Capacity. Agency, free will to make choices is a separate question. Do they have a capacity to what? Appreciate the criminality of their conduct.

> What were these for? . . . . To hide the bodies; right? So nobody would find out; right? So he wouldn't be caught; right? Obviously, the defendant appreciated the criminality of his conduct, when he put the dismembered bodies in gym bags and put them in the river with weights, and also when Jennifer Villarin and James Gamble killed because they may identify Jordan as the person involved in all of this, including the murder of Selina. Obviously, he appreciated the criminality of his conduct. . . .
>
> What about conforming conduct to the requirements of law? Well, I've talked about methamphetamine, no evidence of crashing. . . . [¶] If you buy into the defense that the defendant was mentally ill, he was since 1990; right? . . . . Because if you say that as a result of mental illness he couldn't conform his . . . conduct to the requirements of law, you should see all kinds of criminality going on between 1990 and 1998. And you don't. Why? No matter what you say, in the final analysis, whether or not you accept the premise of mental illness, the fact of the matter is it does not prevent the defendant the capacity to conform to the requirements of law. This factor does not apply.

(30RT 6650-6652.)

> What about K? Am I going to cross that out? Nope. Can't. Isn't a case in history where a prosecutor in good conscience and ethically could cross out Factor K. Why not? Because it's the kitchen sink. "Any other circumstance which extenuates." Whatever the Defense wants to put in, whatever they want to say extenuates, they get under Factor K. So it always is in evidence for your consideration under this factor.

(30RT 6653.) Relative to Factor K, the prosecutor noted one limitation on mitigation evidence: jurors could not consider sympathy for the defendant's family. (*Ibid.*; see also 30RT 6752.)

Thereafter, the prosecutor went on to discuss the specific aggravating evidence in the case, and he addressed some of the defense-presented mental impairment evidence. In conclusion, he referred to the

concluding instruction (CALJIC No. 8.88). He explained that the instruction defined mitigating and aggravating circumstances, instructed that jurors were to be guided by the applicable factors (factors A through K), and provided guidance on how to weigh the factors. (See 30RT 6792-6794.) "Before you can impose the death penalty, a judgment of death, you must be persuaded that the aggravating circumstances are so substantial in comparison of the mitigating circumstances that it warrants death. That is it. That is the legal test." (30RT 6794.)

He reminded the jurors repeatedly throughout both of his arguments of their obligation to consider all the evidence and to apply the law as given to them. (See, e.g., 30RT 6643-6644, 6795, 6833 ["Do you have to look at his whole life? Yes."], 6835 ["We have to be responsible. We have to be cognitive. We have to follow the law[.]"], 6838 ["The Court and the law invites – compels you, in fact, to undertake to reach this very important decision[]"].) He also reminded them repeatedly that in coming to their penalty decision, they had to weigh the circumstances in aggravation against those in mitigation. (See, e.g., 30RT 6644, 6794, 6838 ["In the final analysis . . . talk about mercy . . . I submit when you examine the evidence and you add up . . . it is a human calculation[.]"], 6838 ["When you do that [human calculation], there is no question that the evidence in aggravation is so substantial when compared to the evidence in mitigation that it warrants the death penalty."].)

Defense counsel interposed no objection during any portion of the prosecutor's arguments. (See 30RT 6636-6796, 6829-6839.)

In defense counsel's opening argument, she spoke of the jurors' obligation to consider all the evidence. She also spoke about the jurors' ability to give the mitigating evidence whatever weight was deemed appropriate, to find a single mitigating factor significant enough to outweigh all aggravating factors, to find their own mitigating factors (presumably under factor K) and assign to it the appropriate weight, and "to find that life in prison is the penalty for you, even though you have found that the aggravating circumstances exist and no mitigating factors exist." (30RT 6802-6804.) She informed jurors they "must not only decide what factors are applicable and relevant, but how important each factor is to you. If there is any single thing that I argue or which I do not even mention, but you believe argues for life, that alone may justify a sentence of life in prison without the possibility of parole, regardless of how many other factors you find." (30RT 6804.) She also informed jurors that if they determined that the mitigating circumstances outweighed the aggravating circumstances, or if they balance equal, or if mitigation is "less than" or even "much less than" aggravation, they are required to return a sentence of life without parole. (30RT 6804-6805.)

In discussing the evidence, defense counsel focused on appellant's mental impairments and drug use (30RT 6807-6812, 6818-6821, 6823-

6824, 6826, 6828) and argued that the murders were committed under the influence of extreme mental or emotional disturbance (factor D). (30RT 6822-6824, 6828.) She also noted appellant's lack of violent history (30RT 6812-6814, 6826), his desire to make the world a better place, particularly through religion and spirituality, and his devotion to the Mormon Church (30RT 6814-6817). She stressed the involvement of Helzer and Godman, without whom the murders in this case may not have happened. (30RT 6821-6822, 6823.) And in conclusion, defense counsel pleaded for jurors to show mercy and to spare appellant's life. (30RT 6840.)

B. Standard of Review and Applicable Law

Claims of instructional error, including claims that the trial court failed to properly instruct on the applicable principles of law, are reviewed de novo. (See *People v. Cole*, *supra*, 33 Cal.4th at p. 1210; *People v. Guiuan* (1998) 18 Cal.4th 558, 569; *People v. Martin* (2000) 78 Cal.App.4th 1107, 1111-1112.) A claim that an erroneous instruction was given is "examined based on a review of the instructions as a whole in light of the entire record." (*People v. Lucas*, *supra*, 60 Cal.4th at p. 282, citing *Estelle v. McGuire* (1991) 502 U.S. 62, 72 [112 S.Ct. 475, 116 L.Ed.2d 385] and *People v. Castillo* (1997) 16 Cal.4th 1009, 1016.) However, a trial court's ruling on proposed jury instructions is reviewed for abuse of discretion. (See *People v. Burney* (2009) 47 Cal.4th 203, 257-258, 260-261

[trial court did not abuse discretion in refusing to give modified CALJIC 8.85].)

A trial court is not required to instruct jurors on which of the section 190.3 factors are aggravating and which are mitigating. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 509 ["The court did not define which of the statutory factors could be aggravating and which were only mitigating. It did not need to. The aggravating or mitigating nature of the factors is self-evident within the context of each case."]; accord, *People v. Lucas*, *supra*, 60 Cal.4th at p. 333; *People v. Merriman* (2014) 60 Cal.4th 1, 106-107; *People v. Sattiewhite* (2014) 59 Cal.4th 446, 490; *People v. Pollack* (2004) 32 Cal.4th 1153, 1193; *People v. Prieto* (2003) 30 Cal.4th 226, 271-272; see also *Tuilaepa v. California* (1994) 512 U.S. 967, 979 [114 S.Ct. 2630, 129 L.Ed.2d 750] ["[a] capital sentencer need not be instructed how to weigh any particular fact in the capital sentencing decision"].)

Nor is a trial court required to instruct jurors with proposed instructions that are incorrect, argumentative, or duplicative. (See *People v. Gurule* (2002) 28 Cal.4th 557, 659 ["[T]he general rule is that a trial court may refuse a proffered instruction if it is an incorrect statement of law, is argumentative, or is duplicative"]; see also *People v. Lucas*, *supra*, 60 Cal.4th at p. 285 [court may refuse a proposed instruction if it is duplicative of other instructions]; *People v. Boyce* (2014) 59 Cal.4th 672, 706 [court may refuse instruction that is incorrect, argumentative, or duplicative];

People v. Edwards, *supra*, 57 Cal.4th at p. 745 [holding trial court correctly refused proposed instruction because it was incorrect statement of the law]; *People v. Moon*, *supra*, 37 Cal.4th at p. 41 [same], citing *Gurule*.)

