

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
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S049741

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.
WILLIAM LESTER SUFF,
Defendant and Appellant.

CAPITAL CASE

Riverside County Superior Court No. CR44010
The Honorable W. Charles Morgan, Judge

RESPONDENT'S BRIEF

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DEATH PENALTY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIAM LESTER SUFF,

Defendant and Appellant.

S049741

**CAPITAL
CASE**

STATEMENT OF THE CASE

In a third amended indictment filed on March 22, 1995, a Riverside County Grand Jury accused appellant William Lester Suff of 13 counts of willful, premeditated murder of the following victims on or about the following dates:

Kimberly Lyttle, June 28, 1989 (count 1);

Tina Leal, December 13, 1989 (count 2);

Darla Ferguson, January 18, 1990 (count 3);

Carol Miller, February 8, 1990 (count 4);

Cheryl Coker, November 6, 1990 (count 5);

Susan Sternfeld, December 19, 1990 (count 6);

Kathleen Milne (a.k.a. Kathleen Puckett), January 19, 1991 (count 7);

Cherie Payseur, April 26, 1991 (count 8);

Sherry Latham, July 4, 1991 (count 9);

Kelly Hammond, August 16, 1991 (count 10);

Catherine McDonald, September 13, 1991 (count 11);

Delliah Zamora (a.k.a. Delliah Wallace), October 30, 1991 (count 12);

Eleanor Casares, December 23, 1991 (count 13).

(7 CT 1855-1867; Pen. Code, § 187.) As to all 13 counts, the indictment alleged separate special circumstances of multiple murder victims, lying in wait, and that Suff had a 1974 conviction for murder in the District Court of the State of Texas. (7 CT 1855-1867; Pen. Code, § 190.2, subds. (a)(2), (3), (15).) Counts two, four, five, eleven, and thirteen also alleged Suff was armed with a knife during the commission of the offense. (7 CT 1856, 1858-1859, 1865, 1867; Pen. Code, §§ 1192.7, subd. (c)(23), 12022, subd. (b).) The indictment additionally charged Suff with the attempted murder of Rhonda Jetmore on or about January 10, 1989. (Count 14; 7 CT 1867-1868; Pen. Code, §§ 187, 664.)

On November 20, 1992, the trial court granted the prosecutor's motion to recuse the Public Defender as Suff's counsel due to conflict of interest and appointed counsel from the conflict defense panel. (2 CT 496.)

On June 25, 1993, the trial court granted the defense discovery request as modified by the court to read "any known exculpatory" information on suspects or alternative suspects for the charged crimes or for five non-charged killings that occurred after Suff's arrest. (3 CT 661-664, 748.) The trial court, however, denied the defense's general request for discovery regarding the investigation of unsolved crimes similar to those charged, i.e. prostitute killings. (3 CT 663-664, 748.)

On October 15, 1993, the trial court heard and denied the defense motion to suppress evidence under Penal Code section 1538.5. (4 CT 856.)

On August 26, 1994, the trial court heard and denied the defense motion to exclude victim impact evidence. (4 CT 1084.) The court also heard and denied the defense motion for discovery regarding two prostitutes who were murdered after Suff's arrest. (4 CT 1085; see 4 CT 1043-1046, 1048-1049, 1060-1069.)

On January 26 and 27, 1995, the trial court heard testimony and argument for the defense motion for change of venue. (5 CT 1312-1316.) On January 31,

1995, the court denied the motion but stated it would not become final until after completion of the voir dire process. (5 CT 1317-1320.)

Jury trial commenced on February 28, 1995. (6 CT 1408.) Suff waived his right to a jury trial on the prior murder conviction special circumstance allegation. (8 CT 2203.)

On March 23, 1995, the trial court reheard and denied the defense motion for change of venue. (7 CT 1893.) The same day, the trial court heard argument on a defense motion to admit evidence of other prostitute murders that occurred after Suff's arrest. (7 CT 1893.) The court denied the motion in the afternoon of the following day. (7 CT 1939.)

On May 1 and 2, 1995, the trial court heard testimony and argument on the defense motion to exclude Suff's statement under *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]. (8 CT 2067, 2069.) The trial court granted, in part, the defense motion to exclude on May 4, 1995. (8 CT 2075-2076.)

On July 19, 1995, the jury convicted Suff of all counts except count eight (Cherie Payseur), on which it was deadlocked, and found the attempted murder of Rhonda Jetmore was wilful, deliberate, and premeditated. The jury also determined each murder to be in the first degree and found true the multiple-murder and lying-in-wait special circumstance allegations as to each of the murders. Finally, the jury found true the deadly weapon allegation charged in counts two, four, five, eleven and thirteen. (10 CT 2509-2551A, 2551D-2555.) The court declared a mistrial as to count eight. (10 CT 2552.) The same day, the trial court heard and found true Suff's prior murder conviction. (10 CT 2556.)

On August 17, 1995, the same day it retired for deliberations, the jury rendered verdicts of death on counts one through seven and nine through thirteen. (10 CT 2694; 11 CT 2790-2801.)

On October 26, 1995, the court denied Suff's motions for a new trial and to reduce the penalty to life imprisonment without the possibility of parole. (11 CT 2967.) The court sentenced Suff to twelve death sentences, a consecutive term of life imprisonment for the attempted murder, and five consecutive one-year terms for the deadly weapon enhancement, and dismissed count eight in the interests of justice. (11 CT 2913-2916, 2967-2969.)

Notice of automatic appeal was filed the same day. (11 CT 2975.)

STATEMENT OF FACTS

Guilt Phase: Prosecution Case

In early 1984, while living with his mother in the Cottonwood Canyon area, Suff began dating Bonnie Ashley. (29 RT 5742-5743; 31 RT 6255-6256.) By April 1984, Suff moved into Ashley's Orchard Street mobile home in the Sedco Hills area of Lake Elsinore. (29 RT 5742-5743; 31 RT 6255-6256.) During the time he lived with Ashley, Suff had a mustache (29 RT 5753) and normally wore silver-colored, wire-rim glasses (29 RT 5755, 5771).

Suff was unemployed when he first moved in with Ashley. (29 RT 5744.) After lasting less than six months at a job with a computer firm in Corona, he got a job at McDonald's on the corner of Railroad Canyon and Mission Trail in Lake Elsinore, where he worked until sometime after January 1985. (29 RT 5744-5745.) He then worked for another computer company. (29 RT 5763.) At some point, Suff began working part-time for John's Service Center on Main Street in Lake Elsinore. (29 RT 5745-5746, 5763.)

Around October 1986, Suff got a job as a supply stock clerk for Riverside County General Services Agency Supply Services Division, in a warehouse on Washington Boulevard. (29 RT 5746, 5780-5782, 5798, 5808.) He typically worked from 7:00 a.m. to 4:30 p.m. (29 RT 5787, 5790.) His usual duties were to pull and pack supplies to fill orders from other County

departments. (29 RT 5792, 5798-5799.) He made deliveries a few times, but they were “not in the normal course of business.” (29 RT 5793.)

In March 1987, Suff separated from Ashley. (29 RT 5757.) He lived in the basement of John’s Service Center for a week before moving into a one-bedroom apartment on Morrow Way in Lake Elsinore. (29 RT 5756-5757; 31 RT 6228-6229.)

On June 28, 1988, Suff was hospitalized after a motorcycle accident. (29 RT 5757, 5767.) When discharged, he could not walk up the stairs to his second-floor apartment, so Ashley invited Suff to stay with her. (29 RT 5757, 5767; 31 RT 6230.)

Ashley recalled driving Suff to work while he was still in casts and on crutches, but could not remember when the casts were removed. (29 RT 5769.) Suff’s immediate supervisor, Joseph Pajak, recalled that Suff was in a cast around June or July of 1988. (29 RT 5811.) Suff’s payroll records showed he was out sick all day on June 28, 1988, and took sick leave until returning to work on September 29, 1988. (29 RT 5816-5819.) Suff had a cast on his wrist and was put on light duty for a short period of time. (29 RT 5819-5820; see also 29 RT 5811-5812.) Pajak was “quite sure” Suff’s cast was off by Christmas of 1988. (29 RT 5819.)

In 1988, Ashley became actively involved in real estate and she would keep real estate documents, brochures, and other paperwork in her car, a white 1985 Toyota Tercel. (29 RT 5747-5748, 5764-5765.) While she was involved in real estate, Ashley used boxes to transport papers in her car and around her house. (29 RT 5765-5766.)

Suff rarely drove Ashley’s Tercel because she encouraged Suff to use his own vehicle rather than borrowing hers, unless his was unavailable. (29 RT 5748, 5766-5767.) Suff’s vehicle broke down frequently, however, and on such occasions he likely borrowed Ashley’s car. (29 RT 5772.)

Ashley would go to bed by 9:00 p.m. and was a sound sleeper; Suff usually went to bed later than Ashley. (29 RT 5749.) After going to bed, Ashley would have no knowledge if Suff borrowed her car. (29 RT 5772, 5778.)

**A. Attempted Murder Of Rhonda Jetmore (Count 14),
January 1989**

In early 1989, Rhonda Jetmore lived in Lake Elsinore and engaged in prostitution to support her drug habit. (20 RT 3816-3817, 3873.) She used as much cocaine as she could get, and on a daily basis. (20 RT 3872-3873.) Jetmore would “work” the Main Street area of Lake Elsinore – a common area for other women to engage in prostitution – during both daytime and evening hours every day. (20 RT 3817, 3874-3875; see also 20 RT 3912.)

One night in the early part of January 1989, around 9:00 p.m., Jetmore sat on a bench outside John’s Service Center on Main Street. (20 RT 3820.) She had used cocaine earlier that evening and was hoping for a “date” so she could make some money for more drugs. (20 RT 3819-3821, 3889-3890.) Around 10:00 p.m., a male friend approached and they spoke briefly. (20 RT 3821; see also 21 RT 3958.) About 11:00 p.m., a man drove his car up to where Jetmore sat.^{1/} (20 RT 3819, 3821-3822, 3890-3891; 21 RT 3935, 3958.) He wore wire-framed glasses with round, probably thick lenses. (20 RT 3841.)

The man asked Jetmore if she was interested in making some money (20 RT 3823-3824) and confirmed he was looking for a “date” (20 RT 3824). He invited Jetmore into the car, but had to move a box of papers from the passenger seat to the back to make space for her. (20 RT 3825, 3829-3830,

1. In her January 20, 1989, statement to a Lake Elsinore Sheriff’s detective, Jetmore said her attacker picked her up at 6:00 p.m. (20 RT 3910.) At trial, Jetmore said 11:00 p.m. was the more accurate time. (20 RT 3890-3891.)

3833.) Jetmore got in and noticed the back seats of the car, a station wagon, were folded down, and that other papers and “stuff” were in back. (20 RT 3825, 3833-3834.) At the time, she thought the papers had something to do with real estate. (20 RT 3834, 3912.)

When the man asked Jetmore if she had a room where they could go, she directed him to a nearby vacant house on Langstaff, three or four blocks away from John’s Service Station. (20 RT 3825-3827.) Although there was no electricity and hardly any furniture, there was a bed; Jetmore was familiar with the house, as she had conducted business and stayed there before, and she felt safe there. (20 RT 3825-3826, 3873-3874.)

The man said his name was “Bob” and that he was from Sedco Hills. (20 RT 3825-3826, 3839; 21 RT 3938.) During the drive to the house, they agreed upon a price of \$20 for “straight sex.” (20 RT 3827-3828.) Jetmore had the man park at the back of the house, and they entered through the unlocked security screen and back door. (20 RT 3829, 3834-3835.) After closing and locking the deadbolt of the security screen, Jetmore shut the solid wooden door to prevent any disturbances. (20 RT 3836, 3874.) Jetmore regularly carried a six-inch plastic flashlight to guide her through the darkened house, as she did on this occasion. (20 RT 3835, 3874.)

Jetmore sat on the “bed” – two mattresses on the floor – and asked for the money in advance. (20 RT 3837.) The man reached in his pocket and handed her a bill as he stood in front of her. (20 RT 3837-3838.) When Jetmore looked at the bill with her flashlight, she saw it was a \$1 bill. (20 RT 3838.) Jetmore looked up at the man. (20 RT 3838.) Before she could say anything, he grabbed her by the throat with both hands, his thumbs inward, and pushed her down on the bed. (20 RT 3838-3839.)

The man stood in front of her, choking her, and saying nothing. (20 RT 3839.) At that time, Jetmore looked at his face and also noticed his belt buckle,

which bore the name “Bill.” (20 RT 3839, 3850, 3892.) Jetmore struggled to get away, but the man was strong and she could not move. (20 RT 3840.) From the expression on the man’s face and the way he was choking her, Jetmore believed he was trying to kill her. (20 RT 3840.) Jetmore then realized she was still holding the flashlight, so she struck him in the head with it. (20 RT 3841-3842.) The man broke his grip and Jetmore “ran for [her] life,” while screaming for help. (20 RT 3842.)

When Jetmore reached the living room area, the man tackled her to the ground and tried to rip off her clothes. (20 RT 3842-3843.) Jetmore said, “Bill, just let me go. I won’t tell anybody.” (20 RT 3843.) The man seemed to respond to the name “Bill.” (20 RT 3850.) He said more than once that he “just wanted to fuck” Jetmore. (20 RT 3843, 20 RT 3895-3896.) At some point while Jetmore was on her back, she felt the man’s finger in her mouth. (20 RT 3843.) She bit down as hard as she could, breaking one of her teeth. (20 RT 3843, 3892-3893.) The man pulled back his hand, and Jetmore was able to get up and run to the front door. (20 RT 3844.)

She was still fumbling with the door locks when the man again wrestled her to the ground and attempted to rip off her clothes as she struggled. (20 RT 3844.) The man’s glasses came off. (20 RT 3844.) As Jetmore pleaded, “Please, just let me go,” the man agreed if she would help him find his glasses. (20 RT 3845.) Jetmore scanned the area with her flashlight and located the glasses on the floor. (20 RT 3846.) When the man told her to get them, she said, “No. You get them.” (20 RT 3846.) When the man went for his glasses, Jetmore ran out the front door and toward the bar across the street. (20 RT 3846-3847.)

Jetmore ran into the street and stopped an approaching car, which happened to be carrying two men she knew. (20 RT 3847.) The man on the passenger side noticed blood on Jetmore’s face and saw Jetmore’s attacker

getting into his car. (20 RT 3847.) He pulled out a pistol and fired two or three shots toward her attacker. (20 RT 3847.) Jetmore did not contact police that night because she was scared. (20 RT 3848.) Within the next week, Jetmore moved to her mother's house in Perris Valley. (20 RT 3849.)

A week or two after the attack, Jetmore learned that someone from the Sheriff's Department Lake Elsinore station wanted to speak with her. (20 RT 3849.) Around 5:05 p.m. on January 20, 1989, Jetmore called Riverside County Sheriff's Department Detective Lawrence Detective Nielsen and told him about the attack.^{2/} (20 RT 3817-3818, 3833, 3849-3851, 3875-3876, 3906-3908.) The telephone conversation lasted 10 to 15 minutes. (20 RT 3909.) Jetmore told Detective Nielsen that her attacker seemed familiar to her, as if she had seen him before. (20 RT 3850-3851.)

Jetmore described the assailant as having round, metal-framed glasses with thick lenses. (20 RT 3876-3877, 3909, 3911.) She may also have said the frames were gold- or brass-colored, and that the man had a silver belt buckle bearing the name "Bill." (20 RT 3877, 3887, 3909.) The man had short, neatly-combed, reddish-brown hair and a thick mustache. (20 RT 3878, 3909.) Jetmore estimated he weighed 175 to 180 pounds and stood about five feet, ten inches tall. (20 RT 3850, 3879-3880, 3909.) The man drove what Jetmore thought to be a small, newer-model station wagon. (20 RT 3909-3910.) Jetmore was confident she would be able to identify her attacker. (20 RT 3854, 3897.)

On February 15, 1989, Jetmore and her mother moved to Siskiyou County. (20 RT 3866.)

2. Detective Nielsen worked out the of the Sheriff's Department Lake Elsinore station. The detective was unaware that Jetmore had been attacked when she contacted him. He knew Jetmore from patrolling the Lake Elsinore area. (20 RT 3906-3908.)

B. Suff's Silver Mitsubishi Van That Bore Licence Plate Number BILSUF1

In March 1989, Suff moved out of Ashley's home and into a two-bedroom apartment in the Morrow Way complex where he had lived before his motorcycle accident. (29 RT 5756-5757, 5768; 31 RT 6230.)

With the money Suff gained from the settlement of his accident (29 RT 5758), he bought a new Mitsubishi van from Riverside Mitsubishi on April 14, 1989 (30 RT 6110-6111). Mitsubishi made only one model of van in 1989, which came only with a gray or brown interior. (30 RT 6117.) The exterior color of Suff's van was "ascot silver," with gray velour seats and gray velour interior carpeting. (30 RT 6112.) It had bucket front seats, a second row of bucket seats, and a bench seat in the back. (30 RT 6113; 31 RT 6329-6330; see also 31 RT 6267.) The second-row seats could swivel like captain's chairs. (30 RT 6113; 31 RT 6329.) Suff sometimes would remove various seats in the van. (31 RT 6329-6330.)

Inside the van, Suff kept a sleeping bag that was blue on the outside and red on the inside, and white stuffing was coming out of rips in the fabric. (31 RT 6360; 37 RT 7967-7968.) Suff also had a green blanket, a gold pillow, and a multicolored knit afghan of red, blue, and black. (31 RT 6360.)

The standard tires on Suff's van would have been Yokohama Y382 all-season tires. (30 RT 6114-6116.) On November 9, 1989, Suff had two Armstrong Coronet Ultra Trac tires installed by Costco Wholesale Tire installation on Magnolia Avenue. (30 RT 6169-6171, 6175; 31 RT 6363-6364.) The tires were mounted on the left and right front of his vehicle, with licence plate number BILSUF1. (30 RT 6169-6171.) The vehicle milage noted on the form was 21,473 miles. (30 RT 6173.)

During Memorial Day weekend in May 1991, Suff drove his van to Paso Robles to help his wife's parents move there from Rialto. (31 RT 6345-6346,

6366-6367.) After one of his tires went flat, Suff bought a used tire from Wayne's Tires in Paso Robles. (31 RT 6367-6368.)

On December 6, 1991, Suff and his wife Cheryl went to Costco, where Suff bought two tires for his van. (31 RT 6360-6361; see also 30 RT 6155, 6157.) The Uniroyal Tiger Paw XTM tires were mounted on the right front and right rear of Suff's silver 1989 Mitsubishi van, license plate number BILSUF1. (30 RT 6165-6167.) A dent in the right side of the van and mileage of 90,001 were noted on the paperwork. (30 RT 6167.)

C. Murder Of Kimberly Lyttle (Count 1), June 1989

Kimberly Lyttle was a prostitute and drug user who normally "worked" Main Street in Lake Elsinore. (21 RT 3964, 3969.) Leann Fults dated the father of Lyttle's daughter and had known Lyttle for about nine years. (21 RT 3972.) Fults last heard from Lyttle on June 26, 1989, the day before Lyttle's birthday. (21 RT 3973.) Lyttle had called and arranged to pick up her daughter for a birthday dinner the next day, but never showed. (21 RT 3974.)

On June 28, 1989, two workers on a lunch break from a construction site discovered a body near a tree, in some shrubbery off of a dirt road called "Lost Road" in the Canyon Ranch development of Lake Elsinore, near Sedco Hills. (21 RT 3976-3981, 3984-3988, 4005-4007.)

