

SUPREME COURT
FILED

JUN 22 2010

Frederick K. Ohlrich Clerk

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

JAMES ANTHONY DAVEGGIO AND
MICHELLE LYN MICHAUD
Defendants and Appellants.

California Supreme
Court No. S110294

Superior Court No.
No. 13414

APPELLANTS' MOTION FOR JUDICIAL NOTICE

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

THE HONORABLE LARRY J. GOODMAN, PRESIDING

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DEATH PENALTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

JAMES ANTHONY DAVEGGIO AND
MICHELLE LYN MICHAUD

Defendants and Appellants.

Superior Court No.

No. 134147

California Supreme

Court No. S110294

**MOTION FOR JUDICIAL NOTICE;
DECLARATION OF COUNSEL; [PROPOSED] ORDER**

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO
THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA
SUPREME COURT:

Appellants James Daveggio and Michelle Michaud, by and through their attorneys of record, David Goodwin and Janyce Keiko Imata Blair, hereby respectfully request, pursuant to Evidence Code sections 452 and 459 and Rules 8.252, subdivision (a)(2) and 8.630, subdivision (h) of the California Rules of Court, that this Court take judicial notice of the transcripts of certain proceedings in the trial record of two other automatic appeals now pending before this Court, *People v. Ropati Seumanu* (S093803) and *People v. Keith Lewis* (S086355).

In *People v. Ropati Seumanu*, appellants request that this Court take judicial notice of the portion of the Reporter's Transcript found at 17RT 3429.

In *People v. Keith Lewis*, appellants request that this Court take judicial notice of portions of the Reporter's Transcript found at 25RT 4346-4347, 26RT 3992-3993, 4007-4008, 4345-4347, 4451- 4652, 4468, and 27RT 4659, 4665.

In *People v. Keith Lewis*, appellants also request that this Court take judicial notice of portions of the Clerk's Transcript found at 5CT 1151-1156.

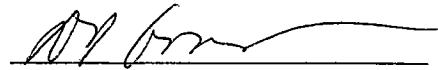
The pertinent portions of the transcripts are attached hereto, per Rule 8.252(c)(3), as is a proposed order. The motion is based on the Declaration of David Goodwin, also attached hereto, and on all the other files and records in this case pertaining to appellants Daveggio and Michaud.

A court of appeal has the same power as a trial court to take judicial notice of any fact relevant to the action. Therefore, if the matter is an appropriate one for judicial notice, judicial notice may be taken by a court of appeal. (Evidence Code Section 459; Witkin, Cal. Evidence (3d ed., 1986) "Judicial Notice", §122, p. 103).

Judicial notice in a capital case is governed by Rule 8.630, which incorporates Rule 8.252 by reference.

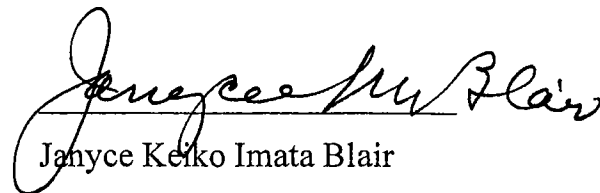
Under Evidence Code section 452, subdivision (d), judicial notice may be taken of records of any court of this state. The documents attached hereto are records of both the Superior Court and this Court.

DATE: June 2010



David Goodwin

DATE: June 2010



Janyce Keiko Imata Blair

DECLARATION OF DAVID GOODWIN

I, David Goodwin, declare:

1. I am counsel for appellant James Daveggio. If called upon to do so, I could and would testify competently as follows.

2. Contemporaneously with this motion, I am filing appellant's opening brief.

3. One of the arguments raised in appellant's opening brief raises the issue of prosecutorial misconduct by Deputy District Attorney Angela Backers, the prosecuting attorney at trial.

4. In particular, appellant has argued that the prosecutor in this case engaged in misconduct by appealing to the passions and sympathies of the jury, by engaging in highly emotional conduct, including engaging in arguments that had minimal probative value, but were conducted in a manner to maximize the emotional impact inherent in this type of case, and by seeking to admit irrelevant evidence of a highly emotional nature.