Prosecutorial argument misstating the law may amount to error (see, e.g., *People v. Centeno* (2014) 60 Cal.4th 659, 666-667 ["it is improper for the prosecutor to misstate the law generally [citation] . . ."]; *People v. Morgan* (2007) 42 Cal.4th 593, 612 [reversal required due to prosecutor's misinterpretation of law in closing argument at a time when language in one of the court's decisions may have misled the prosecutor to think his argument was proper]; *People v. Bell* (1989) 49 Cal.3d 502, 538 [improper to misstate law], citing *People v. Pike* (1962) 58 Cal.2d 70, 97), although it is subject to harmless error analysis. (See, e.g., *People v. Centeno*, *supra*, at p. 667 [defendant must show "[i]n the context of the whole argument and the instructions" [citation], there was a "reasonably likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner"]; *People v. Seaton* (2001) 26 Cal.4th 598, 646 [prosecutor arguing legally insufficient theory was error, but harmless because of court's instructions on the law].)

C. Appellant has Forfeited this Claim; in any Event, Neither the Prosecutor's Closing Argument Nor the Instructions Given by the Trial Judge Precluded Jurors from Considering Applicable Mitigating Circumstances

1. Appellant has forfeited his claim challenging the prosecutor's closing argument

Generally, failure to raise an issue by a timely objection in the trial court forfeits the issue for appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 356.) As this Court has often explained:

> No procedural principle is more familiar to this Court than that a *constitutional right*, or a right of any other sort, may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.

(*People v. Saunders* (1993) 5 Cal.4th 580, 590, italics added, quoting *United States v. Olano* (1993) 507 U.S. 725, 731 [113 S.Ct. 1770, 123 L.Ed.2d 508], internal quotation marks omitted.) Failure to object to counsel remarks during closing argument forfeits any claimed error on appeal. (See, e.g., *People v. Hajek* (2014) 58 Cal.4th 1144, 1218 [failure to object to prosecutor's remarks forfeited claim the prosecutor misled jury]; *People v. Edwards*, *supra*, 57 Cal.4th at p. 764 [failure to object to prosecutor remarks during closing argument forfeited prosecutorial misconduct claim]; *People v. Pearson* (2013) 56 Cal.4th 393, 473 [failure to object and request admonishment forfeited issues on appeal]; *People v. Tully*, *supra*, 54 Cal.4th at p. 1030 [failure to object to remark during closing argument forfeited prosecutorial misconduct claim]; *People v.*

Dykes (2009) 46 Cal.4th 731, 774 [same].)[91] Here, defense counsel failed to lodge any objection to the prosecutor's closing argument. Accordingly, he has forfeited that aspect of this claim.

Appellant predicts the forfeiture argument by claiming any objection or request for a curative instruction would have been futile. (AOB 397-399.) Not so. Counsel argument that misstates the applicable law is error, but may be found to be harmless. (See, e.g., *People v. Seaton*, *supra*, 26 Cal.4th at p. 646; *People v. Bell*, *supra*, 49 Cal.3d at p. 538.) Contrary to appellant's argument, the trial judge never ruled that it would allow the prosecutor to argue a misstatement of the law. (See AOB 397.) Nor has respondent found any decision by this Court, confronted with a situation where counsel argues a misstatement of law, holding that such conduct is not error. Thus, an objection under such circumstances would not have been futile. Had an objection been lodged, the prosecutor would have had an opportunity to address the objection and the trial judge would have had an opportunity to rule on the challenged remarks and, if sustaining the objection, could have supplied a curative instruction. And on appeal, the parties and this Court would have had the benefit of a complete record. As it stands, this did not happen. Appellant should be found to have forfeited this argument.

---

[91] Appellant does not appear to be making a prosecutorial misconduct claim. (See AOB 394-396.)

2. The prosecutor's closing remarks did not misstate the law

First and foremost, the record does not support appellant's claim that the prosecutor, in his closing remarks, precluded jurors from considering mitigating evidence or applicable mitigating circumstances. Appellant characterizes the prosecutor's argument on factors B, C, D, and H as tantamount to instructing jurors that those factors could not be considered. This was simply not the case.

CALJIC No. 8.85, describing factors B and C, states, "You shall consider, take into account and be guided by the following factors, if applicable: . . . (b) The presence *or absence* of criminal activity by the defendant . . ., which involved the use or attempted use of force of violence . . . (c) The presence *or absence* of any prior felony conviction . . . ." (Italics added.) The alternative language of the instruction suggests that those two factors could be considered either aggravating or mitigating depending on the facts presented in the case and, hence, could be argued either way. (See, e.g., *People v. Pearson*, *supra*, 56 Cal.4th at pp. 473-474 [court need not instruct that absence of prior felony convictions is necessarily mitigating; jury instructed that it may consider absence of prior felony convictions will necessarily understand it may consider in mitigation a defendant's lack of prior convictions]; *People v. McDowell* (2012) 54

Cal.4th 395, 437 [prosecutor did not suggest that factor B evidence could never be mitigating].)

Here, there was no evidence appellant had a prior violent criminal history or a history of prior felony convictions. As evident from the context and the language of the prosecutor's argument, he was arguing that factors B and C were not *aggravating* circumstances in this case:

> What about Factor B? Factor B is talking about prior criminal history. That *could* be a circumstance *in aggravation, if it applied, but we don't have it.* Factor B doesn't apply. [¶] Factor C, *similar*, prior felony circumstances. *We don't have any of that in this case.* So factor C does not apply.

(30RT 6647, italics added.) He never said that the lack of prior violent criminal history or lack of prior felony convictions could not be considered as circumstances in mitigation, and a fair reading of the record does not suggest he was implying as much.

CALJIC 8.85 also describes factors D and H: "(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance[,]" and "(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or the effects of intoxication." (16CT 6908-6909.) With regard to factor D, the prosecutor argued that defense evidence of mental impairment should not be considered under this factor, but under factor K. He explained that factor D

evidence was more akin to "heat of passion, extreme anger . . .," but in his view "this crime in this case is as far removed from impulsivity and anger as it could be. This is as cold-blooded and premeditated as it could possibly be." (30RT 6647-6648.) He was *arguing* that the mental impairment evidence should be considered under factor K; he was not telling the jurors that they *could not* consider it under factor D if they believed the mental impairment evidence fit better under that factor.

Likewise, with factor H, the prosecutor *argued* that the mental impairment evidence did not fit within this factor; he never told jurors they *could not consider* this factor. He focused on some of the language in the factor, namely "capacity to appreciate the criminality of their conduct" and "conforming conduct to the requirements of the law." He argued that the mental impairment evidence did not fit within those terms; that appellant's attempt to dispose of the evidence of his criminal conduct suggested appellant's capacity to appreciate the criminality of what he had done, and that if appellant's mental impairment led him to commit the crimes in this case (and, thus, not conform to the requirements of the law), he would have committed other crimes years before when the mental impairment existed, too. (30RT 6650-6652.)

Thus, the prosecutor's closing remarks, read fairly and in context, contradict appellant's characterization of them as precluding jurors from considering mitigating evidence or applicable mitigating factors. He did

not misstate the law, or mislead jurors into believing certain factors could not be considered. In fact, he even specifically informed them that if the evidence in aggravation did not meet the required test, "you certainly should not vote in favor of the death penalty." (20RT 6839.) He simply argued, in his view, that there was no evidence to support jurors' consideration of certain factors. (See *People v. Crandell* (1988) 46 Cal.3d 833, 884 ["Argument stating that particular mitigating factors have not been proven is, of course, entirely appropriate"], abrogated on other grounds by *People v. Crayton* (2002) 28 Cal.4th 346, 364-365; *People v. Ruiz* (1988) 44 Cal.3d 589, 620 [prosecutor may observe in closing argument that some statutory mitigating factors are inapplicable]; *People v. Rodriguez* (1986) 42 Cal.3d 730, 790 [argument that particular mitigating factors have not been proven is appropriate].)