Suff had only recently separated from Bonnie Ashley (29 RT 5756, 5758), with whom he remained friendly (29 RT 5758, 5768), and who lived in the Sedco Hills area, two- to two and a half miles from where the body was found. (21 RT 4008-4009, 4012.) Suff occasionally took Lost Road from Ashley's home to his mother's house in Cottonwood Canyon. (29 RT 5744.)

Senior Investigator Robert Creed of the Riverside County Sheriff's Department, Lake Elsinore Sheriff's Station, identified the body as Lyttle's. (21 RT 4009-4010.) She was 30 years old. (27 RT 5370.)

Lyttle's body was dressed in pink shorts, black socks, and a blue, Western-style shirt with snaps down the front and on the sleeves. (21 RT 3965-3966, 3993, 3995; 31 RT 6269-6271.) A pair of "flip-flop" sandals were also nearby. (21 RT 3956, 3994, 4000-4001.)

Janice Farmer, Lyttle's close friend, was familiar with the kind of clothes Lyttle wore. (21 RT 3964-3966.) Farmer recognized Lyttle's pink shorts and flip-flops but found it odd for Lyttle to be wearing black socks. (21 RT 3965-3966.) Farmer also did not recognize the Western-style shirt as something Lyttle would wear. (21 RT 3966.)

Forensic pathologist Dr. Sara Reddy performed the autopsy on Lyttle on July 1, 1989. (27 RT 5369.) Lyttle was five feet, seven and a half inches and weighed 113.5 pounds. (27 RT 5370.)

A toxicology report indicated Lyttle had no alcohol in her system but tested positive for a class of drugs called benzodiazepines (e.g. Valium, Xanax, Librium; 140 nanograms) as well as opiates (e.g. morphine, Codeine; 480 nanograms) and free or unconjugated morphine^{3/} (80 nanograms per milliliter of blood).^{4/} (27 RT 5462.) Such levels would tend to calm or sedate a person, but would not be toxic. (27 RT 5469.)

Lyttle's body had displayed early decomposition changes such as discoloration of the body to greenish-black, slight bloating, and early stages of maggots. (27 RT 5370-5371.) This affected Dr. Reddy's ability to detect small findings such as the presence of petechial hemorrhages^{5/} in Lyttle's eyes and

3. After heroin is injected into the body, it is metabolized into morphine. (27 RT 5265.) Morphine can also result from the metabolism of Codeine. (27 RT 5276.)

4. One nanogram is one billionth of a gram. (27 RT 5463.)

5. A petechial hemorrhage is a pinpoint hemorrhage that occurs in the eyes or lips when the neck is choked or pressure is otherwise applied to the vein, preventing the return of blood to the heart. (26 RT 5129-5130.) Thus,

lips. (27 RT 5371, 5384.) From the condition of the body, Dr. Reddy estimated Lyttle had been dead for about three days. (27 RT 5376, 5386-5387.) Although Dr. Reddy did not find any needle tracks, the decomposition of the body could have obscured such marks. (27 RT 5383-5384.)

On Lyttle's neck were numerous scratch marks of a semilunar shape, indicative of fingernail marks, which appeared to have occurred antemortem, while she was still alive. (27 RT 5371-5372, 5378-5380.) The fingernail marks on Lyttle's neck appeared to have been inflicted by both the perpetrator while strangling her and by Lyttle, possibly as she tried to free herself from the perpetrator. (27 RT 5377, 5379.) There were also some bruises on her neck. (27 RT 5372.) Under the skin of Lyttle's neck, Dr. Reddy observed small hemorrhages in the muscles of the right side, on the right thyroid cartilage of the larynx (commonly known as the "Adam's apple"), and on the hyoid bone (located just above the thyroid cartilage). (27 RT 5373-5375, 5380.) The hyoid bone was fractured on both sides.^{6f} (27 RT 5373, 5375.)

Hemorrhaging was also present underneath Lyttle's scalp, a little above the forehead, where it was bruised. (27 RT 5375.) Such an injury was consistent with the antemortem blunt-force trauma of being hit on the head. (27 RT 5376.)

Three reddish, round abrasions were present on Lyttle's arms and other parts of her body which were "clearly indicative of characteristic cigarette

pathologists normally look for petechial hemorrhage in determining whether a victim was choked or strangled (26 RT 5129-5130), however, petechial hemorrhages are not always present or visible in such cases. (26 RT 5203.)

6. Fracture of the hyoid bone or thyroid cartilage is usually associated with manual strangulation, which is strangulation using the hands. (26 RT 5134-5135, 5188-5189, 5227.) Some pathologists are of the opinion, however, that such an injury does not indicate any greater likelihood of one method of strangulation over another. (26 RT 5202.)

burns” that Dr. Reddy had seen in other cases. (27 RT 5372-5373, 5385-5386, 5391.) Some of the cigarette burns appeared to have been made through clothing. (27 RT 5385-5386.) The burns were fresh wounds, likely inflicted prior to Lyttle’s death. (27 RT 5391.) Lyttle’s forearms also bore deep healing wounds and scars which appeared to have been present for more than a few weeks before her death. (27 RT 5384-5385.) There were no restraint marks on Lyttle’s wrists. (27 RT 5379-5380.)

Dr. Reddy concluded that Lyttle died of asphyxia due to strangulation. (27 RT 5376.) Based on the absence of ligature marks, coupled with the fingernail marks, small bruises, and the fracture of the hyoid bone, Dr. Reddy opined Lyttle had been strangled by hand, or manually, rather than with a ligature. (27 RT 5377, 5381, 5383.) Dr. Reddy believed Lyttle was strangled from the front, but could not determine if the perpetrator was right- or left-handed. (27 RT 5382.)

D. Murder Of Tina Leal (Count 2), December 1989

In December 1989, Suff moved out of the Morrow Way apartment to an apartment on Chestnut Street in Lake Elsinore. (29 RT 5756; 31 RT 6230-62331, 6245.)

On December 12, 1989, Tina Leal and a man named “Scooter” smoked rock cocaine with Leal’s brother Jesse at the Leal home on East Sixth Street in Perris.⁷ (21 RT 4040-4041, 4045-4047.) Later, after Scooter left, and Leal smoking some more rock cocaine, she got dressed. (21 RT 4040-4041, 4045.) Jesse guessed it was after 6:00 or 7:00 p.m., because it was dark outside. (21 RT 4041.) He recalled seeing Leal change into blue pants, purple and white socks, black and white tennis shoes, and his brown trench coat. (21 RT 4042-

7. Because Jesse Leal has the same surname as his sister Tina Leal, Jesse will be referred to by his first name to avoid confusion.

4043.) Jesse walked Leal up the street. (21 RT 4045, 4047.) He did not know where Leal went, nor could he recall what time he last saw her. (21 RT 4047.)

Around 12:30 p.m. the next day, Jimmy Going and his wife were taking a drive along Goetz Road and onto “old” Goetz Road when they found the body was of a female whose arms were tucked inside the T-shirt she was wearing. (21 RT 4026-4028.) Going and his wife backed the car to the main road, drove about three or four miles to the Quail Valley Fire Department, and reported the body. (21 RT 4029.) The couple returned to the scene, where Sheriff’s Department personnel interviewed them and photographed the soles of their shoes. (21 RT 4029-4030.)

Detective Nielsen, who had investigated the Jetmore attempted murder, was one of the Riverside County Sheriff’s Department personnel who investigated the crime scene. (21 RT 4013-4021; 22 RT 4075.) The area was very hilly and rural, and appeared to be used as an illegal dumping area. (21 RT 4016, 4053-4054; 22 RT 4085, 4088.) Detective Nielsen identified and later confirmed the body was of Leal. (21 RT 4021-4022; see also 21 RT 4039.) She was 23 years old. (27 RT 5392.)

Leal’s body was dressed with her socks pulled inside-out and up over her pant legs, and her arms were tucked inside the Kings Canyon T-shirt she was wearing. (21 RT 4056; 22 RT 4082; 34 RT 6990.) She was not wearing shoes, and there were drag marks in the dirt from her heels and dirt on her socks. (21 RT 4057-4058.)

Although there were no cuts or holes in the T-shirt, Leal had stab wounds to the upper center of her chest and a cut around the areola of one of her breasts. (21 RT 4056-4057.) Around Leal’s neck was a thin line of bruising, indicating the use of a ligature. (21 RT 4057.) She also had two-inch-wide marks on her wrists from what appeared to be adhesive from tape,

possibly duct tape, indicating her wrists may have been bound. (22 RT 4082, 4085.)

At the scene, forensic technicians photographed tire and shoe impressions around the body, in addition to collecting other evidence. (21 RT 4058, 4061-4070; see also 22 RT 4080, 4087-4088.) Criminalist Ricci Cooksey of the California Department of Justice collected trace evidence from Leal's exposed body parts and clothing. (22 RT 4078-4081.)

The day after Leal's body was recovered, criminalist Cooksey met with Detective Nielsen at the Riverside County Coroner's office and collected more trace evidence from Leal's body and clothing. (22 RT 4081-4082.) Cooksey collected thick fibers, later determined to be from vegetation, from Leal's hair. (22 RT 4084.) "Rape kit" samples were collected from Leal, but no sperm cells were detected. (22 RT 4083-4084.)

Dr. Reddy conducted the autopsy the following day, December 15, 1989. (27 RT 5392.) Detective Nielsen was also present. (30 RT 6038-6039.) Leal was four feet, eleven inches tall and weighed 86 pounds. (27 RT 5392.) Her wrists and ankles showed bands of redness, indicative of the wrists and ankles being bound by a ligature. (27 RT 5399, 5411.)

Leal had scratch marks on her chin and face, and a black left eye. (27 RT 5393.) The injuries appeared to have occurred prior to her death and were consistent with Leal being struck in the face. (27 RT 5393, 5403-5404.)

There were linear abrasions on the front of the neck and to some extent on the back of the neck, which were consistent with the use of a ligature prior to Leal's death. (27 RT 5393-5396, 5404-5405.) Dr. Reddy also observed petechial hemorrhaging in Leal's eyes. (27 RT 5394-5395.) In addition, Leal had hemorrhages behind her esophagus and in her neck muscle. (27 RT 5401-5402.) Dr. Reddy was unable to determine whether Leal had been strangled from the front or from behind. (27 RT 5405.)

Also on Leal's neck were crusted, recent needle tracks. (27 RT 5411-5412.) Her toxicology report indicated 1,300 nanograms of cocaine; 2,400 nanograms of benzylecognine, a metabolite of cocaine; 100 nanograms of opiates; and 250 nanograms of methamphetamine, per milliliter of blood. (27 RT 5412, 5463.) While the cocaine level was very high, benzylecognine has no effect on the body. (27 RT 5470.) In addition, though a cocaine level of 500 nanograms per milliliter could be toxic to some people (27 RT 5470), the more a person uses a drug, the more tolerance they have for it.

A cutting type of knife wound close to the nipple of Leal's left breast appeared to have been inflicted prior to her death. (27 RT 5395-5396.) Four stab wounds measuring from 4/16 inch to 8/16 inch in length were visible at the center of Leal's chest and appeared to also be antemortem. (27 RT 5396-5397, 5400.) Two of the stab wounds were three to four inches deep, penetrating her heart; the other two were only superficial. (27 RT 5397.) The measurements of the stab wounds indicated the knife blade was at least three to four inches long and 7/16 to 8/16 inch wide. (27 RT 5397, 5407, 5409, 5413.) Dr. Reddy did not see any hilt marks near the stab wounds. (27 RT 5397, 5409.) Below the stab wounds was an abrasion consistent with a scratch from the knife. (27 RT 5397.)

Leal had additional lacerations to the vagina and a stab wound to the pubic area. (27 RT 5400.) The two lacerations, which are usually caused by blunt force, measured 3/4 inch to one inch in length and penetrated about 1/4 inch into the vaginal area. (27 RT 5400.) The stab wound was to the left side of the pubic area and measured 1/2 inch in length and approximately one inch deep. (27 RT 5401.) The lacerations and stab wound likely occurred prior to Leal's death. (27 RT 5401.)

A 95-watt GE Miser lightbulb had been inserted into Leal's uterus and was recovered intact. (27 RT 5402-5403, 5411, 5414-5415; 30 RT 6039-6042,

6044.) No latent fingerprints were found on the lightbulb. (30 RT 6044.) Dr. Reddy was unable to determine whether the bulb was inserted before or after Leal's death. (27 RT 5403.)

Based on her findings, Dr. Reddy concluded Leal died from asphyxia due to ligature strangulation, as well as stab wounds to the heart. (27 RT 5394, 5402, 5406-5407.)

E. Murder Of Darla Ferguson (Count 3), January 1990

Darla Ferguson frequently visited a man named Barney Mains, who until his death in 1993, employed a home caretaker named Vivian Rudley.^{8/} (22 RT 4147-4150.) Rudley knew Ferguson only by her first name. (22 RT 4148-4149.) Ferguson stopped by to see Mains nearly every morning. (22 RT 4151, 4154-4155.)

About January 14 or 15, 1990^{9/}, as Rudley left Mains's house for the day, Ferguson asked Rudley for a ride to 11th Street in Perris. (22 RT 4151, 4153.) Rudley left with Ferguson around 4:00 p.m. (22 RT 4151-4152.) The next morning, Ferguson did not visit Mains. (22 RT 4152.) Mains became concerned by Ferguson's absence and Rudley drove him around Sun City to every place he had previously picked up Ferguson, but the search was fruitless. (22 RT 4152-4153.)

On the morning of January 18, 1990, Elouise Garcia was driving through Cottonwood Canyon with two of her children, when her nine-year-old son insisted that he had seen "legs." (22 RT 4091.) After turning the car around, Garcia saw legs in the bushes 15 to 20 feet from the road. (22 RT 4091-4092.)

8. Mains passed away before Suff's trial. (22 RT 4150.)

9. Rudley testified that three or four days after she last saw Ferguson, Mains was told that Ferguson's body had been found. (22 RT 4153.)

Without exiting the car, Garcia drove straight home, at most four or five minutes away, and called 911. (22 RT 4092.) Garcia escorted the responding Riverside County Sheriff's deputy with her own car, pointed to the body from inside her car, and immediately returned home. (22 RT 4092, 4094-4095.)

The body was in a rural area, lying in heavy brush about 19 to 20 feet north of Cottonwood Canyon Road, which at the time was a dirt road. (22 RT 4096-4098, 4103-4105, 4109.) The body was in an area that appeared to be used for illegal dumping of trash and vehicles. (22 RT 4096, 4118.)

Riverside County Sheriff's Department Investigator Chris Antoniadis took control of the scene around 10:00 or 11:00 a.m. (22 RT 4103, 4105-4106.) Prior to approaching the body, Investigator Antoniadis directed his investigative team to examine the surrounding area and roadway for tire tracks, shoe prints, clothing, and other evidence. (22 RT 4106-4107, 4110; 23 RT 4241; see also 22 RT 4125-4136; 23 RT 4234-4235.)

The area was damp from the previous night's rain. (22 RT 4121.) Only one "set" of tire impressions – from two tires of one vehicle – was located near the body. (22 RT 4107, 4117-4118, 4121, 4131-4134; 23 RT 4242-4243, 4248.) The tread design of the two tires did not match. (23 RT 4242-4243, 4248.) The location of the tire impressions was consistent with someone having pulled off of the roadway and directly next to where the body was located. (22 RT 4131-4132; see also 23 RT 4248.) The impressions were photographed and their location sketched. (22 RT 4129-4130, 4132-4133, 4140-4141; 23 RT 4244.)

Some partial shoe prints were also located and similarly documented. (22 RT 4117-4118, 4132-4134; 23 RT 4244-4245, 4248-4249.) The shoe impressions were not close enough to the tire impressions to be consistent with someone stepping out of a car at the side of the road. (22 RT 4143.) None of the victim's clothing or personal items were found. (22 RT 4410.)

From the victim's fingerprints, Investigator Antoniadis identified her as Darla Ferguson. (22 RT 4113.) She was 23 years old. (27 RT 5416.)

Ferguson's legs had been propped up. (22 RT 4098, 4110.) A plastic garbage bag covered the upper torso of her body and was tied at the waist with a white hemp rope. (22 RT 4100, 4110-4112, 4134-4135.) Under the garbage bag, Ferguson's arms were crossed over her upper torso. (22 RT 4112.) Though the area around Ferguson's body was off of a dirt road and thick with brush, the bottoms of her feet were clean. (22 RT 44115-4116, 4119.) The garbage bag was examined for trace evidence (23 RT 4236) and for fingerprints (22 RT 4115, 4119, 4136; 23 RT 4245), but no usable prints were recovered (22 RT 4139).

Trace evidence was collected from the exposed lower portion of Ferguson's body prior to the removal of the garbage bag. (23 RT 4236, 4251.) After the bag was removed, trace evidence was collected from Ferguson's upper body, including what appeared to be a paint chip on her chin, a hair on her abdomen, and short, dark-colored hair stuck in blood on her arm. (23 RT 4237-4239, 4249-4250.) Vaginal swabs were also collected. (23 RT 4250-4251.)

Two days later, Dr. Reddy performed the autopsy on Ferguson's body. (27 RT 5416.) Ferguson was five feet, ten inches tall and weighed 105 pounds. (27 RT 5416.) She had needle tracks on both arms. (27 RT 5427.) Toxicology results showed 300 nanograms of unconjugated morphine per milliliter of blood. (27 RT 5464.) Based on the condition of Ferguson's body, the information provided by the coroner, and her own observations of the body, Dr. Reddy gave a very rough and qualified estimate that Ferguson had been dead between 24 and 48 hours prior to her body being refrigerated. (27 RT 5429-5431.)

Bands of redness around Ferguson's wrists, indicative of the use of ligature or other restraint, appeared to have occurred before her death. (22 RT 4114; 27 RT 5419, 5421, 5426-5427.) Ferguson's right wrist had three abrasions, suggesting the application of some sort of trauma or force. (27 RT 5426.) Scratch marks on her arms also occurred antemortem. (27 RT 5421.)

Dr. Reddy found a hemorrhage underneath Ferguson's scalp, to the left side of the top of her skull, which was consistent with a blunt-force trauma inflicted before death. (27 RT 5422.)

Petechial hemorrhaging was present in Ferguson's right eye and lips. (27 RT 5417.) Dr. Reddy also found hemorrhage on the thyroid cartilage in her neck. (27 RT 5419-5420.) Under both sides of her jaw was bruising that may have been caused either from the strangulation or blunt-force injury inflicted before Ferguson's death. (27 RT 5419.) The skin of Ferguson's neck was bruised and imprinted with a pattern abrasion consistent with cloth. (27 RT 5417-5418, 5426.) The bruising appeared to have occurred before death. (27 RT 5419.) From the interrupted pattern of linear abrasions on Ferguson's neck, Dr. Reddy opined a ligature was likely used. (27 RT 5425.) Ferguson also had scratch marks consistent with fingernail marks on her neck and hemorrhages in the neck muscles and pharynx. (27 RT 5418-5420.)

From the combination of the amount of hemorrhage and the cloth imprint on her neck, Dr. Reddy opined Ferguson was strangled both manually and with a ligature, or she was strangled manually after a cloth or clothing was placed on her neck. (27 RT 5426; see 22 RT 4113; see also 23 RT 4239-4240.) In addition, Ferguson's tongue was protruding and bitten between her teeth, indicating asphyxia. (27 RT 5421.) Dr. Reddy determined the cause of death to be asphyxia due to strangulation. (27 RT 5421.)

