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SUPERIOR COURT-STOCKTON

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ROSA JUNQUEIRO, CLERK

BY Amber Tochyain
DEPUTY

1 James P. Willett
District Attorney
2 State Bar Membership No. 88837
San Joaquin County
3 By: Thomas J. Testa
Deputy District Attorney
4 Courthouse
Stockton, CA 95202
5 mb

6 Phone: (209) 468-2400

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
9 STOCKTON BRANCH

10	The People of the State of California,)	No. SF112495(A)
)	
11	Plaintiff,)	PEOPLE'S RESPONSE TO
)	MOTION TO DISMISS
12	v.)	
)	
13	MELISSA HUCKABY)	
)	
14)	DATE: 10/30/09
)	TIME: 1:00 pm
15	Defendant(s).)	DEPT: 14

16 1. The Grand Jurors Were Given the Correct Standard of Proof

17 The prosecutor read to the jurors the three sentence probable
18 cause instruction in Exhibit A. (Grand Jury transcript pages 1794,
19 1833). The first sentence of that instruction is directly from
20 Penal Code § 939.8. The prosecutor must go further and "must
21 explain to the Grand Jury that section 939.8 requires a finding of
22 'probable cause' before an indictment is returned." *Cumminskey v.*
23 *Superior Court* (1992) 3 Cal 4th 1018 at page 1029. The second
24 sentence does just that. The third sentence expounds on the concept
25 of 'probable cause' using the very language upheld in *Cumminskey*,
26 *supra*, citing *Lorenson v. Superior Court* (1950) 35 Cal 2d 49, 56.
27 In considering this issue, a reviewing court may also consult the

1 "Grand Jury Handbook" given to the grand jurors and the Judge's
2 instructions. *Cumminskey*, supra, p. 1025. The Grand Jury on page 34
3 (Exhibit "B") of the manual was adequately instructed that it must
4 find the equivalent of probable cause to indict.

5 2. The Prosecutor Does Not "Act As a Witness" When He Responds
6 To Jurors' Questions

7 *Cumminskey*, supra, illustrates that responding to juror
8 questions --e.g. what was found in the victim's chest (at p. 1031)
9 or what was found on the screen door (at p. 1032) -- is an
10 appropriate function of the prosecutor at a Grand Jury hearing. The
11 prosecutor repeatedly reminded jurors "Nothing I say is evidence"
12 (Grand Jury p. 7), "Don't take what I say as evidence" (Grand Jury
13 p. 208), and "Questions alone don't mean anything. Don't read too
14 much into them." (Grand Jury p. 986). Again at closing he reminded
15 jurors "My statements are not evidence" (Grand Jury p. 1799) and "I
16 can't give you my opinions or ideas" (Grand Jury p. 1833) and that
17 "You are impartial judges of facts." (Grand Jury p. 1841)

18 3. The Prosecutor Need Not Inform the Jurors To Consider Lesser
19 Charges, Diminished Actuality or Mitigating Defenses

20 "Over 100 years ago, we determined the prosecution has no duty
21 to instruct the Grand Jury sua sponte on lesser included offenses
22 (citations omitted). Specifically, we observed that it 'is not the
23 province of the Grand Jury to determine the degree of murder'..."
(*Cumminskey*, supra, p. 1034)

24 Similarly, the prosecutor need not volunteer possible defenses
25 and "mitigating alternatives" such as diminished capacity/actuality
26 to a Grand Jury (*Cumminskey*, supra, p. 1035). *Cumminskey* (at pp.
27 1035-1036) cites authority from other states to illustrate the
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1 distinction between the prosecutor's duty to present "exculpatory
2 defenses" -- which would, if believed, result in a finding of no
3 criminal liability; and the absence of a duty to present "mitigating
4 defenses" -- which would, if believed, result in a reduction of the
5 gravity of the offense committed.

6 Nevertheless, the People *did* present evidence of Melissa
7 Huckaby's claimed bipolar condition and attention deficit disorder
8 (Grand Jury p. 415, 1382); her claimed post-traumatic stress
9 disorder (Grand Jury p. 1382); her allegedly swallowing razor blades
10 (Grand Jury p. 469, 814, 846); her prior allegation of having been
11 raped (Grand Jury p. 486); her "flat affect" (Grand Jury p. 980);
12 her alleged self-mutilation (Grand Jury p. 751); her alleged
13 suicidal thoughts (Grand Jury p. 1382); her alleged depression and
14 other alleged mental issues (Grand Jury pp. 560-561; 588-589; 750;
15 1507-1510; 1543-1546); her sleepwalking (Grand Jury p. 853,
16 1524); and her possession of a notebook entitled "Cute But Psycho"
17 (Grand Jury p. 575)

18 The People instructed jurors per CalJic on the affect of mental
19 disease on the elements of crimes (Grand Jury pp. 1804, 1813).