5. Additionally, it appears in the record that Ms. Backers' voice was breaking with emotion during argument and she may have been crying.

6. In two prior cases of which appellants are asking this court to take judicial notice, it appears that Ms. Backers engaged in similar misconduct in maximizing the emotional impact of marginally relevant evidence and introducing highly emotional but questionably relevant evidence. Furthermore, in *Lewis* it also appears that Ms. Backers may have been crying in front of the jury.

7. Consideration of the above-cited record excerpts in *People v. Ropati Seumanu* and *People v. Keith Lewis* is probative in this cause because the record in those cases provide further confirmation that Prosecutor Backers engaged in such conduct in the past, from which one can infer that this conduct was intentional.

8. Furthermore, the fact that another attorney in a prior case claimed to observe similar conduct in the form of Ms. Backers crying, confirms the allegations made by the trial attorney in this case, due to the fact that if two people

apparently independently claim to have observed this behavior, it corroborates the allegations of the people claiming to observe this conduct.

9. Copies of the transcript pages in *Seumanu* and *Lewis* cited above have been provided to me by appointed counsel in those cases, and copies are included with this motion, in conformance with Rule 8.252, subdivision (c)(3). Those transcripts are also on file with this Court and in the offices of respondent, the Attorney General. These portions of the record include:

Motion to Reduce Penalty to Life without Parole dated January 18, 2000, Lewis SCT 1151-1156, is attached as Exhibit A

A copy of 17RT 3429 from *People v. Seumanu* is attached as Exhibit B

A copy of 26RT 3992-3993 from *People v. Lewis* is attached as Exhibit C

A copy of 26RT 4007-4008 from *People v. Lewis* is attached as Exhibit D

A copy of 25RT 4345-4347 from *People v. Lewis* is attached as Exhibit E

A copy of 26RT 4451- 4652 from *People v. Lewis* is attached as Exhibit F

A copy of 27RT 4659 from *People v. Lewis* is attached as Exhibit G

A copy of 27RT 4665 from *People v. Lewis* is attached as Exhibit H

A copy of 27RT 4668 from *People v. Lewis* is attached as Exhibit I

10. This matter was not the subject of judicial notice in the trial court, as it does not appear that appellants' defendants were aware of this conduct in other cases.

11. This matter relates to proceedings occurring prior to the judgment that is the subject of this appeal.

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

Executed at Los Angeles, California, on June, 2010.

David Goodwin
Attorney for Appellant JAMES DAVEGGIO

EXHIBIT A

FILED
ALAMEDA COUNTY

JAN 18 2000

CLERK OF THE SUPERIOR COURT

By James Flou
Deputy

1 Marvin E. Levy
2 Lorna Brown
3 201 University Avenue
4 Berkeley, CA 94710
5 510-8452769
6 Bar No. 42944

7 CALIFORNIA SUPERIOR COURT, COUNTY OF ALAMEDA

9 PEOPLE OF THE STATE OF

NO. 128675

10 CALIFORNIA,

11 Plaintiff,

Dept. 13

12 vs.

13 KEITH LEWIS,

MOTION TO REDUCE PENALTY
TO LIFE WITHOUT PAROLE
(Penal Code §190.4(e))

14 Defendant

15 **THIS COURT HAS A LEGAL AND MORAL OBLIGATION**
16 **TO REDUCE THE JURY'S VERDICT TO LIFE**
17 **IN PRISON WITHOUT THE POSSIBILITY OF PAROLE**
18

19 **A. THE TRIAL JUDGE'S DUTY**

20 Section 190.4(e) of the Penal Code requires that the trial judge shall review
21 the evidence and make a determination as to whether the jury's findings and
22 verdicts that the aggravating circumstances outweigh the mitigating
23 circumstances are contrary to the law or the evidence presented.
24

25 In part because, as usual, the code is poorly written (outweigh substantially
26 is omitted) the courts have been forced to interpret 190.4(e).
27
28

106

1 While the penal code sets forth the general obligation of the trial judge, the
2 California Supreme Court has tried to set forth in a little more detail the actual
3 responsibility placed upon the trial judge, and that responsibility places upon the
4 trial judge the sole burden of personally and individually deciding the appropriate
5 penalty, death or life without the possibility of parole.
6