F. Murder Of Carol Miller (Count 4), February 1990

Carol Miller lived in an apartment on Mennes Avenue in Rubidoux and worked as a prostitute. (22 RT 4202-4203, 4206.) On February 6, 1990, Miller spent some of the afternoon with her friend and former roommate, Phyllis Hernandez, at an abandoned house where Hernandez had been staying. (22 RT 4203, 4207.) The house, on Sixth Street in Riverside, was known as “the shooting gallery,” because addicts would go there to “shoot up” or stay if they had nowhere else. (22 RT 4203-4204.)

Miller was a heroin user. (22 RT 4206.) That day, Miller was wearing a blouse, jeans, gold chains, bracelets, an anklet, and a purse she had fashioned for herself. (22 RT 4204-4205.) Hernandez left the house around 4:30 p.m. (22 RT 4204.) Around 9:00 p.m., she saw Miller get into a small blue car with a Caucasian man. (22 RT 4205-4206.) She and Miller had earlier arranged to meet that evening and spend the night together, but Miller never showed. (22 RT 4205.)

Suff owned a blue Toyota Celica. (38 RT 8206, 8211.)

About 8:00 a.m. two days later, Natoco Groves employees Lloyd Ward and Louie Sanchez discovered a body in the grapefruit grove. (22 RT 4159-4163, 4166-4167, 4171.) Aside from a black T-shirt covering the face, the body was naked. (23 RT 4274; see also 22 RT 4186, 4198.) The men walked to about 40 or 50 feet from the body, decided the person might be dead, then drove to the ranch’s headquarters and reported their discovery to the office. (22 RT 4164, 4171.)

The grove manager arrived within 15 minutes, parked on the main road, and walked to about 15 feet from the body, just to verify it was not a mannequin. (22 RT 4173-4174.) Having previously discovered human bodies at Natoco Groves, he knew to keep his distance. (22 RT 4175.) While Ward

and Sanchez kept others clear of the area, the manager left to call the Riverside County Sheriff's Department. (22 RT 4174-4175.)

The area of the grapefruit grove around the body was an isolated location off of the main road, serviced only by small dirt roads where the company had an ongoing problem with people dumping trash. (22 RT 4173-4175, 4177- 4178, 4181-4182, 4184-4185, 4192-4193, 4211, 4215-4216, 4229.) The body had not been seen there the previous day. (22 RT 4175.)

Personnel from the Riverside County Sheriff's Department and the California Department of Justice processed the area for tire and shoe impressions, trace evidence, and other evidence. (22 RT 4195-4196, 4210, 4214, 4220; 23 RT 4256-4257, 4283, 4410.) Investigators documented a number of relevant shoe and tire impressions. (22 RT 4196, 4216-4224, 4226-4227, 4229; 23 RT 4258-4267, 4284-4285.) Photographs were also taken of the shoe soles of the Natoco Groves personnel who first saw the body (22 RT 4165, 4176, 4183, 4217; 23 RT 4287), as well as of the tires of their vehicles (22 RT 4217; 23 RT 4287).

Attempts to recover usable latent fingerprints from the victim's body were unsuccessful, as were attempts to recover comparable fingerprints from a Shasta soda can and milk carton found near the body. (22 RT 4212-4213, 4223; 23 RT 4268-4269.) The victim's fingerprints identified her as Carol Miller. (23 RT 4291-4292.) She was 35 years old. (27 RT 5435.)

While at the scene, a criminalist collected trace evidence and vaginal swab samples from Miller's body. (23 RT 4268-4270, 4277-4280, 4410.) No drag marks were apparent near the body (22 RT 4225-4226; 23 RT 4283), but dirt and abrasions were visible on Miller's right knee and right forearm (23 RT 4275-4276). From the location of the dirt and abrasions and their similarities, as well as the absence of the same elsewhere on her body, it appeared Miller was either dropped or dragged along her right side. (23 RT 4276, 4289.)

Dr. Reddy conducted the autopsy the following morning. (27 RT 5435.) Miller was five feet, one inch tall and weighed 122 pounds. (27 RT 5435.) Circumferential bruising and redness of varying width was evident around both of Miller's wrists, consistent with having been bound or tied with a ligature before her death. (22 RT 4199- 4200; 23 RT 4276-4277, 4289; 27 RT 5438, 5445-5446.)

Miller also had old needle tracks on her arms, consistent with intravenous drug use. (27 RT 5438, 5448.) There were no fresh needle marks. (27 RT 5448-5449.) The toxicology report showed 100 nanograms of opiates per milliliter of blood, but no unconjugated morphine. (27 RT 5464-5465.)

Numerous small, irregularly-shaped scratch-type marks were present in the front of Miller's left thigh, both knees, in the back of both thighs and forelegs, behind the right ankle, and in the back of the left upper arm. (27 RT 5441.) The marks appeared to have occurred before Miller's death. (27 RT 5441.)

Miller had no significant hemorrhaging under the skin of her neck or in the throat organs, and her thyroid cartilage and hyoid bone were intact. (27 RT 5440, 5446.) However, she had petechial hemorrhages in her eyes, right eyelid, and lower lip. (27 RT 5435-5436.) The frenulum of Miller's lip – which attaches the upper lip to the gums – was torn, and an abrasion measuring 1 1/2 inches long and 1/4 inch wide was visible on her upper lip. (27 RT 5439-5440, 5454.) Such injuries were consistent with Miller struggling while something, probably a hand, was placed over her mouth smothering her. (27 RT 5440-5441, 5446-5447.) The black T-shirt covering Miller's face could have been used to apply pressure to Miller's mouth and to smother her. (27 RT 5454-5455; see 22 RT 4199.)

Due to the lack of trauma to Miller's neck and the lack of other evidence of strangling, Dr. Reddy opined Miller was smothered rather than strangled.

(27 RT 5447-5448.) Dried blood inside both ears and on the face could have been caused by bleeding resulting from asphyxia due to smothering. (27 RT 5448.)

Miller was stabbed five times in the chest area. (27 RT 5438; see also 22 RT 4199; 23 RT 4274-4275.) All five stab wounds penetrated Miller's sternal plate, and three penetrated her heart. (27 RT 5444; see also 27 RT 5438.) The resulting bleeding indicated that she was alive during the stabbing (27 RT 5441-5442), possibly while lying down at the crime scene (23 RT 4275, 4407-4408). On Miller's chest appeared to be a wipe mark of smeared blood from a wide knife or other cutting instrument. (22 RT 4199.) The two deepest stab wounds measured about three inches deep, while the others were one to two inches deep. (27 RT 5438, 5443.) No hilt marks were apparent on the body. (27 RT 5439, 5444-5445.) To have caused such wounds, the blade would have measured at least three inches long and about a half-inch wide, and would have had a single cutting edge. (27 RT 5443-5445, 5454.) The blade entered straight into Miller's body from the front. (27 RT 5439, 5448.) Dr. Reddy concluded Miller died of stab wounds to the chest, with signs of asphyxia. (27 RT 5442.)

Miller's stomach contained 200 cc of partially-digested food. (27 RT 5449-5450.) Based on all the information available to her, Dr. Reddy roughly estimated Miller had been dead between 24 and 48 hours prior to the body being refrigerated. (27 RT 5453-5454.)

G. Suff's Marriage To Cheryl Lewis, March 1990

In February 1990, Suff began dating 18-year-old Cheryl Lewis, who worked at the nearby Circle K store.^{10/} (31 RT 6321-6323.) Between the end

10. Because most of the trial witnesses who mentioned Cheryl Lewis used only her first name, and to avoid confusion with another witness with the

of February and beginning of March 1990, Cheryl moved into Suff's Chestnut Street apartment. (31 RT 6324.)

On March 17, 1990, Suff and Cheryl married. (31 RT 6323.) Suff was still working for Riverside County, at the warehouse on Washington Street. (31 RT 6324.) Suff usually left for work about 6:00 or 6:30 a.m. and would return around 5:30 or 6:00 p.m. (31 RT 6397-6398.) Sometimes Cheryl was still asleep when Suff left. (31 RT 6399, 6401.)

In June or July 1990, Suff bought a new pair of metal-frame tinted glasses, but continued to occasionally wear his original pair of metal-frame glasses. (31 RT 6343-6344.)

In September 1990, the couple moved to Cheryl's parents' house on Eucalyptus Street in Rialto. (31 RT 6325.) Around that time, Cheryl had a Toyota car. (31 RT 6330-6331.) A couple months later, Cheryl's brother bought the car. (31 RT 6331.)

Cheryl became pregnant in October 1990. (31 RT 6329, 6331.)

H. Murder Of Cheryl Coker (Count 5), November 1990

In October 1990, Cheryl Coker and her husband, Boyd, were staying at Westward Ho Motel on University Avenue in Riverside.¹¹ (23 RT 4294.) Both used cocaine and heroin on a daily basis, and Coker engaged in prostitution. (23 RT 4295, 4308-4309.) Coker had been "working" University Avenue for about three years. (23 RT 4297-4298.) Normally, Boyd would stay out of the room until Coker was finished with a "john," then Coker would meet Boyd to give him the money to buy more drugs. (23 RT 4295, 4300, 4302.) Boyd would return to the room, the couple would use the drugs together, and the

same surname, Suff's now ex-wife is referenced here by first name.

11. For clarity, Boyd Coker is referenced by first name only.

cycle would repeat. (23 RT 4295-4296.) Coker would typically have four or five customers in one evening. (23 RT 4301-4302.)

Around 8:00 p.m. on October 30, 1990, Coker gave Boyd \$60 to buy cocaine. (23 RT 4296, 4302.) Coker told Boyd she was going back out to earn money for the next morning's heroin. (23 RT 4296-4297.) Boyd left to buy cocaine, and Coker turned around and walked back up University Avenue. (23 RT 4297.) She was wearing a striped top, black jogging pants, and black slippers. (23 RT 4298.) Boyd returned to the motel room with the cocaine about 20 minutes later, but Coker never came back. (23 RT 4299, 4302.) It was very unusual for Coker to stay out overnight while prostituting, without informing Boyd. (23 RT 4299, 4302.)

For the days that followed, Boyd went out to University Avenue searching for Coker and asking other prostitutes if they had seen her. (23 RT 4299-4300.) Two days after Coker's disappearance, one of the prostitutes told a vice detective that Coker was missing. (23 RT 4303.) Boyd did not personally report his wife's disappearance because he did not want any contact with police, due to his criminal activity and prior criminal history. (23 RT 4303-4304.)

Late in the morning on November 6, 1990, Randolph Claunch was installing a laminating machine for HMT Manufacturing on Palmyrita Avenue in Riverside, and was having difficulty making the machine level. (23 RT 4311-4312.) Claunch walked out to the trash enclosure to look for a piece of wood to level the machine, as he had noticed some wooden pallets that had been placed in front of the Dumpster sometime between 4:00 p.m. the previous day and 10:30 a.m. that morning. (23 RT 4311-4313, 4322-4325.)

One of the doors to the dumpster was open, and the front area was filled with debris and tree branches.^{12/} (23 RT 4314, 4330-4331, 4347.) Finding no loose wood from the pallets, Claunch looked inside the dumpster and saw a foot sticking out from underneath some of the branches. (23 RT 4312-4313.) Since Halloween had just passed, Claunch at first thought the foot belonged to a mannequin or a dummy, but realized when he touched one of the toes that the body was human. (23 RT 4313-4315.) He called 911. (23 RT 4315-4316.)

Detective Mark Boyer of the Riverside Police Department, who at the time was the detective in charge of investigating the crime scene, arrived after other law enforcement personnel around 12:10 p.m. (23 RT 4336-4339.) Under Detective Boyer's direction, members of the investigative team photographed and documented the crime scene and any relevant evidence. (23 RT 4339, 4341-4343; see also 23 RT 4345-4347, 4351, 4352-4355, 4358, 4366.)

None of the victim's clothing or identification was found at the scene or in the nearby orange groves. (23 RT 4341-4343.) Detective Boyer later identified the victim, through her fingerprints, as Cheryl Coker. (23 RT 4339-4340.) She was 33 years old. (26 RT 5132.)

Coker's body was partially outside the open doorway of the dumpster, underneath some vegetation. (23 RT 4347-4348; 31 RT 6427.) Investigators were unable to match the vegetation in the dumpster with any trees or shrubs on the property. (23 RT 4357.) Most of Coker's body was lying outside of the dumpster enclosure, with her head roughly in line with the hinged doorway. (23 RT 4348.) Near her feet was a used condom. (23 RT 4350-4351, 4355, 4361, 4378-4379.) Her hands were "partially mummified," as they were very

12. Another witness recalled the door to the dumpster was only slightly ajar on November 1, and noticed the door was open wider on November 6 around 5:40 a.m. (23 RT 4332, 4334.)

dry and beginning to wrinkle, and the body showed a degree of decomposition. (26 RT 5134; see also 23 RT 4349, 4375-4376.) A large amount of blood had collected in her mouth, along with a quantity of maggots. (23 RT 4349; 26 RT 5134.)

Coker's right breast had been removed from her body. (23 RT 4341, 4350; 26 RT 5125.) The removed breast was found on the dirt roadway of a hillside about 30 feet behind the trash enclosure. (23 RT 4341-4342, 4351-4352, 4355.) No usable latent fingerprints were recovered from the removed breast. (23 RT 4363-4364.)

One whole and several partial shoe impressions were found near and underneath the wooden pallets that were in front of the dumpster. (23 RT 4359, 4367-4370, 4377-4378, 4380-4381; 31 RT 6427-6428.) The weather that day was dry, cool, windy, and clear, but the shoe impressions appeared to have been made while the dirt was wet, thereby preserving their quality. (23 RT 4369-4370, 4379-4380.)

An examination of the parking lot area around the dumpster did not yield any tire impressions. (23 RT 4366, 4376.)

Both at the crime scene and at autopsy, fiber and other trace evidence was recovered from different areas of Coker's body, including a fiber embedded in the skin where her right breast had been removed, and one embedded in an injury to her neck. (23 RT 4371-4373, 4381-4382.) Vaginal samples were also collected. (23 RT 4373-4375; 26 RT 5137-5138, 5162.)

Coker measured five feet, four and one-half inches tall, and 114 pounds. (26 RT 5132.) The pathologist who conducted the autopsy, Dr. Joseph Choi, noted a single, deep, thin ligature mark about 3½ inches long that had cut through the skin of Coker's neck and into the muscle, consistent with strong force being applied to a ligature around the neck from front toward the back and pulling mostly backward and toward the left. (26 RT 5125-5126, 5153-

5156; see also 23 RT 4349-4350, 4376.) Based on the injury, the ligature appeared to be 1/16 inch to 1/8 inch in size – thin – and very strong, such as a wire, plastic-covered wire, or nylon rope. (26 RT 5126-5127, 5154.) Hemorrhage in the soft tissue underneath the ligature mark indicated that strangulation occurred antemortem. (26 RT 5134.) It also indicated the ligature may have slipped down. (26 RT 5157.) Due to the lack of fracture in the hyoid bone or thyroid cartilage, Coker was likely only strangled with a ligature, rather than by hand. (26 RT 5134-5136, 5156-5157.)

Dr. Choi opined Coker was most likely strangled from behind. (26 RT 5155-5156, 5163.) Based on the location of the ligature mark and the depth of the wound on the right side, Dr. Choi surmised that if Coker's attacker choked her from behind with the ligature, the attacker was right-handed. (26 RT 5155-5156, 5165.)

On both sides of the neck were what appeared to be fingernail marks that were consistent with the victim trying to grab a ligature that was wrapped around her neck. (26 RT 5127-5128.) Four additional linear abrasions on the left back portion of the neck behind the ear could either have been caused by fingernails or by the ligature. (26 RT 5128-5129.) Due to decomposition, Dr. Choi could not determine with certainty whether there was petechial hemorrhaging in the victim's eyes – which would have been an indication of choking or strangulation – but the reddish brown color of the eyes indicated some hemorrhage may have been present and later decomposed. (26 RT 5129-5130.) Dr. Choi determined the cause of Coker's death to be ligature strangulation. (26 RT 5138.)

Small bruises on Coker's forearms and on the back of her legs appeared to have occurred prior to her death. (26 RT 5133.) Dr. Choi could not determine when the bruises to Coker's buttocks occurred. (26 RT 5133.)

From the jagged nature and size of the cuts, the pathologist opined a medium-size knife, such as a steak knife with a four- to six-inch non-serrated blade, had been used to remove Coker's breast. (26 RT 5139, 5159-5160.) Decomposition of the body affected Dr. Choi's ability to determine whether the blade was serrated, however. (26 RT 5165.) The absence of hemorrhage indicated the breast was removed postmortem, and the shape of the cut suggested the breast was probably held in one hand and cut off in a downward motion. (26 RT 5139, 5157.) Dr. Choi was unable to determine whether the assailant was right- or left-handed. (26 RT 5157.)

Toxicological testing of Coker's blood showed she had in her system 570 nanograms of cocaine and 580 nanograms of unconjugated morphine per milliliter of blood, in addition to 0.03 percent alcohol and 500 nanograms of opiates per milliliter of blood. (26 RT 5138, 5161-5162; 27 RT 5465.) Although Coker had opiates in her blood, Dr. Choi opined they were already in her system and would not have caused her death. (26 RT 5161.) Similarly, a chief toxicologist for Bio-tox Laboratory, which analyzed the blood, opined that while both the cocaine and morphine levels were high, the morphine would override the effects of the cocaine in this particular case. (27 RT 5471-5472.)

From the contents of Coker's relatively full stomach, Dr. Choi opined Coker was killed within an hour after ingesting the food. (26 RT 5136-5137, 5152-5153.) The food resembled something from a fast-food restaurant such as McDonald's. (26 RT 5137, 5162-5163.)

Based on the formation of maggots and the mummification of Coker's fingers (26 RT 5140-5143), along with consideration of the presence of rigor mortis (26 RT 5144), and the outside temperature the day the body was found in comparison to the body temperature (26 RT 5145-5147), Dr. Choi opined Coker had been dead for four to five days. (26 RT 5148-5149, 5164.) He was not aware, however, of the air temperature during the days prior to the body's

discovery. (26 RT 5164.) Dr. Choi was unable to determine how quickly after death the body was dumped. (26 RT 5149-5152.)

I. Murder Of Susan Sternfeld (Count 6), December 1990

In December 1990, Suff and Cheryl moved into the Vineyard Apartments complex on North Beechwood Avenue in Rialto. (31 RT 6325-6326.) There, Suff and Cheryl came to know a neighbor named Vivian Swanson, who shared an apartment with her boyfriend. (29 RT 5876-5879, 5904-5905; 31 RT 6326-6327.)

On or about December 19, 1990, George Vivian picked up Susan Sternfeld from her Moreno Valley residence for a morning court appearance and along the way left Sternfeld's baby with Sternfeld's mother in Rubidoux. (23 RT 4419-4420, 4426, 4433.) After Sternfeld's court appearance, Vivian took Sternfeld to his Woodcrest home for her to change clothes. (23 RT 4420-4422, 4426-4427.) From Vivian's house, Sternfeld called her mother to report on her court appearance, then Vivian and Sternfeld drove around to visit friends. (23 RT 4420-4421, 4426-4427.)