20 4. Defendant's Alleged "Exculpatory Statement" Was Inadmissible

21 A prosecutor cannot give the Grand Jury evidence of a
22 defendant's statement without first establishing a foundation for
23 its admissibility. *Mott v. Superior Court* (1964) 226 Cal.App.2d
24 617.

25 The prosecutor presented Melissa Huckaby's statement to
26 Detective Bauer up to the point where she cried and he stopped
27 (Grand Jury p. 892) just before she invoked her rights both to
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1 remain silent (Grand Jury p. 900) and to have an attorney (Grand
2 Jury p. 1678). Anything she said after that point was inadmissible
3 in the case in chief for three reasons:

- 4 1) "If the individual indicates in any manner, at any time prior to
5 or during questioning, that he wishes to **remain silent**, the
6 interrogation must cease." (*Miranda v. Arizona*, (1966), 384 U.S. 436
7 at 473-474.) 2) Once a suspect invokes his right to **the assistance**
8 **of an attorney**, all questioning must cease, at least until his
9 attorney is present. (*Minnick v. Mississippi* (1990) 498 U.S. 146.
- 10 3) Any words or actions which the police should know are reasonably
11 likely to elicit an incriminatory response, even though not in the
12 form of actual questions, may still constitute an interrogation.
13 (*People v. Underwood* (1986) 181 Cal.App.3d 1223, 1231; see also
14 *Rhode Island v. Innis* (1980) 446 U.S. 291; *Brewer v. Williams* (1977)
15 430 U.S. 387; *In re Albert R.* (1980) 112 Cal.App.3d 783.)

16 Brief reflexive and offhanded comments Detective Nate Cogburn
17 made to defendant (Grand Jury p. 899-906, 1682-1683) that urged her
18 to speak up as he transported her to booking - while appearing to
19 have been made with innocent intent - invalidate any re-initiation
20 under the authority of *People v. Boyer* (1989) 48 Cal 3d 247, at 275.
21 Consequently, any statements defendant made after she first invoked
22 Miranda remained inadmissible.

23 In *Boyer* after defendant invoked his Miranda rights, one of the
24 detectives made comments "not to solicit any statements from him...I
25 just wanted him to understand a couple of things" (at p.266). The
26 court found the detective's comments were reasonably calculated to
27 elicit an incriminating response -- and invalidated defendant's re-

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1 initiation of the interview during which he confessed.

2 Had the People introduced Melissa Huckaby's statement to
3 Detective Bauer, defense would be howling in protest that its
4 admission violated the rule of P.C. 939.6 that the grand jurors may
5 only receive evidence that would be admissible at trial. And he
6 would be complaining --justifiably so-- that while exculpatory on
7 the surface, her statement in context with the other evidence is so
8 damning, unbelievable, preposterous, and incriminating that striking
9 it and re-weighing remaining evidence is an inadequate remedy per
10 *People v. Backus* (1979) 23 Cal 3d 360, 393 and that the indictment
11 should be dismissed.

12 Finally, it is worth noting that simply labeling defendant's
13 statement to Detective Bauer as "exculpatory" does not make it
14 exculpatory. "...[statements] merely intended to be exculpatory by
15 the defendant are often used to impeach his testimony at trial or to
16 demonstrate untruths in the statement...and thus to prove guilt by
17 implication. These statements are incriminating in any meaningful
18 sense of the word...[citation]" *People v. Boyer*, supra, fn 15 at p.
19 274-275.

20 In effect, defendant's statement was incriminatory in context
21 with other evidence in that without defendant's statement to
22 Detective Bauer, defendant is only circumstantially connected to the
23 crime. With her statement, she is directly connected.

24 Underscoring the difficulty determining just what is truly
25 exculpatory versus incriminatory in a circumstantial evidence case
26 is the defense failure to respond to the prosecutor's invitation to
27 furnish exculpatory evidence. See Exhibit D (attached).

28

1 5. Presentation of the Statement Would Not Have Changed the
2 Outcome When Evaluated in Context with Remaining Evidence.

3 Presentation of only the admissible, pre-Mirandized portion of
4 defendant's statement to Detective Bauer did not create such
5 "substantial prejudice" as to mandate a dismissal as that standard
6 is explained in *Beradi v. Superior Court* (2007) 149 Cal 4th 476, 487
7 because her statement ("I had Sandra go in the suitcase to surprise
8 the kids and then I forgot about her") is so preposterous that it
9 ends up incriminating her when compared to the other evidence.