7 In People v Rodriguez (1986) 42 Cal.3d 730, 793, the Court held that in
8 determining whether in his or her independent judgment the weight of the
9 evidence supported the verdict, the judge was required to assess the credibility of
10 the witnesses, determine the probative force of the testimony, and weigh the
11 evidence.
12

13 In People v Frierson (1991) 53 Cal.3d 730,751, the Court held that the trial
14 judge must independently reweigh the evidence and then determine whether, in
15 the trial court's independent judgment, the weight of the evidence supports the
16 jury verdict.
17

18 In People v Marshall (1990) 50 Cal.3d 907,942, the Court held that the trial
19 judge must determine whether the jury's decision that death is appropriate under
20 all circumstances is adequately supported, and he must make that determination
21 independently; that is, in accordance with the weight he himself believes the
22 evidence deserves.
23

24 In People v Crew (1991) 1 Cal.App.4th 1591, 1601, the appellate court,
25 citing Supreme Court cases, held that the trial judge's function in ruling on a
26 section 190.4(e) motion is independently to reweigh the evidence of aggravating
27
28

1 and mitigating circumstances and then to determine whether, in the judge's
2 independent judgment, the weight of the evidence supports the jury verdict.
3

4 In People v Williams (1988) 45 Cal.3d 1268, 1329, the Court, by strong
5 implication, held that under 190.4(e) the trial court reviews the law and the
6 evidence as the "thirteenth juror." (The defense had argued that the thirteenth
7 juror standard should have been used by the trial judge. The Supreme Court held
8 that, "Assuming without deciding that the court was in fact required to apply
9 such a standard, we are of the opinion that the court did indeed review the law
10 and evidence as the thirteenth juror.")
11

12 And finally, in the case of People v Hatch (1998) 66 Cal.App.4th 1510, the
13 appellate court distinguished a dismissal under P.C. 1385, insufficient evidence,
14 from the granting of a new trial based on a verdict contrary to the evidence. The
15 former constituted an acquittal while the latter was not an acquittal. The court
16 here, in Footnote 4, cited the case of Tibbs v Florida (1982) 457 U.S. 31, 102 S.Ct
17 2211, which held that an appellate court acts a thirteenth juror when it disagrees
18 with the jury's resolution of conflicting evidence.
19

20 The moral and common sense conclusion that must be reached from the
21 case law is that the law effectively and literally places upon the trial judge the sole
22 responsibility to determine the penalty under 190,4(e). In effect, and in reality,
23 the trial judge must make an independent judgment. As the jury was instructed,
24 so too the trial judge has total and absolute discretion to choose the penalty the
25 trial judge personally and morally believes to be appropriate.
26
27
28

1 In the end the trial judge is free to choose life without parole because of
2 sympathy, mercy, understanding, moral or religious beliefs, or personal or moral
3 doubts.
4

5 **B. THE EVIDENCE DOES NOT JUSTIFY THE DEATH PENALTY**

6 Based on the entire record, including the court's observations of all parties in
7 the trial, and throughout the trial, the trial judge should conclude that the
8 evidence did not legally or morally justify the verdict of death.
9

10 The evidence of defendant's state of mind, the entire day of the killing, was
11 absolutely overwhelming; he acted "crazy", a person whose years of cocaine
12 addiction lead to a state of cocaine induced psychosis. Call it what you will, the
13 fact of the utter craziness of his behavior that entire day, and all that lead to the
14 terrible tragedy, must dictate that the only legal and moral verdict to be life
15 without parole.
16

17 The only justification for the death penalty is the fact of his killing a
18 "beautiful" six year old "baby." There simply, and tragically, is no other
19 justification for the jury's verdict. The trial judge must look beyond the killing
20 itself, and consider the defendant's life and his state of mind.
21

22 The so-called kidnapping itself was carried out by a person who did not
23 know what he was doing, whose drug induced mind just acted without thought
24 and reason. Without a kidnapping there was no death eligibility. A reasonably
25 objective evaluation of the events of that terrible day should consider this factor,
26 and again, lead to the legally and morally correct verdict of life without parole.
27
28