Later that morning, Sternfeld and Vivian shared about \$30 worth of heroin and cocaine, then Vivian drove Sternfeld home to get her car. (23 RT 4420-4422, 4426-4428). Vivian accompanied Sternfeld to park her car behind the Bob's Big Boy at University and Iowa Avenues so Sternfeld's boyfriend would not know someone had picked her up. (23 RT 4421-4422, 4427, 4429, 4435.)

Vivian and Sternfeld then discussed Sternfeld prostituting herself to get money for more drugs. (23 RT 4422-4423, 4428.) Sternfeld normally "worked" along University Avenue. (23 RT 4428-4429.) Around 2:00 p.m., Vivian dropped off Sternfeld at the Bank of America parking lot on Chicago Avenue at University Avenue. (23 RT 4424-4425, 4428, 4430, 4434.) In the

roughly 20 minutes it would take Sternfeld to walk from there to Iowa Avenue – where Vivian would be waiting in the Denny’s Restaurant parking lot – Sternfeld would try to “make one date.” (23 RT 4424-4425, 4430.) If she got a “date” before reaching Vivian’s car, Sternfeld would meet Vivian afterward so they could buy more drugs. (23 RT 4423-4425, 4428-4430.) If not, Sternfeld would just “call it a day” and they would go home. (23 RT 4425, 4429-4430.)

After leaving the car, Sternfeld walked to University Avenue and turned left toward Iowa Avenue. (23 RT 4424.) Vivian parked in the nearby Denny’s Restaurant parking lot and waited in his car for her. (23 RT 4424-4425, 4430-4431.) When Sternfeld failed to return by about 4:00 p.m., Vivian drove up and down University Avenue to look for her. (23 RT 4425, 4430-4431, 4435.)

Two days later, in the afternoon, Riverside Police officers were called to a Riverside address on Iowa Street, in an industrial complex near some orange groves, where a deceased female had been found in a trash receptacle enclosure area. (23 RT 4387-4390, 4396, 4401, 4404-4405.) Paramedics had already arrived and covered the body with a sheet. (23 RT 4388, 4391.) No dumpster was in the enclosure at the time. (23 RT 4389, 4397, 4405.) The left-hand door of the enclosure area was slightly ajar, revealing a body inside. (23 RT 4397-4400.) The body appeared wedged in the entryway of the enclosure. (23 RT 4400.) None of the victim’s clothing or personal items were found at or around the crime scene. (23 RT 4402.) She was, however, wearing a ring and an earring. (26 RT 5231.)

One of the responding officers, a Riverside Police Department vice detective, recognized the victim as a prostitute named Susan Sternfeld. (23 RT 4402.) She was 27 years old. (26 RT 5176.)

Latent fingerprints recovered from Sternfeld’s skin were not of sufficient detail for comparison. (23 RT 4393-4394, 4404.) Trace evidence and vaginal

swab samples were collected from Sternfeld's body. (23 RT 4409-4410, 4413-4414.) No shoe tracks were detected on the cement surface inside the enclosure (23 RT 4405-4407, 4413), nor was any tire track of sufficient detail (23 RT 4412-4413).

Sternfeld had some blood drainage and dried blood that had run in various directions about her face from her nose, indicating some bleeding occurred while she was in a position other than the way her body was found. (23 RT 4408-4409, 4411, 4413.) The lividity and pressure points on Sternfeld's body, however, were consistent with the position in which she was found. (23 RT 4407, 4412.) At the time of her death, Sternfeld was five feet, two inches tall and weighed 115 pounds. (26 RT 5176.)

Dr. Robert DiTraglia, a forensic pathologist, performed the autopsy. (26 RT 5167, 5175.) Sternfeld had petechial hemorrhages in the eyes. (26 RT 5177-5179.) There were also three abrasions in Sternfeld's neck area. (26 RT 5179-5180.) Underneath the skin and within the muscle of her neck, Dr. DiTraglia found hemorrhages, which were additional indications of strangulation. (26 RT 5184-5185, 5187-5188.) The right superior horn of the thyroid cartilage was fractured. (26 RT 5188-5189.) Dr. DiTraglia determined the cause of Sternfeld's death was strangulation, but could not determine whether she had been strangled manually or with a ligature. (26 RT 5190, 5201-5203, 5212-5213.) He could also not determine whether Sternfeld was strangled from the front or from behind. (26 RT 5213.)

Sternfeld had postmortem abrasions on the front of her right knee, on the outside of her right ankle, and on the upper buttocks to lower back. (26 RT 5180-5181.) She also had a number of abrasions, a healing laceration, and injection sites, scabs consistent with old injections, and needle tracks. (26 RT 5177, 5210.) Dr. DiTraglia found no defensive wounds on Sternfeld's arms, legs, or hands. (26 RT 5210-5212.)

A toxicology screening showed 40 nanograms of cocaine, 650 nanograms of benzylecognine, and 30 nanograms of morphine per milliliter of blood. (27 RT 5465.) Dr. DiTraglia opined that Sternfeld had been dead for between one hour and 54 hours. (27 RT 5259-5260.)

**J. Murder Of Kathleen Milne (a.k.a. Kathleen Puckett)
(Count 7), January 1991**

In December 1990, Kathy Puckett was living with her sister, Sylvia Griggs, near Norte Vista High School in Riverside. (23 RT 4443-4444.) At age 42, Puckett had been a heroin addict for most of her adult life, except for brief periods of sobriety. (23 RT 4444-4445.) Puckett would engage in prostitution along University Avenue to earn money for her drug habit. (23 RT 4445.)

Griggs suspected during the second week of December 1990 that Puckett had resumed heavily using heroin. (23 RT 4446.) Puckett would often leave in the evening around 7:00 p.m. and return around 11:00 p.m. (23 RT 4447-4448.) Though it was not unusual for Puckett to spend the night elsewhere, Griggs usually would know where she was. (23 RT 4448-4449.) Puckett did not have her own transportation. (23 RT 4447.)

Around 5:00 p.m. on January 18, 1991, as Griggs began preparing dinner in the kitchen, Puckett told her sister that she was going to see a family friend to make sure she had a ride to Whittier early the next morning for her daughters' soccer game. (23 RT 4446-4447.) Puckett was wearing a blue tank top, a medium-blue baseball jacket, blue jeans, and tennis shoes with white, terrycloth sport socks. (23 RT 4449-4451.) She was extremely nearsighted but wore only one contact lens, having lost the other. (23 RT 4450.)

The next day, around 3:30 p.m., La Mirada resident Palmer Hurley and her friend Tony Volpe were heading home from Lake Elsinore, when Volpe

decided he wanted to stop and have a beer. (23 RT 4455-4456.) Volpe was driving. (23 RT 4456.) Instead of entering the freeway at Lake Street, Volpe followed a small dirt road past the dead end of Lake Street. (23 RT 4456, 4460.) As Volpe backed the pickup truck out of a wide turn and prepared to stop to drink his beer, Hurley commented on the amount of garbage nearby. (23 RT 4456-4457, 4460.) Hurley then spied a body near the trash. (23 RT 4457-4458.) After Volpe also saw the body from the truck (23 RT 4457), they drove to the Lake Elsinore Sheriff's Station and reported it. (23 RT 4458, 4461.)

Between 3:30 and 4:00 p.m. on January 19, 1991, Riverside County Sheriff Deputy Peter LaBahn followed Volpe and Hurley to an area at the northeast city limits of Lake Elsinore, next to Interstate 15 freeway, where Lake Street ends at the east. (23 RT 4458, 4463-4464, 4497-4498.) Volpe stopped the truck 30 to 40 feet before the dirt road curved, and the couple stayed with the truck while Deputy LaBahn walked up to within ten feet of the body, carefully avoiding visible tire impressions along the way. (23 RT 4459, 4464-4465.) After confirming the presence of a dead body, Deputy LaBahn made the necessary notifications and secured the scene until investigative personnel arrived. (23 RT 4465-4467.) The body was later identified through fingerprints as Puckett. (23 RT 4506.)

The location appeared to be a fairly well-traveled dumping area, with a lot of trash and debris surrounding Puckett's body. (23 RT 4473-4475, 4493, 4498, 4506.) Prior to the crime scene being processed, photos were taken of the bottoms of Volpe's and Hurley's shoes, as well as of the tires on Volpe's truck. (23 RT 4459-4460, 4498-4499.) Investigative personnel then documented, photographed, and collected relevant evidence from the end of the pavement all the way up to the body and surrounding area. (23 RT 4470-4486, 4491-4492, 4494-4495, 4501-4502, 4504, 4509-4510, 4523.) While various potential shoe

impressions were photographed and documented (23 RT 4482, 4484, 4490-4492, 4505, 4510-4511), the impressions were not very clear (23 RT 4484-4485, 4511, 4519). Several of the impressions were very close to the body. (23 RT 4511.) Tire tracks and impressions appeared slightly off the roadway, toward the body, and were also photographed and documented. (23 RT 4482, 4484-4486, 4489-4491, 4512-4513, 4520-4521; see also 23 RT 4505, 4510-4512, 4520.) The dirt road was not particularly conducive to retaining impressions, however. (23 RT 4489, 4511.)

Puckett's body was lying on a red robe that had been weathered, tattered, and faded by the sun, indicating it had been there before the body arrived. (23 RT 4476, 4503.) None of her clothing was found, nor was any identification. (23 RT 4504.) On Puckett's lower back and upper buttocks were abrasions (23 RT 4477, 4505) that were consistent with the dragging of Puckett's body on the ground (23 RT 4513). Possible drag marks appeared nearly halfway between the edge of the roadway and the location of her body, and were also documented and photographed. (23 RT 4477-4478, 4483-4484, 4492, 4505, 4513.) One in the general proximity of tire tracks appeared to be an extended drag mark, and a few other possible marks appeared toward the body. (23 RT 4513.)

"Tape lifts" for trace evidence were conducted on Puckett's body, and the hair on her head and pubic area were combed for fiber and other trace evidence. (23 RT 4513-4514.) Vaginal swab samples were also collected from Puckett's body. (23 RT 4514.) No identifiable latent fingerprints were recovered from Puckett's body or items recently left at the scene. (23 RT 4479-4480, 4486-4487, 4502-4503, 4506.)

At the time the Puckett crime scene was processed for evidence, none of the tire impressions from the crime scenes of the earlier murders had yet been identified. (23 RT 4516, 4522.) Shortly after Puckett's murder, a homicide

task force was created due to the number of murders of prostitutes which had been occurring in Riverside County. (23 RT 4496-4497; see also 24 RT 4632.)

Dr. DiTraglia performed the autopsy on Puckett two days after her body was found. (26 RT 5213.) At the time of her death, Puckett was five feet, seven inches tall and weighed 119 pounds. (26 RT 5215.) She had needle tracks on her arms. (26 RT 5224.) The toxicological screening of her blood, however, was negative for both alcohol and drugs. (27 RT 5465-5466.)

A white sock with a blue stripe had been stuffed into the back of Puckett's throat, behind her tongue. (26 RT 5216, 5229; see also 23 RT 4478.) Petechial hemorrhaging was visible in Puckett's eyes and gums. (26 RT 5215-5216, 5217-5218.) She also had hemorrhages in the muscles of both sides of her neck, resulting from compression to the neck during strangulation. (26 RT 5225-5227.) The right superior horn of her thyroid cartilage had been fractured. (26 RT 5227-5228.) Dr. Traglia determined the cause of Puckett's death to be asphyxia from the combination of strangulation and the sock being jammed in the back of her airway. (26 RT 5227-5229.) He could not be absolutely certain, however, that the sock was not shoved into Puckett's airway after her death. (26 RT 5229.)

Abrasions on Puckett's forehead and right cheek appeared to have occurred prior to Puckett's death. (26 RT 5217-5218.) Additional abrasions on Puckett's left shoulder also likely occurred before her death. (26 RT 5218-5219.) An abrasion on Puckett's left knee appeared to have occurred before and close to the time of her death. (26 RT 5221-5222.) Postmortem abrasions on Puckett's lower back, buttocks, and heels were consistent with her body being dragged on the ground. (26 RT 5222-5224.)

Puckett's stomach held 300 cc of contents that resembled hot dogs. (26 RT 5232.) The stomach typically empties in two to four hours, but the process is variable. (26 RT 5232-5233.)

K. Murder Of Cherie Payseur (Count 8), April 1991^{13/}

For about four months prior to her death, Cherie Payseur lived with her grandmother, Ellis Peters, on Janet Avenue in Riverside. (24 RT 4555, 4558.) Peters was unaware that Payseur engaged in prostitution, but she knew Payseur was a drug user. (24 RT 4558.)

On April 26, 1991, Payseur left Peters's house on foot around 10:00 p.m. to buy some things at the nearby Vons store, about three or four blocks away. (24 RT 4556-4557.) Payseur had been deaf since birth, and wore a hearing aid. (24 RT 4556.) Although she could also read lips, Payseur would never leave the house without her hearing aid. (24 RT 4556-4557.) Payseur left the house wearing a pink top; an angora sweater; gray, stone-washed jeans; and some white shoes. (24 RT 4557.) She never returned. (24 RT 4557.)

Meanwhile, about a mile to 1 1/2 miles away (24 RT 4555) at the Concourse Bowling Alley on Arlington Avenue, Dylan Bourdages and two friends were bowling while waiting for the arrival another friend, who worked until about midnight. (24 RT 4530, 4535.) The bowling alley was relatively busy that night. (24 RT 4535, 4544.) Sometime around midnight, Bourdages and his two friends walked out to the back parking lot area to get some air as they waited for the third friend. (24 RT 4530-4531, 4535.)

The back parking lot area was deserted of both people and cars. (24 RT 4537.) It was usually used only by maintenance personnel and did not have any direct street access; one would have to drive around to the front to exit. (24 RT 4540-4541 4552.) Lighting of the area was also darker than in front. (24 RT 4551-4552.) Bowling alley patrons could only access the area by walking around from the side or the front of the building, as the back door was accessible only to maintenance workers. (24 RT 4551.)

13. The jury did not return a verdict on this count, and at sentencing, it was dismissed by the trial court.

As the young men walked along the back alley from one of the side entrances, they noticed what appeared to be a mannequin lying in a dirt planter at the back of the building. (24 RT 4531-4533, 4541, 4570-4571.) Upon closer inspection – but without stepping into the dirt or touching the body – they realized it was a human. (24 RT 4531-4533.) After a brief moment of panic, the young men notified security guards at both entrances to the bowling alley of their discovery. (24 RT 4534, 4536-4537, 4541.) Bowling alley manager Howard Bingham, who was also a reserve sergeant for aerosquadron unit operations in San Bernardino, immediately called 911, then went out to the area of the body. (24 RT 4541-4542, 4544-4545.)

Bingham was the first to enter the area after the young trio's discovery, but a patron who had followed Bingham outside managed to cover the body with a jean jacket before Bingham could stop him. (24 RT 4543, 4545-4547.) Rather than risk further contamination of the crime scene, Bingham left the jacket covering the body. (24 RT 4547-4549; see also 24 RT 4562.) Thereafter, Bingham blocked other bystanders from entering the area past the corner of the building. (24 RT 4542, 4545-4549, 4560-4561.)

About 12:36 a.m., Riverside Police Officer Randy Ryder was the first to arrive at the scene, and determined the body to be lifeless. (24 RT 4560-4561, 4563, 4565-4566; see also 24 RT 4537, 4543-4544, 4550-4551.) Paramedics arrived shortly thereafter and removed the jacket from the body. (24 RT 4562-4563, 4566, 4580-4581.) Sergeant Mark McFall of the Riverside Police Department, who was in charge of the crime scene, did not attempt to track down the person who put the jacket on the body, as patrol officers had likely already interviewed him. (24 RT 4579.) The jacket was taken into evidence and later analyzed for trace evidence. (24 RT 4579, 4611.)

While most of the detectives were on the scene and conducting their investigation, the automatic sprinklers suddenly turned on. (24 RT 4567, 4578-

4579, 4587, 4590-4592; see also 24 RT 4550.) The detectives reacted by stepping on the sprinkler heads to hold them down and covering them with cups, but they remained on for only a minute or two. (24 RT 4568, 4577, 4582, 4587, 4598-4599.) The area was already damp before the sprinklers turned on. (24 RT 4580, 4598.) Underneath the body, the ground remained dry despite the sprinklers. (24 RT 4598.) While spray from the sprinklers did hit the body, potentially damaging or washing away trace evidence (24 RT 4579, 4592, 4597, 4599, 4600-4601), Sergeant McFall did not see evidentiary items being washed or damaged from the sprinklers (24 RT 4579; see also 24 RT 4607).

Any remaining trace evidence was collected from wet areas of the body by absorbing the water and any trace evidence from the body into a square piece of cotton cloth. (24 RT 4590, 4592.) Water from the sprinklers had fallen on both of the victim's legs, a portion of her groin area, her left arm, and possibly a little portion of the left side of her torso. (24 RT 4592, 4601-4602.) The traditional "tape lift" method was used to collect any trace evidence on the dry front part of the body. (24 RT 4592.) At the crime scene, a tape lift was also performed on the victim's pubic area (24 RT 4593), and vaginal swab samples were taken (24 RT 4595-4596). The body was also checked for latent fingerprints, but none of identifiable quality were found. (24 RT 4615-4616.)

At the autopsy, any trace or fiber evidence was collected from the victim's head and pubic hair by method of combings and brushings. (24 RT 4593, 4596.) Trace evidence was also collected from the body bag in which the victim was transported to the coroner's office. (24 RT 4597, 4599-4600.)

The victim was later identified as Payseur. She was 24 years old. (27 RT 5264.) Payseur had a visible injury to the neck, and none of her clothes were found. (24 RT 4573-4574.) A cigarette butt and a paper tissue or napkin were collected from the scene. (24 RT 4580, 4606-4607.)

In the parking lot, a technician photographed indistinct tire impressions and shoe imprints left in patches of dirt, and tire marks visible on the asphalt. (24 RT 4574-4576; see also 24 RT 4580, 4594.) Shoe impressions in and around the planter area, next to and near Payseur's body, were photographed. (24 RT 4574-4575, 4580, 4584-4586, 4594, 4605-4606.) A number of shoe impressions of good quality were documented. (24 RT 4610.) A partial shoe impression was also found underneath the small of Payseur's back. (24 RT 4605-4606.) Photos were also taken of the shoes of both officers and civilians who had approached the body. (24 RT 4574, 4588.)

Dr. DiTraglia performed the autopsy on Payseur in the afternoon of April 28, 1991. (26 RT 5237.) At the time of her death, Payseur was five feet, four inches tall and weighed 100 pounds. (26 RT 5237.)

Although Payseur's body showed no definitive needle punctures or tracks, there were some bruises and scabs on her forearms which were consistent with intravenous drug use. (26 RT 5237-5238; 27 RT 5255.) Payseur's toxicology report identified 30 nanograms of morphine per milliliter of blood, which in Dr. DiTraglia's opinion was not high enough to be fatal. (27 RT 5255, 5265-5266, 5466.)

Payseur had a large hemorrhage in the white of her left eye which was consistent with blunt-force trauma such as being hit in the face, as well as both swelling and bruising around the same eye. (26 RT 5238-5240; 27 RT 5252-5255.) The eye injury appeared to have occurred either at the time of or hours before her death. (26 RT 5240-5241; see also 27 RT 5256.) Dr. DiTraglia also saw abrasions on Payseur's back, on the back of her thighs, and on her right knee that appeared to have occurred before her death. (26 RT 5243; 27 RT 5255.)