10 An examination of Grand Jury photographs shows how unlikely it
11 would be for a 49-inch, 40-pound, (Grand Jury p. 319) 8-year-old
12 girl to enter voluntarily into suitcase that measured 26" long x 16"
13 wide x 12" deep (Grand Jury p. 321). She would barely fit inside
14 with the suitcase unzipped. With the top zipped shut -- if entry
15 were even possible, (her body would have to be compressed
16 forcefully) (Grand Jury p. 306-311) it would be grossly
17 uncomfortable and scary. And why would defendant be interested in
18 such a time-consuming and disruptive game when she supposedly had a
19 suitcase filled with crafts (Grand Jury p. 411, 559) that she needed
20 to take to the church; and when moments earlier she announced that
21 she wanted the girls ██████████ and Sandra, the 'trouble maker')
22 (Grand Jury p. 412) kept apart to relieve the burden on the
23 grandparent babysitters (Grand Jury p. 1373, 1049, 1476)? Once at
24 the church if she truly had merely "forgotten" Sandra, her first
25 acts would have been: A) to use one of the two church telephones to
26 call 911, and then -- knowing the location of the hospital having
27 just driven there days earlier (Grand Jury p. 1507-1510) after
28 supposedly swallowing a razor blade -- B) to drive Sandra to a local

1 hospital. Instead, she calls home to ask her grandparents to look
2 for her suitcase (Grand Jury p. 1488, 413) and then calmly calls the
3 manager's office (Grand Jury p. 1361) to report the suitcase "loss".
4 After that, she locates a sharp object which she uses to cut the
5 church venetian blind cord. With it she ties shut the suitcase and
6 goes driving. She drives 5-10 minutes to the irrigation pond where
7 she takes the suitcase out of her car and rolls it to the edge of
8 the ponds and dumps the suitcase (with Sandra inside) into the pond.
9 Then, evidence shows, she texts Sandra's mom "Did you find Sandra
10 yet?" (Grand Jury p. 960, 1378) Autopsy findings of pre-mortem and
11 contemporaneous asphyxial injuries, blunt force head injuries and
12 "agonizing" vaginal-area injuries (Grand Jury p. 334-365), and
13 Sandra's DNA (Grand Jury p. 1301) on the church rolling pin (an
14 instrument consistent with that used to cause the penetration per
15 autopsy findings) (Grand Jury p. 3541) all contradict defendant's
16 denial of any violence or sex acts upon Sandra. Moreover, Sandra's
17 body contained evidence of the same drug (Grand Jury p. 1252-1256)
18 as found in the other two victims (Grand Jury p. 540) named in the
19 indictment -- the same drug defendant was known to take (Grand Jury
20 p. 853, 876) and, in fact, possessed (Grand Jury p. 775, 781, 1080).
21 In looking at the record as a whole, comparing the unreasonableness
22 of defendant's statement to the evidence supporting the Grand Jury's
23 findings of probable cause to indict, the outcome would have been
24 the same with as without the statement in evidence.

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26 6. Publicity Did Not Deprive Defendant of Her Right
27 to a Fair Grand Jury.

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At the outset, the prosecutor asked grand jurors questions

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1 (Grand Jury pp. 2-4) suggested by defense "Motion for Grand Jury
2 Questionnaire" (stamped July 14, 2009 by court clerk). Later on, he
3 asked them if they could be impartial (Grand Jury pp. 90-91). Days
4 later, he asked jurors to advise him if something develops which
5 might prevent them from evaluating witnesses objectively and fairly
6 (Grand Jury p. 1375). He also told them to tell the bailiff if they
7 received information about the case from an outside source (Grand
8 Jury p. 6). In closing remarks he again admonished jurors to
9 disregard press accounts (Grand Jury p. 1798).

10 7. Jurors Were Constantly Reminded of Their Independence.

11 Although there is no CalJic or CalCrim instruction on point, the
12 People several times advised the jurors of his "Johnson" obligation
13 to produce admissible exculpatory evidence (Grand Jury pp. 1771,
14 1777, 1763, 1765, 1767, 1810); asked them if they wanted him to call
15 other witnesses (Grand Jury p. 1410, 1809); and urged them to ask
16 questions (Grand Jury pp. 5, 1169).