Furthermore, the instructions themselves informed jurors of the law and how the factors should be applied. For example, beginning with CALJIC No. 8.85, jurors were told "you *shall* consider all of the evidence which has been received during any part of the trial of this case[,]" which would include all of the mitigating evidence presented. (16CT 6908, italics added.) The instruction goes on to state, "You *shall* consider, take into account and be guided by the following factors, *if applicable*[.]" (CALJIC No. 8.85; 16CT 6908.) The mandatory language leaves no room for jurors to question what evidence they should consider or whether they should seek

to apply the listed factors. "If applicable" informs jurors that certain factors may not apply in every case, which was reinforced by CALJIC No. 8.85.1 – *a defense-requested instruction* – that states in part, "not all factors will be relevant and a factor that is not relevant to the evidence in this case[] should be disregarded." (16CT 6728, 6910; 25RT 5659-5660.)

Regarding mental impairment evidence, jurors were instructed – once again with a defense-requested instruction – that "[t]he mental impairment referred to in this instruction is not limited to evidence[] [that] excuses the crime or reduces defendant's legal culpability, but includes any degree of mental defect, disease[,] impairment, or intoxication which the jury determines is of a nature *that death should not be imposed.*" (16CT 6739, 6913 [CALJIC No. 8.85.4], italics added.)

In the concluding instruction, CALJIC No. 8.88, jurors were instructed *again* that they "shall consider, take into account and be guided by *the applicable factors of aggravating and mitigating circumstances* upon which you have been instructed." (16CT 6919, italics added.) The terms "aggravating factor" and "mitigating circumstance" were defined. (*Ibid.*) CALJIC No. 8.88 informed jurors how they were to go about weighing the factors:

> The particular weight of such opposing circumstances is not determined by the relative number but by the relative convincing force on the ultimate question of punishment. You are free to assign whatever moral or sympathetic value you deem appropriate to each and all the various factors you are

> permitted to consider. In weighing the various circumstances you determine under the relevant evidence which penalty is justified by considering the totality of the aggravating circumstances with the totality of the mitigating circumstances. To return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole.

(16CT 6917.)

The jurors were also informed, twice, that the law they were to apply was contained in the instructions, and that if anything counsel said during argument conflicted with the instructions, jurors should follow the instructions:

> You must accept and follow the law as I state it to you, regardless of whether you agree with it. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions.

(16CT 6866 [CALJIC No. 0.50]; 16CT 6871 [CALJIC No. 8.84.1].) Jurors are presumed to follow instructions (see *People v. Bryant*, *supra*, 60 Cal.4th at p. 433 ["jurors are presumed to be intelligent and capable of understanding and applying the court's instructions"]; *People v. Shazier* (2014) 60 Cal.4th 109, 150-151 [applying presumption to instruction that "'nothing . . . the attorneys say is evidence.'"]), and there is nothing in the record to suggest they were either confused or did not follow the instructions. (See, e.g., *People v. Centeno*, *supra*, 60 Cal.4th at p. 667.)

Accordingly, the prosecutor did not misstate the law and improperly limit jurors' consideration of applicable mitigating factors, nor were the instructions given inadequate.

Appellant argues, however, that the prosecutor's argument misstating the law on the applicable mitigating factors, specifically factors B and C, went uncontested and, as in *People v. Crandell, supra*, 46 Cal.3d 833, this Court should likewise hold that error occurred. (See AOB 391-395.) In fact, the prosecutor's arguments did not go unrebutted. Defense counsel argued in her closing remarks that appellant lacked any violent criminal history or prior felony record.[92] (See 30RT 6812-6814, 6826.) The fact that counsel pointed out this dearth of evidence and argued it in mitigation lends support for the conclusion that, contrary to appellant's argument on appeal, the prosecutor did not preclude jurors from considering factors B and C. Moreover, as with factors B and C, defense counsel argued that factor D was mitigating and she argued the mental impairment evidence should be considered under this factor. (See, e.g., 30RT 6822-6824, 6828.) This similarly lends support for the conclusion that the prosecutor did not preclude jurors from considering mental impairment evidence and factor D.

---

[92] Defense counsel did not structure her closing argument by addressing each factor in turn. It is, however, a fair reading of the record to conclude that she made these comments in support of factors B and C.

Further, *Crandell* is distinguishable on multiple grounds. *Crandell* began with potentially misleading and incomplete jury instructions (*People v. Crandell*, *supra*, 46 Cal.3d at pp. 882-883), whereas here appellant has not argued that CALIJC No. 8.85 was ambiguous or misleading, nor has this Court ever held so. Having found the jurors were instructed with faulty instructions, the *Crandell* court examined the entire record, including the parties' arguments, to determine whether the jury had been misled regarding the scope of its discretion and responsibility to consider mitigating evidence. (*Id.* at p. 883.) Examining the prosecutor's argument, the Court noted that the prosecutor somewhat misconstrued the weighing process and failed to acknowledge the existence of mitigating circumstances, strongly implying that none existed. (*Id.* at p. 884.) Here, the prosecutor did neither. He reiterated the standard for weighing aggravating circumstances against mitigating circumstances directly from the jury instructions (see 30RT 6643-6644, 6792-6795), and acknowledged the lack of prior violent criminal activity and prior felony convictions (see 30RT 6647). In *Crandell*, the defendant was in pro per and offered no rebuttal argument. The Court reasoned that without a defense argument, "it cannot be said with confidence that the jury received a correct understanding of the scope of its sentencing discretion and of its duty to consider all relevant mitigating evidence." (*People v. Crandell*, *supra*, at p. 885.) Here, defense counsel presented argument and argued the mitigating

evidence she had presented should lead the jury to favor life over death. Further, like the prosecutor, she reiterated the test for weighing aggravating circumstances against mitigating circumstances. Because it is so factually distinguishable, *Crandell* cannot support appellant's position.

3. The trial judge's rulings on defense proposed instructions modifying CALJIC No. 8.85 were proper; no curative instructions were necessary

Appellant also contends the trial judge should have given curative instructions, and faults her for refusing his requested instructions modifying CALJIC No. 8.85, particularly relative to factors D and H. (AOB 397-399, 404-407.) First, appellant forfeited his claim that curative instructions should have been given by his reticence below. (See *People v. Pearson*, *supra*, 56 Cal.4th at p. 473 [failure to object and request admonishment forfeited issues on appeal]; *People v. McDowell*, *supra*, 54 Cal.4th at p. 440 [defendant forfeited claim of misconduct by failing to request a curative instruction].)

Second, to the extent he takes issue with the trial judge's refusal to instruct the jury about which factors could be considered mitigating and which could be considered aggravating (see, e.g., AOB 397), this Court has repeatedly held that no such instruction is required. (See, e.g., *Tuilaepa v. California*, *supra*, 512 U.S. at p. 979; *People v. Lucas*, *supra*, 60 Cal.4th at p. 333; *People v. Merriman*, *supra*, 60 Cal.4th at pp. 106-107; *People v. Sattiewhite*, *supra*, 59 Cal.4th at p. 490; *People v. Pollack*, *supra*, 32

Cal.4th at p. 1193; *People v. Prieto*, *supra*, 30 Cal.4th at pp. 271-272; *People v. Hillhouse*, *supra*, 27 Cal.4th at p. 509.)

Third, no curative instructions were needed because, as explained above, the prosecutor's argument did not preclude jurors from considering mitigating evidence or applicable mitigating factors.

Fourth, the trial judge's rulings on the defense proposed instructions were proper. Defense Proposed Jury Instruction # 15 was rejected as duplicative of factor K. (25RT 5668.) The proposed instruction, which sought to inform jurors that they were not limited to the statutory mitigating factors and could consider any aspect of appellant's character, background, or record (16CT 6734) was more than adequately covered not only by CALJIC No. 8.85 factor K, but also in the supplemental instructions that followed CALJIC No. 8.85; namely, No. 8.85.2 [how to consider circumstances of the crime] (16CT 6911), and No. 8.85.6 [sympathy] (16CT 6915). A trial judge is not required to give duplicative instructions. (See *People v. Gurule*, *supra*, 28 Cal.4th at p. 659; see also *People v. Lucas*, *supra*, 60 Cal.4th at p. 285 [court may refuse a proposed instruction if it is duplicative of other instructions]; *People v. Boyce*, *supra*, 59 Cal.4th at p. 706.