1 **C. THE JURY WAS EXPOSED TO EXCESSIVE, UNLAWFUL, AND**
2 **INFLAMMATORY EMOTION**

3 During the District Attorney's opening statement, at the beginning of the trial,
4 she cried for an extended period of time. During testimony at least 4 police
5 officers and other non police witnesses cried during significant portions of their
6 testimony. And during some of this testimony, the District Attorney also cried. In
7 the District Attorney's final argument, in both the guilt and penalty phases of the
8 trial she cried, and in her final penalty argument, she cried for at least the last 30
9 minutes of her argument.
10

11 This extensive amount of crying and emotion was extremely inflammatory,
12 and in effect, such emotion displayed by professional witnesses and the District
13 Attorney effectively conveyed to the jury the personal opinions of these
14 professional persons. Such display of emotion, so inflammatory, affected the
15 juror's verdict, absolutely.
16

17 In People v Clark (1992) 3 Cal.4th 41, the Court held that under the
18 Constitution the jury must ignore emotional responses that are not rooted in the
19 aggravating and mitigating evidence introduced during the (trial). In People v
20 Ghent (1987) 43 Cal.3d 739, 771, it was held that references to retribution or
21 community vengeance are potentially inflammatory. Such might not be misconduct
22 so long as such arguments do not form the principle basis for advocating
23 imposition of the death penalty.
24
25
26
27
28

1 The effect of the District Attorney's and police display of extreme emotion by
2 continual crying, was to advocate the death penalty, only because of the age and
3 beauty of the "baby." In this case such emotion was so prevalent that one has no
4 reasonable way of arguing anything but that the inflammatory emotion became
5 the principle basis for advocating the death penalty, advocating not only by the
6 District Attorney, but also by the professional police officers who so openly
7 displayed their emotions to the jury.
8

9
10 In Ghent, at page 772, the court states that in future cases prosecutors
11 should refrain from expressing personal views which might unduly inflame the
12 jury against the defendant. This is exactly what the prosecutor did. As a result
13 of such inflammatory influence on the jury the trial judge should reduce the
14 sentence to life without parole.

15 **CONCLUSION**

16
17 The court is strongly urged, for both legal and moral reasons, to reduce the
18 jury's verdict!

19 Dated: January 17, 2000

20
21
22 Respectfully Submitted,

23 
24 MARVIN E. LEVY
25 LORNA P. BROWN
26
27
28

EXHIBIT B

CLOSING SUMMATION

1
2 MS. BACKERS: MAY IT PLEASE THE COURT, COUNSEL AND
3 THE DEFENDANT, AND NOLAN'S FAMILY.

4 THIS CASE IS ABOUT GOOD AND EVIL. IT IS ABOUT THE
5 JOYFUL BLISS OF THE ANTICIPATION OF YOUR WEDDING DAY WHICH IS
6 REPLACED WITH SHEAR AND UNENDING TERROR; IT IS ABOUT NOLAN, AN
7 INNOCENT BRIDEGROOM, A SON, A BROTHER, WHO BECOMES PAKI'S
8 CAPTIVE. AND THE FIRST DAY OF THE REST OF YOUR LIFE NEVER
9 COMES.

10 IT IS ABOUT A BRIDE'S GIFT TO HER HANDSOME HUSBAND THAT
11 BECOMES A MURDERER'S TROPHY. IT IS ABOUT A WEDDING THAT
12 BECOMES A FUNERAL, A PLEA FOR MERCY WHICH IS DENIED WITH AN
13 INTENSE EXPLOSION THAT RIPS APART YOUR HEART.

14 THE BREATH OF LIFE BECOMES BLOODY LUNGS FILLED WITH HOT
15 PELLETS. AND YOU DIE, SCARED TO DEATH, BEGGING FOR YOUR LIFE,
16 ALL ALONE ON YOUR WEDDING DAY.

17 THAT IS THE DEFENDANT'S CRIME. THAT IS PAKI'S CRIME,
18 THE CRIME FOR WHICH HE IS ON TRIAL. AND TODAY IS THE DAY
19 WHICH HE MUST BE HELD ACCOUNTABLE FOR THIS HORRIBLE, BRUTAL
20 MURDER.