On Payseur's neck, Dr. DiTraglia observed two horizontal linear abrasions (26 RT 5242; 27 RT 5255), which would support a finding of

strangulation as a possible cause of death (27 RT 5262). Payseur also had petechial hemorrhages inside her mouth on the upper gums, which was consistent with strangulation or asphyxiation. (26 RT 5238; 27 RT 5261-5262.) She had no hemorrhaging or fractures about the neck, however (26 RT 5243; 27 RT 5253), nor were there any petechial hemorrhages in her eyes (27 RT 5250, 5261-5262).

Dr. DiTraglia could not conclusively determine the cause of Payseur's death, but he opined based on the horizontal abrasions on her neck, along with the petechial hemorrhages in her mouth, that she could have been strangled or suffocated. (26 RT 5245.) The coroner was also unable to determine a clear cause of death, though he thought Payseur likely died from other than natural causes, possibly suffocation. (27 RT 5263.) Dr. DiTraglia made no other findings he thought were related to Payseur's death, though there was an abnormal finding in her liver. (26 RT 5246; 27 RT 5254-5255.) Also considering the location of Payseur's body and that she was completely naked, Dr. DiTraglia concluded it was very unlikely she died of natural causes. (26 RT 5246; 27 RT 5263-5264.)

At the time the shoe impressions at the Payseur crime scene were documented, no preliminary analysis of the shoe impressions from the prior crime scenes had yet been conducted. (24 RT 4603.) Usually, a shoe impression is analyzed in comparison with a shoe that a suspect may have worn, to either place the shoe at or eliminate it from a crime scene. (24 RT 4612-4614.)

Suff's wife, Cheryl, kept a calendar of appointments, days she worked, County paydays, and other notations (31 RT 6334) including to memorialize an event after it had passed. (31 RT 6385-6387.) April 26, 1991, was noted in Cheryl's calendar as a payday for county employees (31 RT 6335-6336) and for Suff's "earthquake show" in Temecula that night. (31 RT 6336, 6414.) Suff

had told Cheryl that he had to work doing “earthquake shows” from after he got off work until late at night, requiring travel to different places in Riverside and Indio. (31 RT 6334-6335.) He also told Cheryl he had to put on one or two such shows per month. (31 RT 6336, 6413.) Suff would come home between 10:00 p.m. and midnight after doing an “earthquake show.” (31 RT 6413-6414.)

The Supply Services Division where Suff worked stocked “earthquake kits,” which contained disaster survival items and a first aid kit, to sell to County departments and employees and to assist with disaster preparedness. (29 RT 5786, 5791.) At some point, Suff was responsible for setting up and staffing a display of the kit. (29 RT 5786-5788, 5791-5792.) However, this occurred on at most six occasions: at two or five Riverside County locations, plus the County Administration Center in Indio. (29 RT 5786-5788, 5791-5792.) This assignment would never take place outside normal working hours. (29 RT 5787.) While on-site, Suff would answer questions about the kit and accept orders. (29 RT 5792.) Suff never would have worked at any display past 6:00 p.m., or the overtime would have been recorded on his timecard. (29 RT 5787-5788.)

L. Murder Of Sherry Latham (Count 9), July 1991

While taking a walk along Grape Street in the early morning of July 4, 1991, Lake Elsinore resident Dean Mack saw the naked body of a woman in the bushes. (24 RT 4691-4694.) Mack returned home and called 911. (24 RT 4694.) He then drove his pickup truck back to Grape Street, parked on the roadway about 15 feet behind the line of the body to avoid parking where someone else may have parked, and waited for police to arrive. (24 RT 4694-4696.)

Riverside County Sheriff's Deputy Carl Benson was dispatched to the location around 6:24 a.m. (24 RT 4619-4620.) From the roadway, Mack pointed Deputy Benson to an area in the field about 12 feet east of the roadway's edge, where a body was lying in some overgrown weeds and brush. (24 RT 4620-4623, 4628-4629, 4638-4639.) Deputy Benson walked about four to five feet toward the body, then returned to the pavement to notify his supervisor of a possible homicide. (24 RT 4621-4622.)

Investigator Creed of the Riverside County Sheriff later identified the victim by her fingerprints as Sherry Latham. (24 RT 4646.) She was 37 years old. (27 RT 5267.) Latham had worked as a prostitute on Main Street in Lake Elsinore since about 1986. (24 RT 4658-4659.) While on patrol or conducting investigations during that time, Investigator Creed had contacted Latham 10 to 15 times. (24 RT 4657-4659.) During the last year or two prior to her death, Latham had been using drugs. (24 RT 4659.)

Grape Street was a frontage road that ran parallel to Interstate 15 freeway and intersected with Railroad Canyon Road. (24 RT 4622, 4633, 4636-4637.) There was trash in the area of the field (24 RT 4629), though it was not visible from the roadway (24 RT 4624-4625). None of Latham's clothing or personal property was found at the scene. (24 RT 4629, 4670.) It was a hot summer day, reaching temperatures over 100 degrees as the day progressed. (24 RT 4631, 4641.) During the course of the day, Latham's body began to visibly decompose. (24 RT 4640-4641, 4648, 4670, 4686.)

Latham's body was lying face-down. (24 RT 4640, 4670.) No obvious trauma was visible from her back side. (24 RT 4670.) Her right index finger and thumb were wrapped around a weed, as if clutching it. (24 RT 4646-4647.) At the crime scene, Latham's body was tape-lifted and her head and pubic hair were combed for trace evidence. (24 RT 4670, 4680.) Vaginal swab samples were also collected. (24 RT 4670-4671, 4680-4681.) Due to the

decomposition of her body, investigators did not attempt to lift fingerprints off of Latham's body. (24 RT 4674.)

The ground in the area was very hot and very dry. (24 RT 4651.) No shoe impressions at all were located around the body. (24 RT 4642, 4653, 4655, 4671-4672, 4675.) There was no sign of struggle or other disturbance in the sagebrush around the body. (24 RT 4651, 4676.) A total of five tire impressions were found and documented based on their location in the area of the crime scene. (24 RT 4642-4643, 4648-4649, 4664-4666, 4673.) Three of medium quality were on the pavement of the north shoulder of Grape Street, about 15 or 20 feet to the east of the body; two were located a more considerable distance east, about 60 feet away, also on the north dirt shoulder of Grape Street. (24 RT 4643-4646, 4653-4655, 4676.) A Benson cigarette and empty pack of Virginia Slims that appeared to have been recently placed at the scene were taken into evidence. (24 RT 4652-4653.)

Two days later, Dr. DiTraglia conducted the autopsy on Latham. (27 RT 5250, 5267.) At the time of her death, Latham was five feet, eight inches tall and weighed 127 pounds. (27 RT 5267-5268.) The subsequent toxicology results showed cocaine, opiates, and morphine in Latham's blood. (27 RT 5276, 5466.) Latham's blood also contained a .07 percent alcohol level, but the amount was consistent with the degree of decomposition of her body, as ethyl alcohol is produced by the decomposition process. (27 RT 5276-5277, 5466.)

Due to the severe state of decomposition of the body, which was recovered face-down, Dr. DiTraglia was unable to make any determination whether Latham had petechial hemorrhaging in her eyes. (27 RT 5251, 5268-5270.) Aside from tattoos on Latham's right knee and left shoulder and a postmortem puncture of the skin on her left abdomen, Dr. DiTraglia was unable to identify anything of note during his external examination of the decomposed body. (27 RT 5270.)

The inside of Latham's body had not decomposed as severely as the outside. (27 RT 5271.) Within the left and right muscles of Latham's neck, Dr. DiTraglia located hemorrhages. (27 RT 5272-5273.) The left superior horn of Latham's thyroid cartilage was fractured. (27 RT 5273.) Based on his findings, Dr. DiTraglia determined the cause of Latham's death to be strangulation. (27 RT 5274.) He was unable to determine whether she was strangled by hand or by use of a ligature. (27 RT 5278.)

Dr. DiTraglia opined that Latham was unconscious and dying at the scene when she grabbed the plant that was later found clutched in her hand. (27 RT 5278.) Another possibility was that during the process of rigor mortis or when the body was dumped, the plant got into her hand. (27 RT 5278-5279.)

M. Murder Of Kelly Hammond (Count 10), August 1991

In August 1991, Kelly Whitecloud was living in various motels along University Boulevard in downtown Riverside. (24 RT 4698-4699.) Whitecloud was a drug user and had been a prostitute since being paroled from prison in April 1991. (24 RT 4699-4700.) She used about two grams of heroin and an eighth of an ounce of cocaine daily, throughout the day, and engaged in prostitution to support herself. (24 RT 4725-4726.) Five years earlier, while in custody, Whitecloud met Kelly Hammond, who was also a prostitute and drug user. (24 RT 4700.) Hammond also worked along University Avenue and other areas of the city. (24 RT 4752.)

Sometime in the morning on August 15, 1991, Whitecloud and Hammond bought some drugs. (24 RT 4701, 4727.) After using the drugs, Whitecloud and Hammond returned to their motel rooms to get cleaned up. (24 RT 4702-4703.)

That evening, Whitecloud worked as a prostitute on University Avenue between Kansas and Park Street. (24 RT 4704.) Between 10:00 p.m. and midnight, a man pulled over and Whitecloud got into his van. (24 RT 4704-4705, 4716, 4729-4730, 4750.) Whitecloud had injected cocaine in the afternoon and used heroin an hour to an hour and a half prior to the van's arrival. (24 RT 4728.)

The van was bluish-gray. (24 RT 4716.) The driver, passenger, and single rear passenger seats were like captain's chairs. (24 RT 4716-4717, 4733-4734.) On the center console between the two front seats was what looked like a Bible, though Whitecloud did not see any words on the front cover, and the interior carpet was grayish in color. (24 RT 4717, 4734-4735; 26 RT 5065, 5071.)

The van driver was a Caucasian man, about five feet, eight to ten inches tall, and around 35 to 40 years old. (24 RT 4717, 4751; 26 RT 5065, 5072.) He had a stocky build and weighed about 170 pounds. (24 RT 4718; 26 RT 5065, 5072.) His short, brown hair was parted to the side, he wore wire-framed glasses with big lenses, and he had no facial hair. (24 RT 4718; 26 RT 5065, 5073.)

While in the van, Whitecloud agreed to the man's offer of \$20 for "a straight lay." (24 RT 4705-4706, 4730.) She then told the man she was hungry because she was pregnant, and wanted to go to McDonald's. (24 RT 4706.) The man took Whitecloud to the McDonald's on University Avenue, about a half a block to a block away. (24 RT 4706, 4730-4731.) Whitecloud and the man went inside the McDonald's and Whitecloud ordered food, for which the man paid. (24 RT 4707, 4731.) Upon seeing her sundae was made incorrectly, Whitecloud "raised a little bit of hell." (24 RT 4707, 4732; 28 RT 5711; see also 28 RT 5709-5710.)

Ben Amos was the manager of the University Avenue McDonald's at that time. (28 RT 5708.) Amos recognized Whitecloud when she entered the restaurant, as she had previously been in the restaurant a couple times. (28 RT 5709-5710.) He suspected Whitecloud was a prostitute and that she had used drugs in the bathroom on prior occasions, so he tried to keep an eye on her. (28 RT 5710, 5727.)

Amos noticed that Whitecloud was with a Caucasian male who was wearing cowboy boots, a Western shirt, and a Western-style belt buckle. (28 RT 5711.) The buckle was round, silver and gold in color, and had the initial "B" in the middle. (28 RT 5711.)

When Amos heard Whitecloud making a fuss about her sundae, he instructed one of the employees to make a new one right away, as Whitecloud was upset and had become a little loud. (28 RT 5711.) Whitecloud thought the man seemed nervous when Amos came out. (24 RT 4707-4708, 4732.) Amos thought the man looked embarrassed. (28 RT 5727.) Whitecloud ate the food as they walked out to the van. (24 RT 4708, 4732-4733.) Amos did not see Whitecloud and the man leave. (28 RT 5712.)

Back inside the van and pulling out of the McDonald's lot, the man told Whitecloud he only had \$10 left to pay her after buying the food. (24 RT 4709, 4733.) The man also said he wanted to take Whitecloud to the orchards. (24 RT 4708; compare with 24 RT 4745; 26 RT 5068.) Whitecloud protested, saying, "Why do I want to go there when I have my room?" (24 RT 4708.) As they began to argue, Whitecloud noticed the expression on the man's face had changed, and she became scared. (24 RT 4708-4709.) Whitecloud told the man to "fuck off" and said she wanted to get out of the van, but the man would not stop. (24 RT 4709, 4750.) Whitecloud opened her door, held it open with her leg, and jumped out of the van as the man continued to drive about 20 miles per hour. (24 RT 4709, 4743-4744; but see 26 RT 5069-5070.) She fell flat on

her stomach near Stop 'N Go on University Avenue, causing her to go into premature labor from a ruptured placenta. (24 RT 4709, 4743, 4746.)

The man drove about a half a block to the next corner and picked up Hammond. (24 RT 4709-4710, 4746-4747.) Whitecloud screamed to Hammond that “it wasn’t worth it,” and, “Don’t go. Don’t go.” (24 RT 4710, 4749.) Hammond looked back at Whitecloud, smiled, and said she would come back. (24 RT 4710-4711.) Hammond never returned. (24 RT 4711.)

Early the next morning, James Tyhurst was turning off of Sampson Street and driving to his office in Corona when he discovered a woman’s body down the alleyway on the left side. (24 RT 4758.) Tyhurst drove past the body to his office, where he immediately called police. (24 RT 4758-4759.) Corona Police received the call around 6:46 a.m. (24 RT 4762-4763.)

Corona Police Detective Dale Stewart arrived on the scene after another officer had secured the scene. (24 RT 4768-4769.) Due to the summer heat and the media attempting to photograph the body, Detective Stewart raised a blue tarp to shield the body. (24 RT 4770, 4775-4776, 4793.) Aware of the serial murders that had been occurring, Detective Stewart contacted the Riverside County Sheriff’s Department Lake Elsinore station to investigate the scene. (24 RT 4770-4771.)

Riverside County Sheriff’s Detective John Davis, who was assigned to the homicide task force investigating the murders of prostitutes in Riverside County, arrived at the scene around 9:00 a.m. (24 RT 4772-4773.) The body was later identified through fingerprints as Kelly Hammond. (24 RT 4778-4779.) She was 27 years old. (27 RT 5307.)

Hammond’s naked body was lying face-down in a gravel alleyway about 400 feet long and 25 feet wide. (24 RT 4774-4776, 4781-4782.) No distinguishable tire tracks or shoe impressions were visible in the alley. (24 RT 4770, 4784.) The alley was accessible only from Sampson Street. (24 RT

4782-4783.) None of Hammond's clothes or personal belongings were located in the area. (24 RT 4783-4784.)

Hammond's right arm was bent at the elbow and tucked underneath her abdomen; her left arm was bent at the elbow with her left hand resting on the ground with the palm facing upward; her left leg was drawn up into her chest area; and her right leg was extended outward. (24 RT 4777.) The soles of Hammond's feet were clean, indicating her body was likely dumped at that location, and there was an abrasion on the back of her left heel. (24 RT 4777-4778.) No usable latent fingerprints were recovered from Hammond's body. (24 RT 4789-4790, 4796.) At the scene, tape lifts were collected from the body to preserve any trace evidence, and as were vaginal samples. (24 RT 4794-4798, 4805.) Unlike with the previous crime scene samples, however, the criminalist who collected them took the vaginal samples directly to the laboratory to immediately look for some investigative information, such as the presence of semen. (24 RT 4797-4801.)

Dr. DiTraglia performed the autopsy on Hammond's body two days later. (27 RT 5279.) Hammond was five feet, nine inches tall and weighed 130 pounds at the time of her death. (27 RT 5307.)

Hammond had petechial hemorrhages in the eyes and mouth. (27 RT 5280, 5290-5291, 5297.) Dr. DiTraglia also found bleeding inside Hammond's tongue, which was consistent with asphyxial death. (27 RT 5293-5294.) Across the back of her neck was an unusual, linear-type of injury measuring 8.5 cm by 0.7 cm. (27 RT 5282, 5289-5290.) Due to the color of the injury, the dried surface of the skin, and the lack of bleeding underneath it, Dr. DiTraglia was unable to determine whether the injury occurred antemortem, perimortem, or postmortem. (27 RT 5289-5290, 5304-5305.) He did find, however, that the injury had many characteristics of a ligature injury. (27 RT 5290; see also 24 RT 4778.) Across the front of Hammond's neck was a fairly faint and

superficial type of abrasion measuring 9 cm by 3 cm, again consistent with a ligature injury, the timing of which Dr. DiTraglia was unable to determine. (27 RT 5291-5292.) Dr. DiTraglia also found four separate hemorrhages under the skin of Hammond's neck. (27 RT 5293-5294, 5297.)

Hammond had two lacerations in the middle of her forehead, surrounded by abrasion, which appeared to have occurred prior to her death. (27 RT 5280-5281, 5292.) She also had several abrasions on the right side of her forehead, right cheek, chin, and nose. (27 RT 5281.) Dr. DiTraglia was unable to determine if the abrasions occurred at or after the time of her death. (27 RT 5281.)

Numerous abrasions were also present on Hammond's knees. (27 RT 5284-5286.) The abrasions appeared to have occurred either at or after the time of her death, or a combination of the two. (27 RT 5285-5286.) Abrasions on the back sides of both feet and on the front and back of Hammond's left ankle appeared to have occurred before her death. (27 RT 5286.) On the inside of Hammond's right ankle were multiple abrasions that were consistent with being postmortem. (27 RT 5287.)

Additional abrasions in the area of Hammond's right elbow occurred prior to her death. (27 RT 5287.) Around her left wrist was another antemortem abrasion, which was nearly circumferential and measuring 0.7 cm wide, consistent with her wrist having been bound. (27 RT 5287-5288.) The left wrist was also bruised around the abrasion. (27 RT 5288.)

Dr. DiTraglia also observed needle tracks on Hammond's body. (27 RT 5280.) Based on his autopsy findings and toxicology reports from a blood sample drawn during the autopsy, Dr. DiTraglia determined the cause of Hammond's death to be strangulation with acute opiate intoxication possibly contributing to her death. (27 RT 5295, 5297.) The toxicology report showed 50 nanograms of Codeine and 350 nanograms of morphine per milliliter of

blood. (27 RT 5295-5296, 5467.) Because the amount of morphine in Hammond's blood was significant, he could not exclude the possibility that it played a significant role in her death, but Dr. DiTraglia was certain that strangulation was the cause of her death. (27 RT 5297-5298.) Hammond had pneumonia, making a determination of the time of death based on her core temperature even more difficult. (27 RT 5302.)

Around 10:00 a.m. the morning her body was found, having recognized Hammond as a prostitute who had worked on University Avenue, Riverside Police Department Detective Christine Keers contacted Whitecloud on University Avenue and asked whether she had seen Hammond the previous night. (24 RT 4718-4719; 26 RT 5049-5050, 5067-5068.) Whitecloud reported what had transpired the previous night and gave Detective Keers a description of the van and its driver. (24 RT 4719; 26 RT 5050.) That day, she described the man as a Caucasian male, five feet, ten inches tall, in his late 40s, and with a medium build, slight mustache, and wire-rim glasses. (26 RT 5051-5052, 5063, 5065; see also 28 RT 5630.) The man wore a long-sleeved plaid shirt, faded blue jeans, and orange construction boots. (26 RT 5065; 28 RT 5621, 5628.) Whitecloud told Detective Keers the man drove a gray-blue, Astro-type van. (26 RT 5052, 5064; 28 RT 5628.)