The defense requested instruction on factor D that appellant argues should have been given (see AOB 404; 16CT 6735 [Defense Proposed Jury Instruction #16]), was rejected, without argument by defense counsel, as

argumentative. (25RT 5668.) The proposed instruction sought to advise jurors that the mental or emotional disturbance discussed in factor D is similar to heat of passion upon adequate provocation, and sought to explain what that mental state is like. It also sought to advise jurors that the mental or emotion disturbance need not rise to the level of heat of passion, and that it would be sufficient if appellant's mental state was such that he acted differently than he otherwise would. (16RT 6735.) This is argument – not the law. A trial court may properly reject argumentative instructions. (See *People v. Boyce*, *supra*, 59 Cal.4th at p. 706; *People v. Gurule*, *supra*, 28 Cal.4th at p. 659.)

The defense-requested instruction that appellant argues should have been given on factor H (see AOB 405; 16CT 6739 [Defense Proposed Jury Instruction #20]) was, in fact, given. (25RT 5671-5672; 16CT 6913 ["CALJIC No. 8.85.4"].) If appellant was intending to refer to his proposed instruction #21 (16CT 6740), that instruction was rejected, without argument, as argumentative. (25RT 5672.) As with proposed instruction #16, #21 is argumentative in that it seeks to define "the capacity . . . to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law" in a plainly defense-leaning manner. Again, whether appellant had the capacities described in CALJIC No. 8.85 at the time of the crimes was a matter for argument, not one of law. Accordingly, the trial judge properly refused this instruction.

Moreover, the jurors were instructed with proposed instruction #20, which informed them that evidence of legal insanity was not the standard, and that evidence of "any degree of mental defect, disease, impairment, or intoxication" could be mitigating. (16CT 6739, 6913.) To the extent appellant argues this instruction was insufficient because it was circular (see AOB 406), it was his own instruction and he should not be heard to complain.

D. Even Assuming Error Occurred, It Was Harmless

Instructional error, including the erroneous refusal to give requested proposed instructions, is subject to harmless error analysis. (See *People v. Hartsch* (2010) 49 Cal.4th 472, 503, 504 [error in omitting proposed instruction was harmless]; *People v. Flood* (1998) 18 Cal.4th 470, 490, 502-504 [instructional error subject to harmless error review]; see also *Chapman v. California*, *supra*, 386 U.S. at p. 24 [harmless beyond a reasonable doubt]; *People v. Watson*, *supra*, 46 Cal.2d at p. 836 [harmless if not reasonably likely defendant would have received a more favorable outcome absent error].) Likewise, error in a prosecutor's statements of law during argument is subject to harmless error. (See, e.g., *People v. Centeno*, *supra*, 60 Cal.4th at p. 667 [defendant must show "[i]n the context of the whole argument and the instructions" [citation], there was a "reasonably likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner"]; *People v. Seaton*, *supra*, 26 Cal.4th at

p. 646 [prosecutor arguing legally insufficient theory was error, but harmless because of court's instructions on the law].)

Here, viewing the instructions given as a whole (*People v. Whalen* (2013) 56 Cal.4th 1, 61; *People v. Moore* (2011) 51 Cal.4th 1104, 1140) as well as counsel's arguments, jurors could not have been misled into believing they could not consider applicable mitigating circumstances. They heard, and were given hard copies of, the jury instructions that informed them of their duty to consider *all* the evidence presented, defined "mitigating circumstances," and that instructed them to weigh the mitigating circumstances against aggravating circumstances. The instructions given informed jurors that mitigating circumstances were not limited to those enumerated in the instructions, and they could find any circumstances supported by the evidence, including sympathy and mercy, to be mitigating. To the extent the instructions conflicted with counsel's argument, they were told to follow the instructions and it is presumed they did so. Aside from the challenged portions of the prosecutor's argument, the prosecutor noted that jurors could find any circumstance mitigating under factor K (except for sympathy for appellant's family), and noted that if jurors did not find the aggravating evidence to meet the required test, they should return a verdict of life imprisonment without parole. Moreover, defense counsel argued multiple factors in mitigation, including the lack of a prior violent criminal history, lack of prior felony convictions,

and mental or emotional disturbance. On this record, it is not reasonably likely that the jury was misled, either by the instructions or by the prosecutor's argument, into believing they could not consider mitigating circumstances. (See *People v. Watson*, *supra*, 46 Cal.2d at p. 836.) Assuming this Court should find federal constitutional error, for the same reasons any error was harmless beyond a reasonable doubt. (See *Chapman v. California*, *supra*, 386 U.S. at p. 24.)

VI. APPELLANT FORFEITED HIS CLAIM CHALLENGING CALJIC NO. 8.85'S INSTRUCTION THAT THE JURY COULD NOT CONSIDER SYMPATHY FOR, OR THE IMPACT OF EXECUTION UPON, HIS FAMILY IN DETERMINING PENALTY; IN ANY EVENT, THIS COURT HAS REPEATEDLY REJECTED SIMILAR CHALLENGES AND APPELLANT PROVIDES NO REASON TO RECONSIDER THOSE PRIOR HOLDINGS

In Ground Six, appellant requests reconsideration of this Court's prior holdings that it is proper to instruct jurors not to consider the impact of execution on the defendant's family in determining penalty. He acknowledges this Court's recent decision in *People v. Williams* (2013) 56 Cal.4th 165, and in addition to the grounds raised there appellant also challenges the instruction on federal constitutional grounds. (AOB 411-413.) He argues the error was not harmless. (AOB 414.)

Appellant's failure to object to CALJIC No. 8.85 on this ground below under either state or federal law forfeits the issue for appeal. In any event, this Court has repeatedly upheld CALJIC No. 8.85 under both state

and federal law and appellant provides no valid basis for this Court to reconsider its prior holdings.

The prosecution requested CALJIC No. 8.85, which stated in pertinent part:

> Sympathy for the family of the defendant is not a matter that you can consider in mitigation. Evidence, if any, of the impact of an execution on family members should be disregarded unless it illuminates some positive quality of the defendant's background or character.

(16RT 6845-6846; see also 16CT 6820; 25RT 5656.) Defense counsel submitted 22 proposed instructions to modify CALJIC No. 8.85. (16CT 6726-6748 [defense proposed instructions 7 through 27].) In not one of these proposed instructions, nor in any other, did appellant request to omit or modify the quoted language above. (See 16CT 6720-6759.) The trial judge instructed the jury with a slightly modified version of CALJIC No. 8.85 (see 16CT 6908-6909; see, e.g., 25RT 5656, 5659-5660, 5662), and gave several additional instructions based on proposed changes or additions to CALJIC No. 8.85 (see 16CT 6910-6915; 25RT 5664.) The language challenged in this claim, however, remained intact and was not altered by any additional instruction. (See 16CT 6909-6915.)

As explained in Argument V.C.1. above, failure to raise an issue, even a constitutional issue, by a timely objection in the trial court forfeits the issue for appeal. (*People v. Scott*, *supra*, 9 Cal.4th at p. 356; *People v. Saunders*, *supra*, 5 Cal.4th at p. 590.) Failure to object to a jury instruction

(see, e.g., *People v. Moore*, *supra*, 51 Cal.4th at pp. 1134-1135), or failure to request a clarifying instruction (see, e.g., *People v. Cowan* (2010) 50 Cal.4th 401, 499) forfeits any claimed error on appeal. Here, appellant failed to object in any way to the language in CALJIC No. 8.85 instructing jurors that sympathy for his family, or the impact of his execution, cannot be considered in determining penalty. Hence, he has forfeited the issue.