17 He also said "you guys run the show...order me to do
18 anything...re-call witnesses, find other witnesses, etc." (Grand
19 Jury p. 390-391, 1414, 1670); The "Overview of Grand Jury
20 Procedures" manual (page 29) (Exhibit "C") given to each juror also
21 mentions jurors can require the District Attorney to issue subpoenas
22 for witnesses. The prosecutor never presumed an indictment. The
23 prosecutor frequently used the subjunctive: e.g. "if there is a
24 trial" (Grand Jury p. 430); "if there is an indictment" (Grand Jury
25 p. 1673, 90); "if you decide to sign" the indictment (Grand Jury p.
26 1835) The prosecutor, as does the "Overview" - p.31, reminded
27 jurors that counts were severable (Grand Jury pp. 1836, 1795, 1819,

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1 1839). The prosecutor cautioned jurors he was focusing their
2 attention on relevant facts (Grand Jury p. 1780) more than arguing.

3 8. Evidence Showed a Strong Suspicion the Killing Was
4 Willful, Deliberate and Premeditated.

5 In an instant, a gun can accidentally discharge during a fight.
6 Or a knife, meant to ward off blows, can in a fraction of a second
7 accidentally stab another. But how can a grown adult accidentally
8 or unintentionally administer drugs to a 40-pound (Grand Jury p.
9 319) eight-year-old, tie a piece of cloth to her head, (Grand Jury
10 p. 307), cause blunt force injury to her head (Grand Jury p. 339),
11 apply enough pressure to her lips to injure them (Grand Jury p.
12 334-388) and asphyxiate her? It seems a matter of common sense that
13 to smother someone to death takes time. Time to consider what one
14 is doing. That action and mind-set constitutes intent,
15 premeditation, and willfulness.

16 9. Sandra's DNA on the Rolling Pin Recovered From the
17 Church and the Autopsy Findings Create a Strong
18 Suspicion of Both Sex Charges Alleged.

19 Even an erect penis is still made of soft tissue which would
20 not cause the degree and peculiar position of the injury found to
21 the genital area (Grand Jury p. 350-354). Sandra's joyful and
22 carefree skipping in the video belies any attempt to claim someone
23 else did that damage earlier.

24 10. There Was Enough Evidence to Support the Jury's
25 Findings of Kidnaping.

26 The surveillance tape shows Sandra -- just before she
27 disappeared -- walking in the direction of the only neighbor she
28 knew in that corner (Grand Jury p. 861-864): defendant's home.
Defendant claimed her Eddie Bauer suitcase was stolen from the

1 mobile home park (Grand Jury p. 1361) about roughly the same time.
2 Sandra's body is ultimately found in an Eddie Bauer suitcase which
3 defendant admitted was hers (Grand Jury p. 1443). Both Maria
4 Chavez, Sandra's mother, and [REDACTED], Sandra's sister explained
5 that Sandra did not leave the mobile home park without permission
6 (Grand Jury p. 943, 951, 955-956). Sandra never went and had no
7 reason to go to defendant's church (Grand Jury p. 989) where her DNA
8 was found on the rolling pin. Defendant would not have taken her
9 outside the mobile home park with innocent intent as defendant had
10 caused a stir only two months earlier when she took JANE DOE away
11 without parental permission. And there is no evidence the
12 surveillance camera (which recorded the only ingress/egress point)
13 showed Sandra leaving the mobile home park any other way. From
14 these facts and all the evidence, one could reasonably conclude
15 defendant enticed/persuaded/falsely promised/misrepresented/seduced,
16 etc. Sandra to accompany her outside the park in order to do, in
17 very short order, what defendant did.

18
19 11. There Was Adequate Evidence to Support the
20 Penal Code §347(A)(1) Charges.

21 The circumstantial evidence showed defendant administered a
22 drug capable of causing death (Grand Jury p. 1265-1267). Certainly
23 it was harmful when given under circumstances in this case; namely
secretively to a person driving a car and to a child.

24 Dated: 10/27/2009

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26 Respectfully submitted,

27 James P. Willett
28 District Attorney

Thomas J. Testa

Thomas J. Testa
Deputy District Attorney

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GRAND JURY INSTRUCTION NO. _____

[Probable Cause]

The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury.

This means the grand jury must find probable cause before an indictment is found. Probable cause means that each grand juror voting to find an indictment is convinced of a state of facts as would lead a person of ordinary caution and prudence to believe, and conscientiously entertain a strong suspicion that a public offense has been committed and a strong suspicion of the guilt of the accused.

EXHIBITS

criminal proceedings. For one's own peace of mind and to eliminate those doubts, it is important for each Grand Juror to remember that the Grand Jury does not determine guilt or innocence. After an indictment is returned, the eventual prosecution, conviction, and punishment falls into the hands of others who are sworn to do their duties. Thus, the responsibility of the Grand Jury does not extend beyond the determination of whether or not a crime has been committed, and whether there is sufficient evidence to justify putting the defendant on trial. Guilt or innocence is not the test.