The next day, Whitecloud and Detective Keers met with an artist, who created a composite sketch of the man according to Whitecloud's descriptions. (24 RT 4720-4721, 4752; 26 RT 5050-5051, 5062-5063.) A mustache was originally drawn on the composite sketch, but it was removed because it did not look right to Whitecloud. (26 RT 5063-5064, 5071-5072.) Within a day or two, Detective Keers drove Whitecloud to several car lots in the Riverside Auto Center, and Whitecloud identified a van she thought was similar in appearance to the one she had seen the previous night. (24 RT 4719-4720; 26 RT 5052-5053; 28 RT 5628-5629.) Detective Keers did not take Whitecloud to a

Mitsubishi dealership. (26 RT 5053, 5070; 28 RT 5628.) From the information Whitecloud provided, Detective Keers drafted a police bulletin dated August 19, 1991, and disseminated it and the sketch to other law enforcement personnel. (28 RT 5606.)

Detective Keers contacted Amos, the manager at McDonald's, and asked whether he recalled an incident when a woman made a ruckus over a sundae. (28 RT 5712, 5725-5726.) Amos remembered the incident. (28 RT 5712.) During his interview with Detective Keers, Amos said he did not remember the male who was with Whitecloud at the McDonald's. (28 RT 5726.)

In January 1992, however, Amos saw Suff's photo in a newspaper article about Suff's arrest for murder of prostitutes. (28 RT 5728.) Amos recognized Suff's photo as being of the man who was with Whitecloud. (28 RT 5726-5728.) At trial, he identified Suff as the male who accompanied Whitecloud that day. (28 RT 5720.) Amos said he did not inform Detective Keers when he recognized the newspaper photo because he was in college, working full-time, and very busy. (28 RT 5728.) He assumed Detective Keers would eventually call him back, but no one contacted Amos until he was subpoenaed for trial. (28 RT 5728-5729.)

On January 23, 1992, while Whitecloud was in custody in northern California, Detective Keers showed her some photographic lineups. (24 RT 4721; 26 RT 5073-5076.) Whitecloud had not seen any newspaper or television reports about a suspect being arrested regarding the prostitute murders in Riverside county. (24 RT 4724; 26 RT 5079.) Prior to showing the lineups to Whitecloud, Detective Keers read a photographic lineup admonition from a police department form, essentially telling Whitecloud she was not obligated to identify anybody in the lineup, and that it was just as right not to pick someone rather than to incorrectly pick someone. (26 RT 5075.) From a photographic lineup of people wearing glasses, Whitecloud chose number five,

Suff, as the man who was driving the van. (24 RT 4723; 26 RT 5076.) From a photographic lineup of people without glasses, Whitecloud chose number four, also Suff. (24 RT 4723-4724; 26 RT 5076-5077.) At trial, Whitecloud identified Suff as the van driver who picked her up. (24 RT 4724.)

N. Murder Of Catherine McDonald (Count 11), September 1991

Catherine McDonald had lived in Riverside for less than a year and had worked as a prostitute on University Avenue, west of Chicago Avenue. (25 RT 4847.) She also used cocaine. (25 RT 4847.) McDonald's apartment on Lou Ella Lane was no more than a block and a half from University Avenue, between Chicago and Ottawa Avenues. (25 RT 4905.)

About 7:00 or 8:00 p.m. on September 12, 1991, McDonald told her 12-year-old daughter that she was going to the store, and left the apartment. (25 RT 4841-4844.) McDonald never returned. (25 RT 4843.) When McDonald left the apartment, she was wearing some tight black pants, a black shirt, a black jacket, and shoes. (25 RT 4843.) She may also have been wearing a necklace with a cross, earrings, and some rings. (25 RT 4843-4844.)

Sometime in the early afternoon of the following day, Gregory Lewis was driving along a back access dirt road from Summerhill Drive toward Canyon Lake and had turned left onto a second dirt road when, as he crested the top of the hill, he caught sight of a human body. (25 RT 4850-4854, 4865.) Lewis stopped his truck about 20 feet from the body and attempted to call 911 from his cell phone, but had poor reception. (25 RT 4854-4855, 4859.) He backed up to the first dirt roadway while again calling 911, and was connected. (25 RT 4855.)

Lewis met Riverside County Sheriff's deputies shortly after 1:00 p.m. at the corner of Railroad Canyon and Interstate 15 freeway, and rode with the

deputies to show the location of the body. (25 RT 4855-4857, 4863, 4863-4867.) As the deputies approached the body on foot, they walked very slowly, looking for relevant evidence. (25 RT 4867, 4875.) Tire tracks and impressions were visible leading to and in the area around the body. (25 RT 4875, 4913, 4918-4924.) The dirt in the road was fairly soft, resulting in very good tire impressions, but it became more gravelly and hard-packed as it approached the body. (25 RT 4875-4876, 4919, 4928, 4933, 4935.) The soles of Lewis's shoes were photographed by Sheriff's personnel that day. (25 RT 4859.)

From the most recent tire impressions, it appeared a vehicle had driven down the road, turned into the nearby dirt access road, then turned around and back toward the body. (25 RT 4919-4923, 4934, 4939-4940.) The tire tracks and impressions were photographed and documented, as were shoe prints and impressions located on the dirt road near the body. (25 RT 4881, 4889-4895, 4897, 4899, 4915-4927.) All the shoe impressions near the body appeared to be of the same shoe print pattern. (25 RT 4916, 4930-4931.)

The victim was later identified through her fingerprints as Catherine Ann McDonald. (25 RT 4904.) She was 30 years old. (27 RT 5311.) McDonald's legs were spread apart with her feet together and her arms extended outward toward the top of her head. (25 RT 4880.) Her right breast had been removed, and there were two puncture wounds to the center of the chest. (25 RT 4880.) A blood sample was taken from McDonald's left inner thigh, where blood had drained from her vaginal area along the thigh and onto the ground. (25 RT 4932.) Blood had also drained from McDonald's neck. (25 RT 4932.) On the left side of her neck was a large, gaping laceration. (25 RT 4881.) None of McDonald's personal property or clothing was located, nor was her right breast. (25 RT 4902-4904.) No latent fingerprints were found on McDonald's body. (25 RT 4913-4914.) McDonald's body was tape-lifted and her head and pubic

hair were brushed for trace evidence, and vaginal swab samples were collected. (25 RT 4915, 4924-4925; 27 RT 5324.)

The following afternoon, Dr. DiTraglia conducted the autopsy. (27 RT 5310-5311.) McDonald was five feet, five inches tall and weighed 121 pounds. (27 RT 5311-5312.) On her right ear, which was pierced once, was a post-type earring; on her left ear, which was pierced four times, was a hoop-type earring. (27 RT 5330, 5332.) There was a silver ring on her left ring finger. (27 RT 5330.) Toxicology results showed no drugs or alcohol in her system. (27 RT 5331, 5467.)

Dr. DiTraglia saw petechial hemorrhaging in McDonald's eyes and eyelids. (27 RT 5312, 5320.) There had also been hemorrhaging in her tongue. (27 RT 5320.) She had an abrasion along the right side of her jaw and neck. (27 RT 5312-5313.) Two additional, linear abrasions on her neck extended toward the right side from a large, gaping cut wound to the left side of her neck. (27 RT 5312-5314.) The cut wound extended from the front around the left side of her neck. (27 RT 5314-5315, 5321.) It transected the left jugular vein, muscle, the thyroid gland, trachea, and left common carotid artery. (27 RT 5321.) The wound appeared to have occurred before her death. (27 RT 5319-5321.) Severe and significant hemorrhage was also present under the skin of McDonald's neck, beneath the left side of the lower jaw, indicating along with the petechial hemorrhaging that there had been compression to her neck. (27 RT 5321-5322.) Dr. DiTraglia was unable to determine, however, whether the neck compression was caused by manual strangulation or through the use of a ligature. (27 RT 5322.)

McDonald had three stab wounds to the chest: one to the left side and two near the center. (27 RT 5315-5316.) Based on the depth of the wounds, Dr. DiTraglia estimated the length of the knife blade which likely caused them to be at least two or three inches. (27 RT 5317, 5326-5327.) He did not see hilt

marks at any of the stab wounds. (27 RT 5317-5318, 5327.) From the length of the wounds, Dr. DiTraglia estimated the width of the blade was between 1.3 and 1.5 cm. (27 RT 5328-5329.) He could not determine whether the blade was serrated. (27 RT 5327-5328.) The stab wounds appeared to have been antemortem. (27 RT 5319.) Dr. DiTraglia was unable to determine, based on the wounds, the dominant hand of the perpetrator. (27 RT 5326.)

McDonald's right breast appeared to have been cut off with a sharp object, such as a knife, in a circumferential cutting motion around the breast. (27 RT 5318-5319.) The excision appeared to have occurred postmortem. (27 RT 5332.) It also appeared as if a number of circumferential cuts were required to remove the breast. (27 RT 5319.) Additionally, one stab and four cut wounds had been inflicted upon McDonald's external genitalia. (27 RT 5323-5324.) Two of the cut wounds were superficial and could have been inflicted postmortem, but the other two had associated hemorrhage and therefore occurred before McDonald's death. (27 RT 5329-5332.)

Dr. DiTraglia determined the cause of McDonald's death to be multiple stab wounds and neck compression. (27 RT 5324, 5330.)

Suff's wife Cheryl gave birth to their daughter, Brigitte, on July 26, 1991. (31 RT 6331.) On September 9, 1991, Cheryl began taking classes Monday through Thursday at the International Air Academy in Ontario. (31 RT 6332, 6337.) The classes were held from 6:30 to 10:00 p.m.; Cheryl would either drive Suff's van to class or he would drop her off and pick her up later. (31 RT 6337.)

On October 25, 1991, Brigitte became ill and was hospitalized, causing Cheryl to drop out of school. (31 RT 6338, 6344-6345.) Cheryl last attended class on October 31, 1991, until 10:00 p.m. (31 RT 6338, 6386, 6415.) She dropped out the next day. (31 RT 6415.)

**O. Murder Of Delloah Zamora (a.k.a. Delloah Wallace)
(Count 12), October 1991**

Around 7:30 a.m. on October 30, 1991, Riverside County Sheriff's Deputy Danny Bragdon received a dispatch call of a body found in the Glen Avon area of Riverside county. (25 RT 4942.) The body was located about five feet north of the dirt shoulder of Granite Hill Drive, about 150 to 200 feet from the Country Village Street offramp of the 60 freeway, and about 150 yards from the intersection of Granite Hill and Country Village Street. (25 RT 4944-4950, 4952, 4961, 4966.) A responding member of the California Department of Forestry reported to the deputy that the victim had no pulse. (25 RT 4943.) Members of the fire department, who had also arrived, had covered the body with a gauze sheet. (25 RT 4943-4945, 4948.)

The victim was dressed in black cycling shorts, a blouse or light T-shirt, with earrings and no shoes. (25 RT 4951-4952, 4961.) She appeared to have an injury to her upper lip area, and some type of fluid had drained from her mouth. (25 RT 4962-4963.) There was also bruising on the victim's neck near her throat. (25 RT 4951, 4963, 4975.) Some scratches appeared on her legs and there was some sort of indentation in her vaginal area, as if it had been leaning up against something. (25 RT 4975.)

The weather was cold; the temperature was in the 60s with gusty winds. (25 RT 4950-4951, 4954, 4960, 4969-4970.) Any shoe or tire impressions were likely blown away, as none were located. (25 RT 4970.) Due to the severe wind conditions and the risk of losing trace evidence, members of the homicide task force put the victim in a body bag and processed it at the coroner's office rather than at the crime scene. (25 RT 4961, 4970; 30 RT 6031.)

At the coroner's office, the body was tape-lifted and the pubic and head hair were brushed for trace evidence. (25 RT 4965, 4971, 4974; see also 27 RT

5341-5342.) Vaginal swab samples were also collected. (25 RT 4971, 4974.) Riverside Sheriff's Department Homicide Investigator John Davis was present while the body was processed prior to autopsy, and took possession of three earrings the victim had been wearing when her body was found. (30 RT 6031-6032.) The matching pair was of dangling silver earrings with turquoise in the bottom. (30 RT 6032.) The third earring was a gold, star-shaped, stud-type earring. (30 RT 6033.)

Dr. DiTraglia conducted the autopsy of the victim, Delliah Zamora, on November 1, 1991. (27 RT 5333.) Zamora was 35 years old at the time of her death. (27 RT 5333.) She was five feet, five inches tall and weighed 107 pounds. (27 RT 5333.) Needle tracks were present on her body. (27 RT 5345.) The toxicology screen indicated 1,290 nanograms of cocaine and 3,540 nanograms of benzylecognine metabolite per milliliter of blood. (27 RT 5345, 5467.) Although hers was the highest cocaine level Dr. DiTraglia saw among the eight autopsies he conducted in this case, he did not believe the amount to be enough to cause Zamora's death. (27 RT 5345-5346.) Someone with such a high level of cocaine would generally be hyperactive and fidgety. (27 RT 5472.)

Petechial hemorrhages were present in both of Zamora's eyes and in her eyelids. (27 RT 5334.) Dr. DiTraglia also found an area of acute hemorrhage inside her tongue, which was consistent with strangling. (27 RT 5335, 5343.) A number of abrasions and superficial lacerations were visible on the front, right side, and left back side of her neck which appeared to have occurred antemortem, and which were consistent with "fingernail injuries." (27 RT 5334-5335, 5343.) Such injuries can occur when a person being choked or strangled uses his or her fingernails to try and pull away the ligature. (27 RT 5335-5336, 5343-5344.) Multiple areas of hemorrhage were present in Zamora's neck, indicating compressive force. (27 RT 5336-5338, 5342.) The

thyroid cartilage of Zamora's larynx was crushed and broken down the middle, which would have required an extreme amount of pressure. (27 RT 5338-5340, 5342.) Dr. DiTraglia concluded Zamora died from strangulation. (27 RT 5341.) He was unable to determine whether the strangulation was manual or with a ligature. (27 RT 5343.)

P. Suff's Activities In Fall And Early Winter Of 1991

Rebecca Ross was the leasing consultant at the North Beechwood apartment complex when Suff and his wife first moved there in December 1990. (29 RT 5904-5905.) Between July 1991 and January 1992, Suff was very friendly with Ross and visited her frequently. (29 RT 5917-5918; see also 29 RT 5936, 5948.)

Ross moved out of the North Beechwood complex in September 1991 and after other jobs, began working on November 8, 1991, as resident manager of an apartment complex on Meadow Lane in Colton. (29 RT 5905-5908.) Suff helped Ross and her boyfriend, Gary Bell, move from her mother's Lake Elsinore home to their new Meadow Lane apartment. (29 RT 5950.)

During the drive back to Lake Elsinore in Suff's van, Bell became bored and fidgety, and he put his hand between the passenger seat and the center console. (29 RT 5950-5951, 5953, 5955.) His hand touched a wooden handle. (29 RT 5950, 5955.) When he looked down, he saw it was a knife. (29 RT 5950-5951, 5955.) Bell noticed it had a wooden handle, but otherwise disregarded it. (29 RT 5951.) He did not ask Suff about the knife. (29 RT 5951.)

In October 1991, Suff told Ross he had heard over the police radio, while talking at the side of the road to a police officer friend, that another body had been found. (29 RT 5918-5919, 5930.) Suff warned Ross about her safety and told her the body was found just down the street, behind Burger King at

Mission and Railroad Canyon. (29 RT 5919.) That evening, Ross and her mother heard about the murder on the news. (29 RT 5919.)

On November 23, 1991, the Saturday before Thanksgiving, Cheryl left Suff and moved to her parents' house in Paso Robles. (31 RT 6349-6350; see also 29 RT 5880-5881, 5917.) By the end of November 1991, Cheryl had reconciled with Suff, who had moved to the Meadow Lane apartment complex where Ross had just begun working as resident manager. (29 RT 5910; 31 RT 6350.)

On December 4, 1991, Cheryl moved back in with Suff. (31 RT 6350.) It was the same day Cheryl took Brigitte to a doctor's appointment at Kaiser Hospital in Riverside. (31 RT 6349-6350.) Around 11:20 a.m., while at an intersection just east of Kaiser Hospital, Suff was involved in a traffic accident with a skiploader or front-end loader. (30 RT 6088-6089, 6091, 6093-6094, 6102; 31 RT 6350.) Suff was driving his gray 1989 Mitsubishi van with license plate BILSUF1. (30 RT 6090-6092.) The right rear portion of Suff's van sustained damage after being hit by the front-end loader. (30 RT 6091-6092, 6094.) A photo was taken of Suff and Cheryl standing next to the van shortly after the collision. (30 RT 6095; 31 RT 6351.) Suff was wearing a pair of tennis shoes purchased shortly before the accident. (31 RT 6351-6352.)

That night, Cheryl began her first day of work at Carl's Jr. on Mt. Vernon in Colton. (31 RT 6339.) She worked there until the night Suff was arrested. (31 RT 6340.) Cheryl usually worked the night shift from 5:00 p.m. until closing, which was sometimes as late as 3:00 or 3:30 a.m. (31 RT 6340-6341.) The next morning, Cheryl would not wake up until around noon or 1:00 p.m. (31 RT 6341.)

Cheryl's calendar indicated she worked from 5:00 p.m. to 3:00 a.m. on December 22 and from 5:00 p.m. until 3:30 a.m. on December 23, 1991. (31 RT 6340-6341, 6371.) On December 24, Christmas Eve, Cheryl worked

from 2:00 p.m. until 8:40 p.m. (31 RT 6371.) Cheryl worked from 5:00 p.m. until 2:30 a.m. on December 26 and from 5:00 p.m. until 2:00 a.m. on December 27, 1991. (31 RT 6372.)

Suff did not work during the week of Sunday, December 22, 1991. (29 RT 5784; 31 RT 6342, 6371.)

Q. Murder Of Eleanor Casares (Count 13), December 1991

In December 1991, Eleanor Casares lived with her brother, Phillip,^{14/} her nieces, and her mother on Date Street in Riverside. (26 RT 4985, 4993.) Phillip knew Casares used heroin and had heard she engaged in prostitution. (26 RT 4987, 4990.) Casares's other brother, Joe, was also aware of her drug use and had seen her working as a prostitute on University Avenue at Eucalyptus. (26 RT 4994, 4997.) Joe was also an addict at the time, but he and Casares did not share drugs. (26 RT 4996.) Sometimes Casares would go out after midnight to work, then come home later in the morning; other times, she would work in the evening and come home to use heroin. (26 RT 4990-4991.) Casares often would be out in the evening and return home around 11:00 p.m., then would go out to work the streets again in the early morning hours. (26 RT 4996, 5060-5061.)

Around 8:00 p.m. on Sunday, December 22, 1991, Phillip saw Casares leave the house. (26 RT 4987, 5047.) Casares was wearing all new clothes: blue, acid-washed, size 11 jeans, a black sweater with a pocket on the left side, and a black trench coat. (26 RT 4987-4989, 5047-5048; 30 RT 5988-5995.) She may also have been wearing white L.A. Gear tennis shoes. (26 RT 4989, 5047.) Between 10:00 and 11:00 p.m., Joe saw Casares walking down Park to University Avenue, as was her routine. (26 RT 4995.)

14. For clarity, Casares's brothers will be referenced by first name.

Between 10:00 and 11:00 a.m. the next morning, December 23, 1991, Casares called her sister, Adela Soliz, and asked to borrow \$10. (26 RT 5000-5002, 5061.) Soliz said she did not have time to deliver the money, so Casares said she would find a ride to pick it up. (26 RT 5000.) Casares never showed up to pick up the money (26 RT 5001), and she never returned home (26 RT 4989, 4991).