Even assuming the merits of appellant's claim are reached (see, e.g., section 1259 ["appellate court may . . . review any instruction given . . . even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby"]), this Court has repeatedly upheld the language challenged in CALJIC No. 8.85. (See, e.g., *People v. Bryant*, *supra*, 60 Cal.4th at p. 456; *People v. Williams*, *supra*, 56 Cal.4th at pp. 197-198 [no state law or Eighth Amendment violation]; *People v. Thomas* (2012) 53 Cal.4th 771, 828; *People v. Smithey* (1999) 20 Cal.4th 936, 1000 [no state law, Eighth, or Fourteenth Amendment violation]; *People v. Ochoa* (1998) 19 Cal.4th 353, 456 [no state or federal law violation].) Appellant provides no valid or persuasive basis to reconsider these prior holdings.

Accordingly, relief on this claim must be denied.

VII. THE TRIAL JUDGE PROPERLY REFUSED TO GIVE DEFENSE-PROPOSED JURY INSTRUCTIONS ADVISING JURORS THAT THEY WERE NOT REQUIRED TO WEIGH AGGRAVATING AND MITIGATING CIRCUMSTANCES AND COULD IMPOSE LIFE WITHOUT PAROLE BASED SOLELY ON MERCY OR SYMPATHY

In Ground Seven, appellant contends that the trial judge erred in failing to instruct jurors, as requested, that they could deem death inappropriate and impose life without the possibility of parole for any reason. (AOB 415-427.) The trial judge properly refused to give the defense proposed instructions because they were, in part, incorrect statements of the law and, moreover, they were duplicative of standard instructions that were given.

The prosecutor requested CALJIC Nos. 8.84, 8.85 and 8.88. (16CT 6845-6847.) Defense counsel requested modifications to CALJIC Nos. 8.85 and 8.88 to provide that jurors could deem death inappropriate and impose life without the possibility of parole for any reason whatsoever. Defense Proposed Jury Instruction #13 provided, in relevant part: "The normative function of deciding which penalty should actually be imposed is entirely in your hands." (16CT 6732.) Defense Proposed Jury Instruction #28 provided, in relevant part:

> You may impose a life sentence without finding the existence of any statutory mitigating circumstance. Even if you should find beyond a reasonable doubt the existence of a statutory aggravating circumstance and find no mitigating circumstance, you may still decide that a sentence of life imprisonment without possibility of parole is the appropriate punishment in this case. In other words, you may, in your good

judgment, impose a life sentence for any reason at all that you see fit to consider.

It is not essential to a decision to impose a sentence of life imprisonment without possibility of parole that you find mitigating circumstances. You may spare the life of Taylor Helzer for any reason you deem appropriate and satisfactory.

(16CT 6749, italics added.)

The prosecutor objected to Defense Proposed Jury Instruction #13 as argumentative and vague as to the meaning of "normative function." (25RT 5664.) He argued that the approach defense counsel was advocating – to give jurors specific guidance about what to consider, but then telling them that it was entirely in their hands regardless of the guidance – was previously rejected as an equal protection violation "because it didn't provide enough uniformity in the way in which jurors approached their task[.]" (25RT 5665.) Ultimately, he argued that a balance must be struck between giving jurors too much structure and not enough structure within which to make a decision. "[T]his instruction intends to remove that structure from their consideration, and that's why we object to it." (*Ibid.*) Defense counsel pointed out that the instruction would be given with CALJIC No. 8.85, and that would provide the structure. (*Ibid.*) The trial judge rejected the proposed language as argumentative. (25RT 5666.)

The prosecutor objected to the relevant language in Defense Proposed Jury Instruction #28 as argumentative. (25RT 5677.) Defense

counsel submitted without argument. (*Ibid.*) The trial judge rejected the proposed instruction as argumentative. (25RT 5678.)

To the extent the proposed instructions sought to advise jurors that they were not required to engage in the weighing of aggravating and mitigating circumstances, or that they could consider sympathy for appellant's family in their penalty determinations, both of which were flatly contradicted by the clearly established law of this Court as well as other instructions given, they were incorrect and not required to be given. (§ 190.3; see *People v. Gurule*, *supra*, 28 Cal.4th at p. 659; *People v. Edwards*, *supra*, 57 Cal.4th at p. 745 [holding trial court correctly refused proposed instruction because it was incorrect statement of the law]; *People v. Moon*, *supra*, 37 Cal.4th at p. 41 [same], citing *Gurule*.)

To the extent the proposed instructions sought to advise jurors that they could return a verdict of life without possibility of parole: (1) even if the circumstances in aggravation outweighed those in mitigation; (2) even if they believed death was the appropriate punishment; (3) even in the complete absence of mitigating circumstances, or (4) based solely on sympathy, the trial court was not required to give such instructions. (See, e.g., *People v. Bryant*, *supra*, 60 Cal.4th at pp. 456-457; *People v. Whalen*, *supra*, 56 Cal.4th at p. 89; *People v. Famalaro* (2011) 52 Cal.4th 1, 43; *People v. Virgil* (2011) 51 Cal.4th 1210, 1279; *People v. Lee* (2011) 51

Cal.4th 620, 652; *People v. Lomax*, *supra*, 49 Cal.4th at p. 595; *People v. Valencia* (2008) 43 Cal.4th 268, 309-310.)

However, to the extent the proposed instructions sought to advise jurors that they could consider mercy and sympathy in their weighing, or that they could consider any mitigating circumstance presented by the evidence even if not specifically enumerated, they were duplicative of the instructions that were given. (See *People v. Lucas*, *supra*, 60 Cal.4th at p. 285 [court may refuse a proposed instruction if it is duplicative of other instructions]; *People v. Boyce*, *supra*, 59 Cal.4th at p. 706 [court may refuse instruction that is incorrect, argumentative, or duplicative]; *People v. Gurule*, *supra*, 28 Cal.4th at p. 659.) CALJIC No. 8.85, subpart (k), informed jurors that they could consider, take into account, and be guided by, among other things, "[a]ny circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime and any sympathetic or other aspect of the defendant's character or record that the defendant offers as a basis for a sentence less than death[.]" (16CT 6908-6909.) This Court has "consistently held this instruction 'adequately instructs the jury concerning the circumstances that may be considered in mitigation, including sympathy and mercy.'" (*People v. Chism*, *supra*, 58 Cal.4th at p. 1329, quoting *People v. Burney*, *supra*, 47 Cal.4th at p. 261.) Even more so, jurors here were instructed with CALJIC No. 8.85.6 (an addition based on defense-proposed instructions) that if the mitigating

evidence, including testimony from appellant's friends and family, gave rise to compassion or sympathy, that jurors may reject death as a penalty on that basis alone. (16CT 6915.)

This Court has also repeatedly held that "CALJIC No. 8.88 adequately advises jurors on the scope of their discretion to reject death and to return a verdict of life without possibility of parole." (*People v. McKinnon* (2011) 52 Cal.4th 610, 696; accord, *People v. Chism*, *supra*, 58 Cal.4th at p. 1329, quoting *McKinnon*.) CALJIC No. 8.84 also advises jurors about the scope of their discretion, instructing them that the defendant has been convicted of a capital crime, including special circumstances, and it is up to them to decide between two possible penalties. (See *People v. Chism*, *supra*, at p. 1330.) Both of these instructions were given in this case.

Finally, to the extent the proposed instructions sought to advise jurors to disregard the applicable law, a trial court is not required to give instructions on jury nullification. (*People v. Dillon* (1983) 34 Cal.3d 441, 487-488 [instructing on power of jury nullification "may achieve pragmatic justice in isolated instances, but we suggest the more likely result is anarchy."]; *People v. Nichols* (1997) 54 Cal.App.4th 21, 25-26; *People v. Baca* (1996) 48 Cal.App.4th 1703, 1707; see also *People v. Williams* (2001) 25 Cal.4th 441, 449-457 [discussing jury nullification and cases

holding instruction on jury nullification not required; parties agreed instruction on jury nullification was not required].)