21 ALMOST A MONTH AGO, MR. CIRAULO STOOD BEFORE YOU AND
22 TOLD YOU THAT HIS GOAL WAS TO HAVE YOU ACQUIT HIS CLIENT OF
23 THESE CHARGES, ACQUIT HIM OF MURDER, FIND HIM INNOCENT OF
24 MURDER. HE WANTED YOU TO FIND HIM INNOCENT OF ALL THE CHARGED
25 CRIMES: KIDNAPPING, ROBBERY, AND MURDER. HE WANTED YOU TO
26 ACQUIT HIS CLIENT BECAUSE HE TOLD YOU HE WASN'T THERE. HE
27 TOLD YOU HE WAS HOME WITH HIS WIFE.

28 MR. CIRAULO CLAIMED THAT THE EVIDENCE IN THIS CASE WOULD

EXHIBIT C

1 name is LaKeisha.

2 Q. Is LaKeisha Franklin your godsister?

3 A. Yes, ma'am.

4 Q. And your niece is Shakuri?

5 A. Yes.

6 Q. How old was she at the time this happened?

7 A. About two.

8 Q. Were all three of you, you and LaKeisha and Shakuri,
9 all three inside Pete's?

10 A. Yes.

11 Q. What happened after Fred tells you about that guy
12 with a gun over on 64th?

13 A. Well, I see all these police cars passing by, and I
14 seen them behind this car. So I just was looking, and as I
15 was looking, and then all of a sudden the car just -- I'm
16 looking out the door, and the car just come to a halt in
17 front of the other car, and Fred's -- it bumped into his car
18 a little bit.

19 And all of a sudden, it's the police cars behind,
20 they tell the guy in the car to throw the gun out. So he put
21 his hand out the window, threw the gun out, and police came
22 to the car and apprehended him, you know, and put him in the
23 car.

24 And after they put him in the car, they came around
25 to the other side and to get the girl out the car and try to
26 bring her back.

27 And I couldn't look no more, and the police came in
28 the store. It was just a sad day. Everybody was just

1 crying, everything.

2 Q. What do you mean you just don't look no more?

3 A. After they brought the little girl out the car, I
4 seen all the blood. I couldn't look no more.

5 Q. Where did you go?

6 A. Back in the -- from the doorway back into the store.

7 Q. Did you ever see the baby out on the sidewalk when
8 they're trying to save her?

9 A. All I seen, her -- when they pulled her out. That's
10 all.

11 Q. And did you see blood on her?

12 A. Yeah. Yes.

13 Q. Thank you.

14 When Fred Bell came into the store and told you about
15 the guy with a gun, did you see Fred's car out front?

16 A. Yes.

17 Q. The car that ended up getting a little bit hit was
18 his?

19 A. Yes, it was.

20 Q. Let me show you this photograph. That's People's
21 Exhibit 10 for identification.

22 In photograph A up in the right-hand corner, is that
23 Pete's Market at 63rd and Avenal?

24 A. Yes, ma'am.

25 Q. Right out front along the curb, is that Fred Bell's
26 car?

27 A. Yes, it is.

28 Q. There's a couple guys that are standing at the door

1 in that picture.

2 A. That the store owner.

3 Q. The guy who is on the right, the older gentleman --

4 A. Yeah.

5 Q. -- is that one of the store owners?

6 A. Yes, ma'am.

7 Q. Is that the guy you referred to as Mohammed's
8 brother?

9 A. Yep.

10 Q. And then tell me, the car that he came in and tapped,
11 Fred's car, is that shown on the right of that picture?

12 A. Yes, that's it right there.

13 Q. When was it that you recognized the driver of that
14 car?

15 A. After they pulled him out.

16 MR. LEVY: I'm sorry, after what?

17 MS. BACKERS: They pulled him out.

18 THE WITNESS: After they pulled him out.

19 MS. BACKERS: Q. So before that -- before the
20 driver of this car pulled to a halt, did you hear sirens
21 before that?