That afternoon around 1:00 p.m., Charles Petty had just returned from his lunch break and was driving a company truck through the orange groves at Gage Canal, when he saw something off to the left. (26 RT 5004-5007, 5009.) Petty backed up, stepped out of the truck, and took at most two steps, and from about 10 to 15 feet away saw it was a dead body. (26 RT 5005-5007, 5010.) He returned to the truck, backed up to Victoria Avenue, and radioed his office to call the police. (26 RT 5006, 5008-5009.) Police arrived in about 20 minutes, and Petty pointed out to the first officer where the body was located. (26 RT 5008-5009, 5013.) Later, officers photographed Petty's boots as well as his truck tires. (26 RT 5010-5011.)

The body was off of Victoria Avenue, down a dirt roadway past about four rows of orange trees. (26 RT 5013-5015.) The homicide task force and Riverside Police homicide investigators were immediately notified. (26 RT 5015-5016, 5020.)

The weather that day was sunny and warm, with no wind. (26 RT 5017.) By about 2:30 p.m., the temperature was around 65 degrees. (26 RT 5033.) Both a photographer and an evidence technician photographed the entire area before the body was examined. (26 RT 5021, 5040-5042.) Investigators observed, photographed, and documented tire and shoe impressions as they walked up the right side of the dirt roadway to a position parallel with the body. (26 RT 5022-5023, 5026-5028, 5035-5036, 5045, 5083, 5099-5100, 5102-5104, 5107-5108.) Tire impressions were generally located

on the dirt road and just to the left of where the road ended. (26 RT 5028, 5083.) The condition of the surface of the dirt road varied from fairly soft dirt to hard-packed, and some areas were covered with tree branches, leaves, and shrubbery. (26 RT 5111-5112.)

Shoe impressions were also located in the general and immediate vicinity of the body. (26 RT 5028, 5083.) Two areas of shoe impressions or tracks were next to the body, and a third was between the victim's legs. (26 RT 5086.) All three appeared to have the same design or pattern. (26 RT 5086-5087.) A group of several shoe tracks was also observed between the body and the access road, where an area of dirt appeared consistent with something having dragged through it. (26 RT 5087-5088, 5115.) The shoe impressions near the drag mark had the same design or pattern as the impressions immediately next to the body and also matched impressions located in the dirt roadway directly parallel to the victim's body. (26 RT 5088, 5090-5091, 5116.) The impressions near the drag mark led away from the body, toward the roadway, while those in the dirt roadway led both toward the body and back. (26 RT 5116.) Fairly fresh tire impressions were also located in the dirt roadway directly parallel to the victim's body. (26 RT 5088-5089, 5113, 5115.) An area between the tire impressions and the body had no shoe impressions, however. (26 RT 5115.)

From the shoe and tire impressions, criminalist Steven Secofsky of the California State Department of Justice could somewhat reconstruct the movement of the person and of the vehicle, such as where it stopped or backed up. (26 RT 5089-5090, 5113-5115, 5117-5121.) Based on tire impressions he had recovered from another crime scene, criminalist Secofsky kept Armstrong tires in mind as he looked at the impressions at Casares's crime scene. (26 RT 5121.)

A black jacket was covering the head of the body. (26 RT 5024-5025, 5045, 5048.) When the jacket was removed from the victim's head, Riverside Police Detective Keers recognized the victim as Eleanor Casares, a prostitute who worked on University Avenue and with whom the detective had become "quite friendly." (26 RT 5045-5046, 5060.) She was 39 years old. (27 RT 5348.)

Casares's body was in full rigor. (26 RT 5033.) Her left arm was tucked underneath her back, her right arm was extended away from her body, and her legs were spread apart. (25 RT 5024-5026.) Her right breast had been removed. (26 RT 5024.) Casares had a stab wound in the middle of her chest. (26 RT 5091.) When Casares's body was turned on its side, investigators discovered a rubber band clutched in her left hand. (26 RT 5025.) None of Casares's clothing or personal items were located. (26 RT 5028-5029, 5033.) Casares's breast was found in the next row of orange groves, about 40 feet away. (26 RT 5029-5030.)

No latent fingerprints were recovered from Casares's body. (26 RT 5084.) Tape lifts for trace evidence were taken at the scene from Casares's body as well as from the jacket that had been covering Casares's head. (26 RT 5084-5085.) Hair from Casares's head and pubic area were brushed for trace evidence. (26 RT 5093.) A vaginal swab sample was also collected at the scene. (26 RT 5085-5086; 27 RT 5347.)

The following day, Dr. DiTraglia conducted the autopsy of Casares's body. (27 RT 5346.) She was five feet, three inches tall and weighed 130 pounds. (27 RT 5348.) At the autopsy, a criminalist tape-lifted the tips of the fingernails and collected fingernail cuttings for additional trace evidence. (26 RT 5109-5110.) A lot of blood was present on Casares's fingernail clippings. (35 RT 7370-7371.) Because Dr. DiTraglia collected a vaginal swab sample at the scene where Casares's body was located, he did not take one at

the autopsy. (27 RT 5356.) A toxicological screening of Casares's blood was negative for alcohol and drugs. (27 RT 5468.)

Petechial hemorrhaging was present in Casares's eyes and eyelids. (27 RT 5347-5348.) There were abrasions on her neck that likely occurred before her death. (27 RT 5349.) The largest abrasion was consistent with strangulation. (27 RT 5349-5350.) No ligature marks were present on Casares's neck. (27 RT 5359.) Casares's thyroid cartilage was fractured, as was the hyoid bone above it. (27 RT 5354-5358.) There was also hemorrhaging in the neck around the thyroid cartilage. (27 RT 5355.)

At the center of Casares's chest was a single stab wound measuring 3.2 cm long and 4 3/4 inches deep. (27 RT 5350.) The weapon entered from the front of Casares's body and was angled five degrees downward but was otherwise straight. (27 RT 5351-5352.) DiTraglia did not see any hilt mark at the wound. (27 RT 5351; see 27 RT 5360-5391.) Casares's breast appeared to have been excised postmortem in a circumferential cutting manner similar to how McDonald's breast had been removed. (27 RT 5352-5354.) The inside of Casares's left wrist was bruised before she died. (27 RT 5349.)

Dr. DiTraglia determined the cause of Casares's death to be strangulation; he also noted the stab wound to Casares's chest. (27 RT 5357.) The stab wound was fatal and would have killed Casares, but Dr DiTraglia could not determine whether the strangulation or stab wound had killed her first. (27 RT 5357.) He also could not determine whether the strangulation was effected by hand or with a ligature. (27 RT 5358.)

R. Scratches On Suff's Face And Chest On December 23, 1991

On December 23, 1991, the day of Casares's murder, Suff visited Ross's office and saw her assistant, Cristen Thompson. (29 RT 5908, 5937, 5942.)

Thompson noticed Suff had thick, wide scratches on his face. (29 RT 5937.) When Thompson visited Ross's apartment later that evening (29 RT 5938, 5942), Suff was also present. (29 RT 5915-5916, 5926-5927, 5930.) Suff had three scratches that resembled fingernail scratches on his face that reached from his cheekbone near his eye to his jaw. (29 RT 5915, 5929, 5938; see also 29 RT 5948-5949.) Ross recalled they were on the right side of Suff's face, but was not certain. (29 RT 5929.) The scratches were red but not bleeding or scabbing. (29 RT 5929-5930.)

Suff told Thompson and Ross that he attempted to intervene in an argument between a man and a woman at Kaiser Hospital in Fontana, when the woman turned on Suff and defended the man by scratching Suff in the face. (29 RT 5916, 5938-5939.) Suff said hospital security responded to the fight. (29 RT 5916, 5939.)

Describing the same incident to Ross's boyfriend, Suff said he had broken up a fight between two men, and that a girlfriend of one of the men got on Suff's back and clawed him on the face. (29 RT 5949.) He also said he was scratched on the chest during the fight, and showed the scratches to Bell. (29 RT 5949, 5954.) Suff said security was called but the matter was "taken care of" because the security people knew him. (29 RT 5949.)

Suff told Cheryl that the scratches on his face and chest were from their cat, Cally. (31 RT 6375.)

The Kaiser Hospital Fontana Assistant Security Location Manager, who was responsible for security (30 RT 6099, 6101), checked incident logs at both the Fontana and Riverside Kaiser Hospitals for a fight or other incident involving Suff in December 1991 (30 RT 6100). Under the hospital's written policy, security personnel must immediately respond to a call for assistance due to an altercation, fight, or other need, and call for police assistance when needed. (30 RT 6099-6100, 6103-6104.) The only incident report involving

Suff in December 1991 was his traffic accident, which had occurred outside hospital property. (30 RT 6100, 6102.)

The next day, on Christmas Eve, Suff was again at Ross's apartment for dinner with other guests when a Pay-Per-View advertisement for the movie, "Silence of the Lambs," aired. (29 RT 5920, 5926-5928, 5939.) Ross's guests were trying to decide between two movies. (29 RT 5940, 5945.) After a friend of Ross's made a comment about the movie, Suff said, "she was stupid to get into the van." (29 RT 5921, 5940.) There was no mention or reference in the commercial about a van. (29 RT 5944.)

S. Suff's Arrest, January 9, 1992

From 1985 to January 1992, Roberta Gamboa lived in the Riverside area and worked as a prostitute. (27 RT 5475-5476.) As of January 1992, she had been a prostitute for about 10 years, though not always in the Riverside area. (27 RT 5476.) Gamboa would usually work the area on University Avenue between Park and Chicago Avenues. (27 RT 5476.) To her knowledge, the majority of the prostitutes in Riverside worked in that area. (27 RT 5476.)

Around 9:30 p.m. on January 9, 1992, after working earlier that night, Gamboa stopped at a liquor store on University Avenue to buy a soda. (27 RT 5477-5479, 5489-5490.) The liquor store was located between an empty lot and what was then the Thunderbird Motel. (27 RT 5477-5480.) As she entered the store, she saw a Caucasian man driving a gray van up University Avenue. (27 RT 5482, 5491.) He pulled into the driveway of the dirt lot, made a U-turn in the dirt area of the lot, and parked on the pavement at the end of the driveway, facing traffic, with the engine running. (27 RT 5481, 5491-5492, 5496.)

When Gamboa emerged from the liquor store, she looked around and saw the van. (27 RT 5491.) She noticed the passenger side of the van was

smashed in. (27 RT 5482.) The driver was alone in the car. (27 RT 5482.) He motioned for Gamboa to come over, and she walked in front of the van toward the driver's side. (27 RT 5481, 5491-5493.) As she approached, the man asked Gamboa if she was working and she said, "No, not right now." (27 RT 5481-5482, see also 27 RT 5492.) The man offered Gamboa \$30 for a date, and Gamboa again said she was not working. (27 RT 5482, 5494.) While still about five feet away from the driver's window, Gamboa spotted a police officer on a motorcycle coming toward her on the street; the officer made eye contact with Gamboa. (27 RT 5481-5483, 5492-5493.) Not wanting to get in trouble, Gamboa turned and walked back toward the way she had come. (27 RT 5482-5483.)

1. Traffic Stop Of Suff's Van

Riverside Police Officer Frank Orta was patrolling the area of University Avenue on a police motorcycle on January 9, 1992. (27 RT 5498-5499.) Working his usual shift, he patrolled the area from 2:00 p.m. to midnight. (27 RT 5503; 28 RT 5516.)

Officer Orta was aware there had been multiple murders of prostitutes in the Riverside and Lake Elsinore areas, and that a task force had been created to investigate the murders. (27 RT 5500; see 28 RT 5584, 5606-5607.) That evening, Officer Orta was aware the task force was also patrolling the area, trying to locate the suspect for the murders. (27 RT 5502-5503.) Officer Orta had earlier seen a police bulletin, generated by Detective Keers in August 1991, concerning a possible suspect in at least one of the murders that had occurred near the University Avenue area. (27 RT 5500-5501.) The bulletin described the suspect and the suspect's vehicle. (27 RT 5501-5502.) Officer Orta had also seen a sketch of the suspect. (27 RT 5502.)

Around 9:30 p.m., Officer Orta was riding his police motorcycle eastbound on University Avenue, when he saw a grayish van making a U-turn inside the dirt area of the Discount Liquor store parking lot. (27 RT 5503-5504; 28 RT 5507-5513, 5539-5540.) After making a U-turn the van stopped, facing University Avenue. (28 RT 5513, 5540.) From about 70 to 80 feet away, Officer Orta saw that the van's headlights remained on after it stopped, and no one got out. (28 RT 5514.) The van was similar to the description in the police bulletin of the serial killer's vehicle. (28 RT 5522.)

Officer Orta then saw a lone female approach the van from the front of the liquor store. (28 RT 5514-5515, 5521, 5541.) He could not see the driver of the van at that time, nor could he tell how many people were inside. (28 RT 5515.) The officer took note of the woman's physical description (28 RT 5521) and clothing (28 RT 5517).

Having patrolled the area for five or six years, Officer Orta was aware that University Avenue was an area of high activity for prostitution. (27 RT 5499; 28 RT 5515-5516.) Officer Orta had assisted other law enforcement officers on numerous occasions in contacting known prostitutes on University Avenue. (28 RT 5516.) He had also observed how prostitutes would solicit sex. (28 RT 5516.) Based on his experience, Officer Orta believed the woman was a prostitute who was contacting a client. (28 RT 5817.)

The woman was about five feet from the driver's side of the van (28 RT 5521, 5541) when, as Officer Orta neared the van's location, he and the woman looked at each other (28 RT 5522-5523). The woman then stopped, turned around, and walked back toward Discount Liquor. (28 RT 5523.) Officer Orta decided to turn around and follow or contact the van. (28 RT 5523.)

Officer Orta drove about a half block further eastbound down University Avenue to Sedgewick and made a U-turn. (28 RT 5523, 5541.) The van was already on University Avenue heading westbound, and Officer Orta pulled up

directly behind it. (28 RT 5524, 5541.) At Park Avenue, the van stopped at the red light, then abruptly turned right without signaling. (28 RT 5524-5525.) Officer Orta followed the van around the turn and activated his emergency lights upon straightening out from the turn. (28 RT 5525.) The van continued down Park Avenue, stopped at the four-way stop sign, and then turned left onto Seventh Street. (28 RT 5525-5526, 5546.) After traveling on Seventh Street about 60 feet, the van pulled over and Officer Orta began a typical traffic enforcement stop. (28 RT 5526, 5542, 5546.)

When Officer Orta approached, he noticed the driver, like the description of the possible suspect of the prostitute killings, was wearing very thick glasses. (28 RT 5528-5529.) The man was alone. (28 RT 5527.) Officer Orta asked the man for his driver's license and vehicle registration. (28 RT 5527, 5542.)

The man never produced a vehicle registration. (28 RT 5530.) The driver's name, as listed on his license, was Bill Lee Suff. (28 RT 5527.) At trial, Officer Orta identified Suff as the driver. (28 RT 5546-5547.) Suff's printed address of 33021 Orchard, Lake Elsinore, had been crossed out. (28 RT 5527.) On the back of his license was handwritten, "new address," and the address of 1410 Morrow Way, No. 9, Lake Elsinore. (28 RT 5528.) Underneath was written a second address, 210 N. Beechwood, No. 469, Rialto. (28 RT 5528.) Officer Orta noted the two Lake Elsinore addresses because he was aware some of the bodies of the serial prostitute killer were disposed of in the Lake Elsinore area. (28 RT 5528.)

Officer Orta returned to his motorcycle to write a citation. (28 RT 5530.) After running a check of the license and the van's license plate number, Officer Orta learned Suff's license was suspended. (28 RT 5530-5531, 5543.) The van had a personalized license plate that read, "BILSUF1." (28 RT 5534.)

Officer Orta decided to impound the van after learning the vehicle registration had expired. (28 RT 5531-5532, 5535.)

As Officer Orta began writing the citation, Officers Don Tauilli and Duane Beckman from the Riverside Police Department stopped and offered assistance. (28 RT 5532-5533, 5553, 5572.) The officers also happened to be members of the task force that was patrolling for the suspect of the prostitute killings. (28 RT 5533, 5535, 5549-5550, 5571.) Officer Orta told the officers what he had observed between the van driver and the woman. (28 RT 5533, 5553, 5572.)

2. Inventory Search Of Suff's Van

The van was gray or silver, but in the evening light it had a two-tone, gray and bluish tint. (28 RT 5583; see also 28 RT 5580.) Officer Tauilli saw that the van very closely fit the description of the one in a police bulletin provided to the task force officers. (28 RT 5552, 5554.) Officer Beckman took photos of the driver to assist in confirming whether he matched the composite and description of the serial killer suspect. (28 RT 5535, 5545, 5554, 5572-5573.)

The two task force officers also helped Officer Orta conduct and write up an inventory search of the van prior to it being towed and stored. (28 RT 5535-5536, 5555, 5575.) The inside of the van was very messy. (28 RT 5568, 5581.) Officer Beckman searched the passenger side of the van. (28 RT 5575.) In the area of the center console, he found a pair of glasses with a silver frame and clear glass lenses. (28 RT 5575, 5577, 5580, 5583-5584.) Nearby, he found a credit card holder containing several cards. (28 RT 5580.)

Looking inside the van while standing at the driver's side, Officer Tauilli saw what appeared to be the butt of a gun poking out from under the seat. (28 RT 5555-5556.) Officer Tauilli pulled the gun out of the car. (28 RT

5556.) It resembled a Colt Python – a long-barrel, large-frame revolver – in a brown holster with a strap over the top. (28 RT 5556-5557.) The gun looked, felt, and had the weight of a real gun. (28 RT 5556-5557.) Upon further inspection after removing it from the holster, however, Officer Tauilli determined it was a BB gun. (28 RT 5557-5558, 5567.) Officer Beckman photographed the BB gun. (28 RT 5573.)

Officer Tauilli looked under the driver's seat and found a steak knife with the blade wedged in the track of the seat so only the handle was visible. (28 RT 5558-5561.) The blade measured about five inches in length. (28 RT 5561.) Suff's wife Cheryl recognized the knife as having come from her kitchen. (31 RT 6364-6365.) A red substance that appeared to be blood was visible on the knife blade. (28 RT 5561; 35 RT 7465-7467.)

The red substance on the blade was later determined to be human blood of type A. (35 RT 7443-7453, 7458.) A pinkish-whitish substance, which appeared to be human fatty tissue, was also on the blade. (35 RT 7454, 7466-7467.) The tissue-like substance was tested for phosphoglucomutase (PGM) enzyme type, of which there are ten, and determined to be of PGM type 2+1-. (35 RT 7453-7458; see also 38 RT 8154-8155.) Casares's blood was type A, PGM type 2+1-. (35 RT 7459-7461.) Suff had blood type O, PGM type 2-1+. (35 RT 7458-7461.) Of the general population, about 1.2 percent of African-Americans, 1.8 percent of Caucasians, and 1.9 percent of Hispanics shared both the same blood type and PGM type as Casares and the blood and tissue on the knife. (35 RT 7464-7465; see also 35 RT 7462-7463, 7467-7478.)