Assuming, however, that the trial judge should have given the defense proposed instructions, any error was harmless. (See *People v. Hartsch*, *supra*, 49 Cal.4th at pp. 503, 504 [error in omitting proposed instruction was harmless]; *People v. Flood*, *supra*, 18 Cal.4th at pp. 490, 502-504 [instructional error subject to harmless error review]; see also *Chapman v. California*, *supra*, 386 U.S. at p. 24 [harmless beyond a reasonable doubt]; *People v. Watson*, *supra*, 46 Cal.2d at p. 836 [harmless if not reasonably likely defendant would have received a more favorable outcome absent error].) Viewing the instructions given as a whole (*People v. Whalen*, *supra*, 56 Cal.4th at p. 61; *People v. Moore*, *supra*, 51 Cal.4th at p. 1140), and considering defense counsel's argument wherein she asked jurors to exercise sympathy and show mercy and sentence appellant to life imprisonment rather than death, it is not reasonably likely that jurors were misled into believing that they could not consider mercy, sympathy, or any other mitigating circumstance in determining which penalty to impose. As noted above, the instructions that were given adequately advised jurors of their ability to consider these things. Thus, there is no reasonable probability of a different outcome had the defense-proposed instructions been given. And for the same reasons; any error was harmless beyond a reasonable doubt.

For the reasons set forth above, relief on this claim must be denied.

VIII. APPELLANT FORFEITED HIS CHALLENGES TO THE DEATH-QUALIFICATION PROCEDURE USED BELOW; IN ANY EVENT, THE DEATH-QUALIFICATION PROCEDURE USED WAS CONSTITUTIONAL AND DID NOT DEPRIVE APPELLANT OF ANY STATE OR FEDERAL RIGHTS

In Ground Eight, appellant contends that the exclusion from his penalty jury of any jurors who were unwilling to impose the death penalty violated his state and federal constitutional rights to a fair, impartial, and representative jury. In other words, he argues that the death qualification system used in California today violates state and federal law. (AOB 428-439.) Appellant forfeited this argument by failing to raise it below and by willingly participating in the procedure he now condemns. In any event, appellant's arguments have been repeatedly rejected, and he proffers no reason why a different result is warranted in his case.

A defendant is generally precluded from raising any defects in the preliminary jury screening process procedure on appeal when the defendant acquiesced in the procedure. (See *People v. Eubanks*, *supra*, 53 Cal.4th at p. 126, citing *People v. Ervin* (2000) 22 Cal.4th 48, 73; *People v. Ramirez*, *supra*, 39 Cal.4th at p. 440 [failure to preserve claim based on non-representative cross-section forfeits the claim on appeal]; *People v. Howard* (1992) 1 Cal.4th 1132, 1157 [claim of constitutional deprivation in jury selection process must be preserved in trial court or it is forfeited]; *People v. Mickey* (1991) 54 Cal.3d 612, 663 [same].) Here, appellant did not raise

any objection to the death-qualification procedure utilized by the trial judge; indeed, he willingly participated in it. Thus, he has forfeited this issue for appeal.

However, assuming the merits of appellant's claim are reached, the death-qualification procedure used by the trial judge below has been upheld against constitutional challenge. The Sixth Amendment right to an impartial jury is protected when the standard used for excusing a prospective juror for cause based on his or her views regarding capital punishment is "whether the [prospective] juror's view would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath.'" (*Wainwright v. Witt*, *supra*, 469 U.S. at p. 424; accord, *People v. Clark*, *supra*, 52 Cal.4th at p. 895.) California uses the same standard to assess whether a defendant's right to an impartial jury under article I, section 16 of the state Constitution was violated by excusal for cause based on a prospective juror's view on capital punishment. (See *People v. Thomas* (2011) 51 Cal.4th 449, 462; *People v. Moon*, *supra*, 37 Cal.4th at p. 13; *People v. Griffin* (2004) 33 Cal.4th 536, 558.)

Both this Court and the United States Supreme Court have held that death-qualifying a jury – that is, excluding jurors who would automatically vote for death or for life – does not violate a defendant's constitutional right to an impartial jury. (See, e.g., *Lockhart v. McCree* (1986) 476 U.S. 162, 176-177 [106 S.Ct. 1758, 90 L.Ed.2d 137]; *People v. Taylor*, *supra*, 48

Cal.4th at p. 602; *People v. Pinholster* (1992) 1 Cal.4th 865, 913 [death qualification of jury does not result in a death-oriented jury], overruled on other grounds by *People v. Williams* (2010) 49 Cal.4th 405, 459; *People v. Avena* (1996) 13 Cal.4th 394, 412; *People v. Jackson* (1996) 13 Cal.4th 1164, 1198.) Nor does death qualification violate a defendant's right to a jury selected from a representative cross-section of the community. (See *People v. Taylor*, *supra*, at p. 603, citing *Lockhart v. McCree*, *supra*, at pp. 175-176.)

Appellant's penalty jury was selected using the death-qualification procedure that has been approved both by this Court and by the United States Supreme Court. He provides no valid or persuasive basis to either reconsider this Court's prior holdings or to come to a conclusion contrary to the holdings of United States Supreme Court. Thus, relief on this claim must be denied.

IX. CALIFORNIA'S ADMINISTRATION OF THE DEATH PENALTY DOES NOT VIOLATE THE EIGHTH AMENDMENT'S BAN AGAINST CRUEL AND UNUSUAL PUNISHMENT

In Ground Nine, appellant argues that California's administration of the death penalty is inconsistent, arbitrary, and underfunded, and on those grounds urges this Court to declare the state's capital system unconstitutional under the Eighth Amendment. (AOB 440-459.) As appellant acknowledges, this Court has repeatedly declined to so do (see AOB 455-456). (See *People v. Lee*, *supra*, 51 Cal.4th at p. 654 ["Justice

Blackmun's dissent from the high court's denial of certiorari in *Callins v. Collins* [citation], does not convince us that the death penalty is so arbitrary or unreliable as to constitute cruel and unusual punishment in violation of the Eighth Amendment"] and ["The slow pace of executions in California, which defendant contends is similar to the conditions condemned by Judge Noonan in his dissenting opinion in *Jeffers v. Lewis* [citation], does not render our system unconstitutionally arbitrary"]; *People v. Redd* (2010) 48 Cal.4th 691, 758-759 [holding where defendant does not face imminent execution he cannot claim he is being singled out for quick or slow treatment of his appeal, and generally, defendant made no showing that number of condemned prisoners executed, or order of executions, is determined by any "invidious means or method, with discriminatory motive or effect," or according to anything other than the pace at which appeals are resolved, "a matter by no means within the sole control of the state"]; see also *People v. Boyce*, *supra*, 59 Cal.4th at p. 723 ["California's death penalty law does not violate the Sixth Amendment right to a jury trial, the Eight Amendment prohibition against cruel and unusual punishment, or the Fourteenth Amendment right to due process . . . ."]; *People v. DeHoyos* (2013) 57 Cal.4th 79, 151 [imposition of the death penalty "'does not violate international norms of decency or the Eighth Amendment's prohibition against cruel and unusual punishment. [Citation.]'"]; *People v. Jones* (2012) 54 Cal.4th 1, 87-88.) Contrary to appellant's argument, his

case is not so significantly different from the above cases to warrant a different resolution of this claim. (See AOB 456-457.) Accordingly, this claim must be denied.

X. ALTHOUGH APPELLANT HAS NOT BEEN APPOINTED HABEAS COUNSEL, HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS HAVE NOT BEEN VIOLATED

In Ground Ten, appellant claims that his state and federal constitutional rights have been suspended by the state legislature because he has not yet been assigned state habeas counsel.[93] He acknowledges that this Court previously rejected a similar claim in *People v. Williams*, *supra*, 56 Cal.4th at page 202, but argues for a different result here. (AOB 460-462.) Appellant provides no valid reason why a different result should be reached in his case.