22 A. Yes, ma'am.

23 Q. And did you go outside when you heard the sirens?

24 A. I went to the door, and looking out the door, I seen
25 all the police cars coming in.

26 Q. Did you see the driver of that car actually hit
27 Fred's car?

28 A. Yes.

EXHIBIT D

1 Q. Did he seem crazy?

2 A. No.

3 You seem like you crazy the way you keep asking me so
4 many illiterate questions.

5 THE COURT: Mr. Starnes, you need to just answer the
6 questions.

7 MR. LEVY: Q. You noticed Keith before?

8 A. No, no, no.

9 MR. LEVY: That's it. No more questions. That's it.

10 THE COURT: Miss Backers, anything further?

11 **REDIRECT EXAMINATION**

12 MS. BACKERS: Q. I want to make sure I heard you.
13 You said that Keith didn't seem crazy?

14 A. No, ma'am.

15 Q. Can you describe how the police were?

16 A. It was a very sad day. They were in the store crying
17 and real upset.

18 MR. LEVY: I --

19 MS. BACKERS: Excuse me?

20 MR. LEVY: I'm muttering. I was going to object, but
21 I'm not going to.

22 MS. BACKERS: Q. When you said that -- when the
23 defense attorney was asking you about a lot of activity,
24 describe how the police were handling themselves.

25 A. All the police were trying to really deal with it.
26 It was really upset. The police was in the store real upset,
27 crying.

28 MR. LEVY: I'm objecting to this answer. It's not

1 relevant, and it's not --

2 MS. BACKERS: Counsel brought this up.

3 THE COURT: The objection is overruled. The answer
4 remains.

5 MS. BACKERS: Q. Did you see more than one officer
6 crying?

7 A. Yes, I did, ma'am.

8 MS. BACKERS: I don't have anything else.

9 THE COURT: Thank you, Miss Backers.

10 Mr. Levy.

11 **REXCROSS-EXAMINATION**

12 MR. LEVY: Q. I guess I'll ask you this. If I
13 could help you get out of prison earlier, would you be a
14 little kinder to me?

15 A. I'd be the same way to you, sir. You know what I
16 mean? Wouldn't be nothing else I can say to change from you
17 helping me.

18 MR. LEVY: Okay. I have nothing else.

19 THE COURT: Okay. Thank you.

20 Miss Backers, anything further?

21 MS. BACKERS: No thank you.

22 THE COURT: May Mr. Starnes step down?

23 THE WITNESS: I'd like to ask you a question, sir.

24 THE COURT: I think what we better do, Mr. Starnes,
25 is take a break now.

26 THE WITNESS: Okay, sir. No problems.

27 MS. BACKERS: I don't have any additional witnesses
28 this morning, Your Honor.

EXHIBIT E

1 And I believe that's all we discussed in
2 chambers. If I missed anything or either counsel wants
3 to add to the record or correct me, please do.

4 Ms. Backers?

5 MS. BACKERS: That was accurate, your Honor.

6 MR. LEVY: May I just sort of comment on it?

7 THE COURT: Sure. Sure.

8 MR. LEVY: Our objection was basically it
9 wasn't relevant to any issues involved in this case and
10 that the prejudicial -- prejudice totally outweighed any
11 probative value. And I claim there was no probative
12 value.

13 I would also indicate that Ms. Backers
14 indicated that one -- I thought she meant, but she did
15 say, one of the reasons for his testimony was to show
16 the movement of evidence by him. He never did that
17 other than the backpack.

18 Anyway, that was my objection.

19 THE COURT: Okay. Do you want to respond to
20 that, Ms. Backers?

21 MS. BACKERS: The movement of the backpack is
22 exactly what he did move and did describe and that is
23 one of the major pieces of evidence in this case.

24 He also described the position of Chantel when
25 he found her.

26 In addition to all the other reasons I stated,
27 which the court has already included, for why it was
28 relevant.

1 THE COURT: Okay. The record will show that I
2 have considered, as I always do, and in particular with
3 respect to this objection and this area of testimony and
4 evidence, I very carefully considered Evidence Code
5 Section 352 weighing probative value against prejudicial
6 effect. I previously defined prejudice as the Courts of
7 the State define it. I will incorporate that
8 definition.

9 I feel there is probative value here and that
10 it is substantial. The prejudicial effect as prejudice
11 is defined by the case law is minimal. And so I have
12 made that balancing test. I have considered it in that
13 light and feel that the probative value substantially
14 outweighs any prejudicial effect.