As to the degree of evidence sufficient to warrant the return of an indictment, the law provides that an indictment should be found when all of the evidence before you, taken together, if unexplained or uncontradicted, would, in your judgment, provide sufficient cause to believe that a public offense was committed and that the person accused is guilty of it. For sufficient cause there must be enough evidence to support a strong suspicion or probability of (1) the commission of the crime or crimes in question, and (2) the accused's guilt thereof.

When an indictment or accusation has been voted and found as required by law and the formal written indictment or accusation has been prepared, it must be endorsed A True Bill. The endorsement must be signed by the Foreperson or the Foreperson Pro Tempore, as the case may be. The names of the witnesses examined before the Grand Jury must be written on the indictment before it is presented to the court.

When the results of the Grand Jury's vote are ready for

During presentation of a criminal proceeding, the District Attorney will often present physical evidence for the consideration of the Grand Jury. This evidence is entered in the record at the proceedings and is turned over to the clerk of the court responsible for its custody, if an indictment issues; otherwise the physical evidence is returned to the District Attorney.

When physical evidence is presented by the District Attorney, he will request that it be properly identified and numbered for the record. The following information should be placed on evidence tags by the Secretary of the Grand Jury.

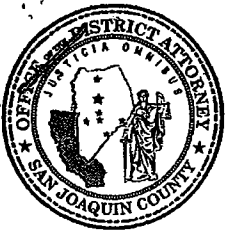
- (1) exhibit number;
- (2) identification with words "Grand Jury";
- (3) date of presentment;
- (4) signature of the Grand Jury Foreperson; and
- (5) name(s) of the accused
- (6) District Attorney case number
- (7) law enforcement agency case number.

If a Grand Jury has reason to believe that other evidence within its reach will explain away the charge, it can order such evidence to be produced and, for that purpose, may require the District Attorney to issue subpoenas for the witnesses.

When the District Attorney has indicated that he has concluded his/her presentation and the members of the Grand Jury have no further questions, the Foreperson should then excuse all those nonmembers of the Grand Jury. Before being excused, the District Attorney should read all pertinent jury instructions. The

EXHIBIT²⁹

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C



**OFFICE OF THE DISTRICT ATTORNEY
SAN JOAQUIN COUNTY**

HOMICIDE AND GANG VIOLENCE SUPPRESSION UNIT

222 East Weber Avenue, Suite 202, Stockton, California
P.O. Box 990, Stockton, California 95201
Telephone: (209) 468-8307 Fax: (209) 953-7884

JAMES P. WILLETT
DISTRICT ATTORNEY

EDWARD J. BUSUTTL
ASSISTANT DISTRICT ATTORNEY

July 22, 2009

To: Sam Behar
Re: Huckaby case

Mr. Behar,

The People decided to present evidence in this matter to the Grand Jury. Please advise me in writing: (A) if there is any legally admissible exculpatory evidence. (It would help if you cite my discovery pages or provide me with reports). (B) if your client wishes to testify before the Grand Jury. You can e-mail me ([REDACTED]) if that is easier for you. Finally, kindly leave a telephone message ([REDACTED]) confirming whatever your written response is to this letter. Grand Jury session is set to end 7/31/09 at 4pm.

Sincerely,

Thomas J. Testa
Deputy District Attorney

EXHIBIT "D"



OFFICE OF THE DISTRICT ATTORNEY
SAN JOAQUIN COUNTY

HOMICIDE & GANG VIOLENCE SUPPRESSION UNIT
222 East Weber Avenue, Suite 202, Stockton, California
P.O. Box 990, Stockton, California 95201
Telephone: (209) 468-2400 Fax: (209) 953-7884

JAMES P. WILLETT
DISTRICT ATTORNEY

EDWARD J. BUSUTTIL
ASSISTANT DISTRICT ATTORNEY

THE FOLLOWING DISCOVERY IS HEREBY RELEASED TO:

ATTORNEY: Bahar

APPOINTED: _____

RETAINED: _____

DEFENDANT'S FULL NAME: Hve Kaby

DA FILE/CASE NUMBER: _____

DATE COMPLETED & AVAILABLE: 7/22/09

ITEM(S) DISCOVERED: letter of 7/22/09

PAGE(S) @ 50 CENTS PER PAGE \$ _____

09 JUL 22 AM 10: 54
PUBLIC DEFENDER

RECEIPT ACKNOWLEDGED

DATE 7/22/09

Testa

RETURN TO DDA: _____

Radcliff