In *People v. Williams*, *supra*, 56 Cal.4th at page 202, the defendant argued that California's likely failure to appoint habeas counsel in a timely manner violated his Sixth Amendment rights which, in turn, violated the Eighth Amendment's prohibition of cruel and unusual punishment and the right to due process under the Fourteenth Amendment. This Court rejected the claims as "entirely speculative." (*Ibid.*) Appellant has presented no less speculative claims here. The funding situation appellant refers to

---

[93] He does not explain how his rights under the Equal Protection Clause or "other elements of due process" have been violated. (See AOB 460.)

(AOB 460-461) remains speculative, and his allegation that he will not be appointed state habeas counsel before his direct appeal is final remains speculative.

As Justice Kennedy observed in *Murray v. Giarratano* (1989) 492 U.S. 1, 14 [109 S.Ct. 2765, 106 L.Ed.2d 1], meaningful access to courts can be satisfied in a number of ways. (See also *Bounds v. Smith* (1977) 430 U.S. 817 [97 S.Ct. 1491, 52 L.Ed.2d 72].) "The intricacies and range of options are of sufficient complexity that state legislatures and prison administrators must be given 'wide discretion' to select appropriate solutions." (*Murray v. Giarratano*, *supra*, at p. 14.) "Assessments of the difficulties presented by collateral litigation in capital cases are now being conducted by [various] committees . . . and Congress. . . . Unlike Congress, this Court lacks the capacity to undertake the searching and comprehensive review called for in this area, for we can decide only the case before us. While [the State] has not adopted procedures for securing representation that are as far reaching and effective as those available in other States, no prisoner on death row in [the State] has been unable to obtain counsel to represent him in postconviction proceedings. . . ." (*Ibid.*)

Likewise here, meaningful access to the courts remains intact under California's system. Appellant has pointed to no capital defendant in California who has been unable to obtain state habeas counsel. And, as observed by Justice O'Connor, who concurred with Justice Kennedy, "the

matter is one of legislative choice based on difficult policy considerations and the allocation of scarce legal resources," which the courts are not equipped to handle. (*Murray v. Giarratano*, *supra*, 492 U.S. at p. 13; see also *id.* at p. 14.)

For these reasons, relief on this ground must be denied.

XI. APPELLANT'S GENERAL CHALLENGES TO CALIFORNIA'S DEATH PENALTY STATUTE ARE MERITLESS

In Ground Eleven, appellant contends that California's death penalty statute, as interpreted by this Court and as applied in appellant's case, violates the United States Constitution. (AOB 463-474.) Although he acknowledges this Court has previously rejected identical challenges to California's death penalty scheme, he nonetheless asserts eight claims of error. Appellant has provided no reason for this Court to revisit its previous holdings. Accordingly, every one of appellant's challenges should be rejected.

A. Section 190.2 is Not Impermissibly Broad/Overbroad

Appellant contends that California's capital sentencing scheme fails to provide a meaningful way to distinguish defendants who are sentenced to death from those who are not. (AOB 463-464.) This Court has repeatedly rejected this claim, and appellant has provided no valid reasons for this Court to reconsider its previous holdings. (See, e.g., *People v. Johnson* (2015) 60 Cal.4th 966, 997; *People v. Bryant*, *supra*, 60 Cal.4th at p. 468;

People v. Lucas, *supra*, 60 Cal.4th at p. 332; see also *Pulley v. Harris* (1984) 465 U.S. 37, 53 [104 S.Ct. 871, 79 L.Ed.2d 29] [California's requirement of a special circumstance finding adequately "limits the death sentence to a small sub-class of capital-eligible cases"].)

B. Section 190.3(A) is Not Impermissibly Broad/Overbroad

Appellant argues that section 190.3, factor A – the circumstances of the crime factor – has been applied so broadly that nearly all features of a murder can be characterized as "aggravating." He contends that this violates the federal Constitution because it allows the jury "to assess death upon no basis other than that the particular set of circumstances surrounding the instant murder warrants death." (AOB 465-466.) This Court has repeatedly rejected this claim and appellant provides no persuasive reason to reexamine those previous holdings. (See, e.g., *People v. Johnson*, *supra*, 60 Cal.4th at p. 997; *People v. Bryant*, *supra*, 60 Cal.4th at p. 469; *People v. Lucas*, *supra*, 60 Cal.4th at p. 332; *People v. Merriman*, *supra*, 60 Cal.4th at pp. 105-106; see also *Tuilaepa v. California*, *supra*, 512 U.S. at pp. 975-976, 978.)

C. There is No Requirement for Aggravating Factors to be Found Beyond a Reasonable Doubt (other than Factors 190.3(B)-(C))

Appellant contends that the federal Constitution requires a penalty jury's findings supporting a death verdict to be based on proof beyond a

reasonable doubt; specifically, factors in aggravation and the weighing process "must be made with the highest level of certainty, and on proof beyond a reasonable doubt." He acknowledges that this Court has rejected this argument on a number of occasions, but asks it to reconsider the prior holdings in light of *Descamps v. United States* (2013) ___ U.S. ___, 133 S.Ct. 2276, 2288. (AOB 466-469.)

As appellant concedes, this Court has already rejected this argument. (See, e.g., *People v. Johnson*, *supra*, 60 Cal.4th at p. 997; *People v. Bryant*, *supra*, 60 Cal.4th at p. 458; *People v. Lucas*, *supra*, 60 Cal.4th at p. 332; *People v. Merriman*, *supra*, 60 Cal.4th at p. 106.)

Descamps v. United States, *supra*, 133 S.Ct. 2276, cited by appellant, is inapposite. *Descamps* was a non-capital criminal case involving a federal statute, and the issue presented was the federal government's approach to determining whether a particular sentencing enhancement applied. (*Descamps v. United States*, *supra*, p. 2281.) Like *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435] and the cases that followed it, the *Descamps* Court reaffirmed that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. (*Id.* at p. 2288.) This holding has no applicability in the context of a penalty phase of a capital trial.

Appellant provides no valid reason for this Court to reconsider its prior holdings; thus, this claim should once again be rejected.

D. There is No Requirement for Jury Unanimity on the Existence of Aggravating Factors

Appellant argues that a death sentence violates the federal Constitution when there is no assurance that the entire jury, or even a majority of the jury, ever agreed upon a single aggravating fact or set of facts that warranted the death penalty. (AOB 469-471.) He further argues that not requiring unanimity in capital cases violates the Equal Protection Clause because in non-capital cases where special enhancements are alleged, juries must make separate unanimous findings on the truth of those allegations. (AOB 470-471.)

This Court has on numerous occasions rejected the argument that unanimity is required for aggravating factors. (See, e.g., *People v. Johnson*, *supra*, 60 Cal.4th at p. 997; *People v. Bryant*, *supra*, 60 Cal.4th at pp. 457, 458; *People v. Lucas*, *supra*, 60 Cal.4th at p. 332; *People v. Merriman*, *supra*, 60 Cal.4th at p. 106.) And again, *Descamps v. United States*, *supra*, 133 S.Ct. 2276, relied on by appellant (AOB 469-470) is inapposite for the reasons discussed above.

E. There is No Requirement for the Jury to Render Written Findings on Aggravating and/or Mitigating Factors Found

Appellant argues that California's failure to require written findings before returning a death sentence violates the federal Constitution. (AOB 472.) This contention has been repeatedly rejected by this Court, and appellant offers no valid reasons to revisit those holdings. (See, e.g., *People v. Bryant*, *supra*, 60 Cal.4th at pp. 458, 469; *People v. Lucas*, *supra*, 60 Cal.4th at p. 333; *People v. Merriman*, *supra*, 60 Cal.4th at p. 106; *People v. Banks* (2014) 59 Cal.4th 1113, 1207.)