15 But the record should reflect the objection
16 was made and was made in a timely manner.

17 MS. BROWN: May I add one thing, your Honor?

18 THE COURT: Yes, you may.

19 MS. BROWN: Just so the record is clear,
20 basically our objection was that this was going to be
21 extremely emotional testimony and as such was
22 prejudicial to the jury.

23 In fact, I hope the record will note that
24 Sergeant Traylor did end up crying at the end of his
25 testimony, which was about ten minutes in length during
26 the period of time after the objection.

27 THE COURT: Well, I don't think he cried for
28 ten minutes.

1 MS. BROWN: No, but he did cry at the end of
2 his testimony.

3 THE COURT: You're absolutely correct.
4 Sergeant Traylor was dis -- displayed some level of
5 emotion and I think if he wasn't actually crying, he was
6 verging on tears when he was describing the life-saving
7 efforts with respect to the victim, Chantel.

8 And it -- at the end of the direct testimony
9 and before the beginning of cross-examination, I asked
10 Sergeant Traylor if he wished to have a break and he
11 indicated he did. That's why we took the recess at that
12 time.

13 Do you want to add to the record in that
14 respect?

15 MS. BACKERS: No. I do have one other matter,
16 though, your Honor. The tape that's 21A still has that
17 Home Base incident on it, and so since I am seeking to
18 introduce this tape, I wanted to borrow this exhibit and
19 dub the first part out and make a new copy that doesn't
20 include the Home Base incident.

21 Does the court have any objection?

22 THE COURT: I don't. Any objection here?

23 MR. LEVY: No.

24 MS. BACKERS: I will keep this in its
25 original --

26 THE COURT: I want to make sure 21A remains
27 intact for any purposes, including appellate review. If
28 you could make a new copy of the portion of the tape

EXHIBIT F

1 Q. Now, on the radio transmission tape -- have
2 you had a chance to listen to that?

3 A. Yes, I did.

4 Q. They were asking for a sergeant to come and
5 help out with Sergeant Traylor, is that right?

6 A. Yes. And I made one of those requests myself.

7 Q. Okay. And is that because he needed some
8 assistance?

9 A. Yes, it was.

10 Q. Why?

11 A. Well, it was like two groups working the stop.
12 Once the car crashed into the parked car, four of us
13 focused on the suspect, and it seemed like a whole gang
14 of blue was on the passenger side and they were -- they
15 were taking out a little girl and Sergeant Traylor was
16 over there.

17 Q. And did you see him lose his composure?

18 MR. LEVY: Objection under 352.

19 THE COURT: Objection is overruled. You may
20 answer.

21 MR. LEVY: Also object under it is not
22 relevant.

23 THE COURT: Ruling is the same. You may
24 answer.

25 THE WITNESS: Yes, I did.

26 MS. BACKERS: Q. At the time that this
27 incident happened, were you a sergeant?

28 A. Yes, ma'am.

1 Q. And when they were asking for a sergeant to
2 come and assist Sergeant Traylor, did you come on the
3 radio and say, "this is K52, I'm on the scene,"
4 indicating that you were a sergeant on the scene?

5 A. Yes, ma'am.

6 Q. Did you see the C.P.R. efforts on the baby?

7 A. Yes, I did.

8 Q. Where were you?

9 A. I was at the -- in the right -- I was at the
10 right door of the suspect vehicle, of the gray car.
11 Everybody was hollering --

12 MR. LEVY: Objection, he's not responding to
13 the question.

14 THE COURT: Sustained. Do you want to proceed
15 by question and answer?

16 MS. BACKERS: Sure.

17 MS. BACKERS: Q. Tell us what you saw once
18 you got to the sidewalk.

19 MR. LEVY: Then I object under 352 and it is
20 not relevant.

21 THE COURT: Objection overruled, you may
22 answer.

23 THE WITNESS: I saw about five or six, maybe
24 more, officers bent over a little girl.

25 MS. BACKERS: Q. And did you stay over there
26 on that sidewalk?

27 A. Yes, I did. I was -- I was there and somebody
28 was hollering trying to figure out how old she was and

EXHIBIT G

1 A. Um-hum.

2 Q. Then what?

3 A. The officer was -- was pretty upset at the time.
4 He -- he was crying. And he -- he was so focused on
5 breathing for her that he didn't want to get up.

6 Q. What do you mean he didn't want to get up?

7 A. He didn't want to leave her side. He didn't want to
8 stop breathing for her, so we had to coax the officer away
9 from her and -- and take over his job.

10 And we began breathing for her using a -- excuse
11 me -- using a bag valve mask, which is it's essentially a big
12 rubber ball that we squeeze with a mask on the end, and
13 oxygen is supplied into the rubber ball. When we squeeze it,
14 it gives a high concentration of oxygen, which is beneficial
15 for the patient in this case.

16 Q. When you first met this child, did she have vital
17 signs?

18 A. She had a strong radial pulses. She had strong
19 pulses in her wrist, which indicates that she -- that she was
20 profusing well, which means she's getting blood well, not
21 only her vital organs, but her extremities as well.

22 Q. Go ahead.

23 A. She was not breathing. So we breathed for her.

24 Q. So when you got there, all the breathing was being
25 done by the officers?

26 A. Yes.

27 Q. And when you were able to coax the officer off of
28 her, who took over the breathing for her?

EXHIBIT H

1 Q. And is Children's the Alameda County trauma unit?

2 A. Yes.

3 Q. And what does that mean?

4 A. It means the emergency medical services system in
5 Alameda County has deemed Children's Hospital to be a trauma
6 unit.

7 If they were an adult, they would be taken to
8 Highland General Hospital, which is the adult trauma center.

9 Q. What time did you leave the scene to be en route to
10 the hospital?

11 You can take a look at your report if you need to
12 refresh your memory as to the time.

13 A. We left the scene ten minutes after we arrived, which
14 is 1429.

15 Q. What time did you arrive at Children's?

16 A. 1438.

17 Q. When you left the scene, do you remember what was
18 going on at the scene when you got her in the ambulance?

19 A. My recollection of everything outside of Chantel
20 is -- is not -- I was pretty focused on her. I -- I remember
21 the police officer weeping. I don't remember much else
22 besides -- besides that and her.

23 Q. What happened once you got her to Children's? What
24 do you do with her?

25 A. We transfer her to the emergency department and give
26 a report to the physician on duty and transfer care.

27 MS. BACKERS: Thank you, sir.

28 I don't have any other questions.

EXHIBIT I

1 A. Well, I saw the child --

2 Forgive me. I have daughters. This is a hard case
3 for me.

4 I saw the child with a backpack with her seat belt on
5 in front. She looked terrified.

6 I saw the suspect with a gun, and as we approached,
7 he got back in the vehicle. He had the gun, and we didn't
8 want to press him into doing anything.

9 He got in the car, proceeded westbound. Sergeant
10 Traylor and I pursued.

11 Q. What position were you in when you first saw that it
12 was a little girl?

13 A. Toward the rear of the vehicle.

14 Q. What were you looking through, the back windshield of
15 that car?

16 A. Yes.

17 Q. Could you see what the driver was doing with the gun?

18 A. He was pointing it at the child.

19 Q. And did you see part of the little girl's face?

20 A. I did.

21 Q. What part did you see?

22 A. Well, the side of her face, the left side of her
23 face.

24 Q. And was your gun drawn at that point?

25 A. Yes.

26 Q. What did you do when you actually could see that he
27 had a gun pointed at the little girl?

28 A. Well, I pointed the gun at him initially. But as he

CERTIFICATE OF SERVICE

I, David H. Goodwin, certify that I am over 18 years of age and not a party to this action. I have my business address at P.O. Box 93579, Los Angeles, Ca 90093-0579. I have made service of the foregoing **MOTION FOR JUDICIAL NOTICE; DECLARATION OF COUNSEL; [PROPOSED] ORDER** by depositing in the United States mail on June __, 2010, a true and full copy thereof, to the following:

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Executed on June __, 2010, at Los Angeles, California
I declare under penalty of perjury that the foregoing is true and correct.

David H. Goodwin