F. The Jury Instructions Defining Mitigating Factors Were Constitutionally Sound

Appellant argues that the inclusion of adjectives such as "extreme" and "substantial" in the list of mitigating factors acted as barriers to the jury's consideration of mitigation in violation of the federal Constitution. (AOB 472-473.) As appellant acknowledges, this argument has been rejected. (AOB 473; see *People v. McCurdy*, *supra*, 59 Cal.4th at p. 1111 ["We have . . . repeatedly considered and rejected attacks on the constitutionality of CALJIC Nos. 8.85 and 8.88."]; *People v. Avila* (2006) 38 Cal.4th 491, 614-615 ["Use in the sentencing factors of such adjectives as "extreme" (§ 190.3, factors (d), (g)) and "substantial" (*id.*, factor (g)) does not act as a barrier to the consideration of mitigating evidence in violation of the federal Constitution"]; *People v. Morrison* (2005) 34

Cal.4th 698, 729-730 [cited by *Avila*].) Appellant has provided no valid reason for this Court to reconsider its previous holdings.

G. Trial Courts Need Not Instruct the Jury that Certain Sentencing Factors Can Be Considered Only as Mitigating

Appellant contends that the trial court should have instructed the jury that certain factors in CALJIC No. 8.85 could be considered only as mitigating factors; specifically, factors (d), (e), (f), (g), (h), and (j). (AOB 473-474.) This Court has held that trial courts are not required to identify which factors are aggravating and which are mitigating. (See *People v. Hillhouse*, *supra*, 27 Cal.4th at p. 509 ["The court did not define which of the statutory factors could be aggravating and which were only mitigating. It did not need to. The aggravating or mitigating nature of the factors is self-evident within the context of each case."].) Further, the Supreme Court has held that "[a] capital sentencer need not be instructed how to weigh any particular fact in the capital sentencing decision." (*Tuilaepa v. California*, *supra*, 512 U.S. at p. 979.) Appellant provides no valid or persuasive grounds for reconsideration.

H. California's Death Penalty Scheme Does Not Violate International Law

In his final argument, appellant contends that the death penalty violates international law, the Eighth and Fourteenth Amendments, and "evolving standards of decency." (AOB 474.) This Court has held that

"International law does not prohibit a sentence of death rendered in accordance with state and federal constitutional and statutory requirements." (*People v. Friend*, *supra*, 47 Cal.4th at p. 90; accord, *People v. Kelly* (2007) 42 Cal.4th 763, 801 ["a sentence of death that complies with state and federal constitutional and statutory requirements does not violate international law"]; *People v. Cook* (2006) 39 Cal.4th 566, 619-620 ["international law does not bar imposing a death sentence that was rendered in accord with state and federal constitutional and statutory requirements"]; see also *People v. Capistrano* (2014) 59 Cal.4th 830, 881 ["We have also repeatedly rejected defendant's claim that the death penalty statute violates international norms generally or, specifically, the International Covenant on Civil and Political Rights. [Citations.]")

Although the United States Supreme Court has found "international law" relevant to its recognition that the imposition of capital punishment upon those who were juveniles when their crimes were committed is unconstitutional (see *Roper v. Simmons* (2005) 543 U.S. 551, 575-576 [125 S.Ct. 1183, 161 L.Ed.2d 1] [no country other than U.S. sanctioned juvenile death penalty]), it has never held that international law renders capital punishment unconstitutional. And this Court has held that development "does not require reconsideration of the cases recognizing the constitutionality of the penalty when it is rendered in accordance with state and federal law." (*People v. Mai*, *supra*, 57 Cal.4th at p. 1058; accord,

People v. McCurdy, *supra*, 59 Cal.4th at p. 1112 ["California's death penalty scheme does not violate international law and norms. [Citation.] We are not persuaded otherwise by *Roper v. Simmons* [citation], in which the high court cited evolving international standards as 'respected and significant' support for its holding that the Eighth Amendment prohibits imposition of the death penalty against persons who committed their crimes *as juveniles*.' [Citation.]"].)

This Court's previous denials of this claim were sound, and appellant has provided no valid reason to reconsider those holdings.

XII. THERE WERE NO PENALTY-PHASE ERRORS TO ACCUMULATE

In his final claim, appellant argues that even if no single penalty-phase error was sufficient to warrant relief, this Court should consider the cumulative effect of the errors, find them together to be prejudicial, and reverse his conviction. (AOB 475-477.) On the contrary, there were no penalty-phase errors to accumulative and, even assuming otherwise, any errors were harmless.

A defendant is entitled to a fair trial, but not a perfect one, even where he has been exposed to substantial penalties. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 1009, and cases cited therein; *People v. Marshall* (1990) 50 Cal.3d 907, 945; see also *United States v. Hasting* (1983) 461 U.S. 499, 508-509 [103 S.Ct. 1974, 76 L.Ed.2d 96] ["Given the myriad safeguards provided to assure a fair trial, and taking into account

the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial."]; *Schneble v. Florida* (1972) 405 U.S. 427, 432 [92 S.Ct. 1056, 31 L.Ed.2d 340].) "The litmus test is whether the defendant received due process and a fair trial." (*People v. Kronemyer* (1987) 189 Cal.App.3d 314, 349.) In reviewing a case for cumulative error, an appellate court: (1) reviews each allegation; (2) assesses the cumulative effect of any error; and (3) determines whether it is reasonably probable the jury would have reached a result more favorable to the defendant in their absence. (*Ibid.*)

For the reasons articulated in respondent's arguments, *supra*, either no errors occurred or any errors were harmless beyond a reasonable doubt, or it is not reasonably probable that the penalty jury would have reached a result more favorable to appellant absent the errors. As the court in *United States v. Haili* (9th Cir. 1971) 443 F.2d 1295, 1299, observed, "[a]ny number of 'almost errors,' if not 'errors,' cannot constitute error." Since appellant's argument is premised on the mistaken belief that prejudicial errors occurred, this claim must be denied. (See *People v. Avila* (2009) 46 Cal.4th 680, 718 [error was only assumed and does not amount to reversible cumulative error]; *People v. Beames* (2007) 40 Cal.4th 907, 933 [where court determined all of defendant's claimed errors were either meritless or did not require reversal, there was no cumulative error]; *People*

v. Beeler (1995) 9 Cal.4th 953, 994 [where none of claimed errors constitute individual errors, they cannot constitute cumulative error].)

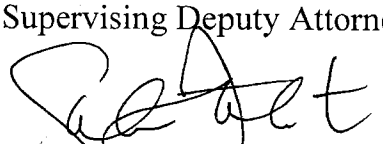
CONCLUSION

Based on the foregoing, respondent respectfully requests that this Court reject appellant's claims, deny the relief requested, and affirm the judgment and sentence of death.

Dated: August 25, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
RONALD S. MATTHIAS
Senior Assistant Attorney General
GLENN R. PRUDEN
Supervising Deputy Attorney General



SARAH J. FARHAT
Deputy Attorney General
Attorneys for Respondent

SF2010400967
20776134.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13-point Times New Roman font and contains 61,151 words.

Dated: August 25, 2015

KAMALA D. HARRIS
Attorney General of California

SARAH J. FARHAT
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Glen T. Helzer*** No.: **S132256**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 26, 2015, I served the attached **RESPONDENT'S BRIEF** by placing a true copy enclosed in sealed envelopes in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Jeanne Keevan-Lynch
Attorney at Law
P.O. Box 2433
Mendocino, CA 95460

CAP - SF
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3647

The Honorable Mark Peterson
District Attorney
Contra Costa District Attorney's Office
900 Ward Street
Martinez, CA 94553

Contra Costa Superior Court
Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553-1233

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 26, 2015, at San Francisco, California.

Tan Nguyen
Declarant

Tan Nguyen
Signature

SF2010400967
20776144.doc