In the net-like pocket on the back of the driver's seat, Officer Tauilli found white rope resembling clothesline. (28 RT 5561-5562, 5574.) The rope was about a quarter-inch thick. (28 RT 5568.) Officer Beckman photographed the rope together with a California Highway Patrol cap he found draped over a CB radio at the front of the console. (28 RT 5574-5576.) On the console

behind the driver's seat was a black book. (28 RT 5564-5565.) Officer Beckman called to the scene his supervisor, who then contacted Detective Keers. (28 RT 5565, 5581.)

3. Examination Of Suff's Tires For Brand Names

Criminalist Secofsky had earlier told Detective Keers that the tires on the suspect vehicle at the Casares crime scene included a Yokohama on the front driver's side and two Uniroyals on the passenger side of the vehicle; he could not determine the brand of the rear driver's side tire. (28 RT 5585-5587; see 28 RT 5627, 5632.) Thus, while his supervisor was on the phone with Detective Keers, Officer Tauilli was asked to look at the tires of the van and report the brand of the tire on the front driver's side. (28 RT 5565, 5589-5590.) After Officer Tauilli relayed the information, Detective Keers asked the supervisor to secure the scene and stop searching until Detective Keers and other law enforcement personnel arrived. (28 RT 5537, 5566, 5590.)

Detective Christine Keers later arrived on the scene. (28 RT 5537, 5566, 5591.) After speaking with Officers Orta, Tauilli, and Beckman about their observations, Detective Keers looked at the tires on the van. (28 RT 5591.) A Yokohama tire was on the front driver's side and two Uniroyal were tires on the passenger side. (28 RT 5591.) The fourth tire was a Dunlop. (28 RT 5591-5592.)

4. Police Locate The Woman Suff Contacted At The Liquor Store

Later that evening, Detective Keers asked a female officer to go to University Avenue and locate the woman with whom Officer Orta had seen Suff's van, based on her description. (28 RT 5601, 5619-5620; see 28 RT 5517.) About 20 minutes later, the officer located the woman, identified as

Roberta Gamboa, and brought her to the Riverside Police Department. (27 RT 5483; 28 RT 5601.)

Detective Keers interviewed Gamboa, who told the detective about her encounter with the man in the van. The detective then showed Gamboa photos of the van Suff had been driving that evening. (27 RT 5484, 5495; 28 RT 5601, 5620.) Gamboa identified Suff's van. (28 RT 5601-5602.) She additionally told Detective Keers that the passenger side of the van, which was not pictured, was damaged. (28 RT 5603.) Detective Keers also had seen damage to the passenger side. (28 RT 5603, 5604.) Photos of the van's damaged passenger side were later taken in the Department of Justice parking lot. (28 RT 5604-5605.)

After reading the police department's admonishment form to Gamboa, Detective Keers took Gamboa to a room where a person was seated. Gamboa identified Suff as the driver of the van. (27 RT 5484; 28 RT 5602.) Gamboa recognized the person as the man who had contacted her in the dirt lot next to the liquor store earlier that evening. The man in the room was Suff (27 RT 5484, 5488; 28 RT 5603.) At trial, Gamboa identified Suff as the man she saw in the van. (27 RT 5489.)

5. Suff's Physical Appearance At Time Of Arrest

Detective Keers first spoke with Suff within an hour of his arrival at the Riverside Police Department, around 11:00 p.m. that night. (28 RT 5582; 37 RT 7969-7970, 7977.) At that time, Detective Keers observed scratches on Suff's chest and on the side of his face. (28 RT 5605, 5621.) The scratches were photographed. (28 RT 5605, 5621.) The interview was conducted in an interview room and was recorded without Suff's knowledge. (37 RT 7970-7971.)

Suff was wearing Converse tennis shoes. (28 RT 5603-5604, 5621, 5634.) Criminalist Secofsky had earlier related to Detective Keers his opinion that the shoes which left the impressions at the Casares crime scene were Converse tennis shoes. (28 RT 5588; see 28 RT 5627.) Suff was also wearing gold wire-framed, tinted glasses. (28 RT 5610-5611.) Detective Keers confiscated as evidence Suff's gold-framed glasses, along with the silver wire-frame glasses Officer Beckman had found inside the van. (28 RT 5610-5612; see 28 RT 5575, 5577, 5580, 5583-5584.)

Around 4:30 a.m. on January 10, 1992, a Riverside County Sheriff's Department forensic evidence technician took several photographs of Suff, including of abrasions or scratches on the right side of his face, the left clavicle area of his upper chest, and his hands. (28 RT 5656-5659, 5662-5663.) On Suff's right hand was a healing cut or scratch just above the knuckle on his forefinger, and a scar on the back of his thumb. (28 RT 5660.) The technician also photographed some bruising and a healing cut on Suff's lower lip. (28 RT 5657-5658.) Suff had five cuts or tears on the T-shirt he was wearing. (28 RT 5660.) Additional photos were taken of Suff without shoes but otherwise fully clothed including his jacket, and wearing the wire-frame, dark-tinted glasses. (28 RT 5657, 5661.) A separate photo was taken of Suff's black Converse tennis shoes. (28 RT 5661.)

Riverside Police Department Investigator Creed transported Suff to the Riverside County Jail for booking sometime in the morning on January 10, 1992. (28 RT 5635-5636.) During the booking process, Investigator Creed collected Suff's clothing as evidence. (28 RT 5636; see also 28 RT 5634.) Suff was wearing a brown button-down shirt, sleeveless blue T-shirt with some holes near the stomach area, a pair of brown pants, and a black, basket-weave belt with a silver- and gold-colored metal buckle on it. (28 RT 5636-5637.)

The buckle bore the initial "B." (28 RT 5637.) Suff was also in possession of a jacket with various patches. (28 RT 5637-5638.)

6. Fluid And Hair Samples Collected From Suff

At the Riverside Police Department, Detective Michael Hearn assisted forensic technician Michael Latulippe of Bio-tox Laboratory in collecting samples of blood, saliva, and hair from various parts of Suff's body at 1:15 a.m. on January 10, 1992. (28 RT 5639-5640, 5642, 5647-5650; 37 RT 7969-7970, 7975, 7977.) Detective Hearn took additional samples of hair from Suff's arms and legs three days later, at the Riverside County Jail. (28 RT 5641.) About 16 months later, on April 22, 1993, Latulippe collected additional hair samples from Suff's pubic area and between the thigh and the pubic area on both legs. (28 RT 5652-5653.)

7. Suff's Statement To Police

Later in the afternoon on January 10, 1992, Detective Keers conducted a second tape recorded interview of Suff. Riverside County Sheriff's Detective John Davis was also present. (37 RT 7971, 7974.) Suff initially denied that his van was on Victoria Avenue on December 23, 1991. (37 RT 7972.) When Detective Keers told Suff that tire tracks from his van's tires were located in an orange grove area off of Victoria Avenue, Suff admitted his van was on Victoria Avenue on December 23. (37 RT 7972.) Although Suff also denied anything was in the orange grove, he later said there was a body in the orange grove, but denied putting it there. (37 RT 7972-7974.) Detective Keers asked Suff whether his shoe prints were in the orange grove, and Suff admitted he had left shoe prints there. (37 RT 7973.) Suff repeatedly denied killing any of the victims. (37 RT 7976, 7980.)

T. Detailed Search By Police Of Suff's Van

While at the scene of Suff's arrest, Detective Keers took as evidence the California Highway Patrol baseball cap and white, clothesline-type rope that Officer Beckman had removed from the van and photographed. (28 RT 5612-5613; see 28 RT 5562, 5574-5576.) There were two pieces of white rope with fibers different from one another. (28 RT 5613.)

Detective Keers also collected carpet fibers and other trace evidence from the van. (28 RT 5592.) Mindful that gray and green fibers and rope fibers had been recovered from some of the victims' bodies, Detective Keers collected fiber samples of gray carpet, a green blanket, and a rope that were inside the van. (28 RT 5593, 5630-5631, 5633.) She then had the van towed by flatbed truck to preserve the tire tread, and contacted criminalist Secofsky. (28 RT 5594.)

Secofsky collected carpet and seat fibers from inside Suff's van, as well as Suff's sleeping bag, green blanket, gold pillow, and rope. (33 RT 6880-6881.) He also collected trace evidence from inside the van, using tape lifts. (33 RT 6888-6889.) Cat hairs found in the carpet of Suff's van were similar, at a microscopic level, to those of Suff's adult cat. (35 RT 7345-7347.)

While searching the van, a Notice to Appear dated August 8, 1991, and bearing the name of Kelly Marie Hammond was located in the glove box. (28 RT 5608-5609.) On August 16, 1991, Detective Keers had responded to the crime scene in Corona where Kelly Marie Hammond's body had been found. (28 RT 5609.) Hammond's friend, Kelly Whitecloud, had described a third seat behind the passenger seat. (24 RT 4716-4717, 4733-4734.) Suff's van had no third seat, but was equipped to attach additional seats. (28 RT 5622.)

In separate locations of the van, Detective Keers found two lengths of brown, natural fiber rope, also called sisal. (28 RT 5613-5615.) She also found a plastic credit card holder containing several cards, including two Costco

Wholesale membership cards bearing Suff's name, signature, and photo; a business card for Turner Realty in the name of Bonnie Ashley with an address in Wildomar, California; a bowling membership card in Suff's name; and a Home Club Warehouse membership card bearing Suff's name, signature, and photo. (28 RT 5616-5617.)

In addition to the knife found earlier by Officer Tauilli, a buck knife was found in the back of the van, in a quarter panel. (28 RT 5627.)

U. Tire Track Impression Analysis

Criminalist Secofsky of the California Department of Justice analyzed tire impressions at the Miller crime scene in comparison to reference manuals and the usable tire impressions photographed at the other crime scenes, and determined 12 impressions were consistent with an Armstrong Coronet Ultra Trac, and two were consistent with a Yokohama 382 type of tire. More specifically, based on the general tread design and pitch variation, the tire track impressions at the Miller crime scene could have been made by the same tires or the same type of tires that made impressions at the Leal, Ferguson, and Puckett crime scenes. (32 RT 6606-6653, 6663; 33 RT 6680-6694, 6697-6715, 6717-6727, 6732-6753, 6820-6827.) Assuming forward movement, the Armstrong tire would have been mounted at the front, and the Yokohama tire would have been mounted at the rear of the same vehicle. (32 RT 6642-6648; 33 RT 6721-6723.) Finally, the measurements of the track widths and particular tire placement according to the impressions were consistent with the placement of the Armstrong and Yokohama tires that would have been on Suff's Mitsubishi van at the time of the Miller, Leal, Ferguson, and Puckett murders. (33 RT 6713-6715, 6820-6823.)

Criminalist Secofsky also examined tire track impressions he observed and documented at the McDonald crime scene. After analyzing them

independently and in comparison to the tires on Suff's Mitsubishi van at the time of the crime and at his arrest, Secofsky determined one was consistent with the Yokohama 382 tire that would have been on the right rear, one was consistent with a Yokohama 381 tire that would have been on the right front, one corresponded with the measurements and wear of the Yokohama 381 tire on the left front, and one could have been made by a Dunlop tire at the left rear of Suff's van. (33 RT 6754.1-6754.16, 6754.19, 6754.22-6754.28, 6754.31-6754.32, 6766-6773, 6781-6782, 6793-6794, 6823, 6825-6826.)

Comparing the McDonald crime scene tire impressions with the Miller crime scene tire impressions, Secofsky concluded the same Yokohama 382 tire could have made the track impressions at both crime scenes. (33 RT 6754.16-6754.19, 6754.29(1)-6754.29(2), 6809-6810, 6823, 6825.)

Criminalist Secofsky also compared test impressions from the tires on Suff's van at the time of his arrest with tire impressions from the Casares crime scene and determined that crime scene impressions could have been made by the Uniroyal Tiger Paw XTM tires on the right front and the right rear of Suff's van, which were fairly new at the time, by the Yokohama 371 tire on the left front of Suff's van, and by the Dunlop SB 32J tire on the left rear of Suff's van. (33 RT 6773-6794, 6796-6826.) In light of the combination of the three different types of tires mounted on Suff's van in the same placement as the tires that made the impressions at the Casares crime scene, in addition to the wear characteristics of those tires, it was unlikely any vehicle other than Suff's left tire tracks at the crime scene. (33 RT 6813-6815.)

The impressions made by the Dunlop tire at the Casares crime scene and by the Dunlop on Suff's van were consistent with the impression found at the McDonald crime scene. (33 RT 6793-6794.)

V. Search Of Suff's Meadow Lane Apartment

On January 10, 1992, members of the homicide task force executed a search warrant at Suff's Meadow Lane apartment in Colton. (29 RT 5961-5963; 30 RT 6048-6049; 31 RT 6281.)

A General Electric Miser 95-watt light bulb was installed in a floor lamp equipped with a table attachment and extra reading light. (29 RT 5968-5970, 5983.) A storage closet contained more light bulbs. (29 RT 5976.) Among them, a GE 95-watt Miser light bulb – the same brand, type, and size that was found in Leal's uterus – and a GE 75-watt Miser light bulb were taken as evidence. (29 RT 5976-5977, 5983; see 27 RT 5402-5403, 5411, 5414-5415; 30 RT 6039-6042, 6044.)

A pair of captain's chairs for Suff's van were stacked inside the spare bedroom. (29 RT 5974-5975, 5982; 30 RT 6047.) Inside the closet of the spare bedroom was a fold-down bench seat, also for Suff's van. (29 RT 5975, 5982; 30 RT 6047.)

Suff and Cheryl had a cat named Cally continuously since they lived on Chestnut Street in Lake Elsinore. (31 RT 6357-6358.) The cat had ridden in the van. (31 RT 6358.) Cheryl and Suff got two kittens on December 23 or 24, 1991. (31 RT 6358-6359.) Hair samples were taken from Cally and the two kittens. (29 RT 5981, 5984; 31 RT 6358.) The couple had another cat for about a month while they lived in Lake Elsinore, but it did not move with them to Cheryl's parents' home in Rialto. (31 RT 6359.)

In a box in the livingroom was a pair of metal handcuffs. (29 RT 5981, 5983-5984.) Also in the living room, police found nylon rope. (29 RT 5981-5982.) A length of white cotton rope was also located in the spare bedroom. (29 RT 5982.)

Police executed a second search warrant on the apartment three days later. (30 RT 6058; 33 RT 6876.) Along with a map, police collected three photographs of Suff. (33 RT 6058-6060, 6876-6877.)

On March 24, 1992, Riverside County Sheriff's Investigator George Yeo visited Suff's Meadow Lane apartment, which by then was vacant. (30 RT 6149.) There was trash in most of the rooms. (30 RT 6150.) Investigator Yeo collected clothing, receipts, pieces of paper, and other documents. (30 RT 6150-6152.)

W. Further Investigation Of Rhonda Jetmore's January 1989 Attack

After Suff's arrest on January 2, 1992 (21 RT 3923, 3945), Riverside County Sheriff's Deputy Theodore Hoffman of the Lake Elsinore Sheriff's Station reviewed Detective Nielsen's 1989 report and noticed the name "Bill." Deputy Hoffman contacted Jetmore in late January 1992 through the Siskiyou County Sheriff's Department. (20 RT 3851; 21 RT 3922-3925, 3945.) Their telephone conversation lasted 10 to 15 minutes at the most. (21 RT 3945.)

Jetmore said she lived in a remote area and did not recall seeing any media reports of an arrest in connection with the Riverside County prostitute murders; Jetmore did not own a television or read newspapers. (20 RT 3867; 21 RT 3925-3926.) Jetmore remained confident she could identify her attacker. (20 RT 3854, 3898; 21 RT 3926.)

On March 25, 1992, Deputy Hoffman visited Jetmore at her boyfriend's house in Seiad Valley, Siskiyou County (20 RT 3854-3856; 21 RT 3927), where she had lived since February 1989. (20 RT 3867.) The area was very remote; it was at least an hour from Eureka and in the middle of a national forest, with a population of 80. (20 RT 3867; 21 RT 3927.) During the tape recorded interview, Jetmore described the entire incident in more detail than

before, as she felt she had more time than in the prior telephone conversations with law enforcement. (20 RT 3855-3856, 3863, 3879; see also 21 RT 3932-3935, 3944-3946.)

In this interview, Jetmore described her attacker as between five feet, ten inches and six feet tall, and weighing 200 to 210 pounds. (20 RT 3880-3881; 21 RT 3937.) Jetmore also said the man had straight, short brown hair. (20 RT 3881; 21 RT 3937, 3956.) She identified the man's belt buckle as being gold- or brass-colored and bearing the name "Bill." (20 RT 3887, 3899-3900; 21 RT 3939, 3987-3958.) At the time, the man was wearing a dark-colored windbreaker, possibly red, and glasses with dark wire frames. (20 RT 3882; 21 RT 3938, 3957.)

Jetmore recalled the car was a small, light-colored station wagon, possibly tan or cream-colored, with a tan or light-brown interior. (20 RT 3868, 3882-3883, 3896; 21 RT 3935-3936, 3956.) The car was in good condition and the inside looked clean, other than all the papers. (20 RT 3868; 21 RT 3936.) The back seat was folded down. (20 RT 3868; 21 RT 3936.) Although she testified she thought the car had four doors, Jetmore told Deputy Hoffman she was pretty sure it was a two-door vehicle. (20 RT 3868-3869, 3883-3884; 21 RT 3936, 3957.) Jetmore told Deputy Hoffman she could not positively identify the car as compared to the person. (20 RT 3870, 3884, 3898.)

After Jetmore described the attack, Deputy Hoffman showed Jetmore two photographic lineups: one of cars and one of people. (20 RT 3863-3865, 3868; 21 RT 3928-3932.) Deputy Hoffman read to Jetmore a standardized printed admonishment for photographic lineups. (20 RT 3863; 21 RT 3940-3941.)

First viewing the photographic lineup of cars (21 RT 3941-3942), Jetmore said, "Could have been any one of these," but selected two photos and said she was not sure. (20 RT 3868-3870, 3884; 21 RT 3943, 3954, 3961.)

One of the photos Jetmore chose was of the white station wagon belonging to Suff's former girlfriend, Bonnie Ashley. (21 RT 3930-3931, 3943, 3955.)

Upon viewing the photographic lineup of individuals, Jetmore said, "Oh, wow," then selected Suff's photo as that of her attacker. (21 RT 3943, 3960.) She then systematically explained why she did not choose some of the other photos. (21 RT 3944.) Jetmore selected the photo based on Suff's glasses, mustache, round face, sideburns, and "clean image." (20 RT 3865-3866.) Jetmore testified she also picked the photo because of the man's "sober image," meaning he was clean-cut and did not look like a drug user; her comment had nothing to do with his facial expression. (20 RT 3886-3887.) She had never previously seen a photo of the man. (20 RT 3867-3868.) At trial, Jetmore identified Suff as the man who attacked her in 1989. (20 RT 3870-3871; see also 20 RT 3899.)

X. Suff's Negative Attitude Toward Prostitutes

1. April 1984

A couple weeks after Suff moved into Ashley's home in April 1984, his younger brother, Robert,^{15/} visited Ashley's residence to do yard work for Suff. (31 RT 6256, 6260.) The Dunes Casino was visible from Ashley's house (31 RT 6261), and Robert was single (31 RT 6262). As Robert pulled weeds from the gravel driveway, Suff stood by while they talked about the casino and that it would be the perfect place to meet a woman. (31 RT 6261-6262.) Suff then abruptly said that he hated prostitutes. (31 RT 6257-6258, 6260-6263.) Robert could not recall whether Ashley was outside during the conversation. (31 RT 6261.)

15. To avoid confusion, Robert Suff is referenced by first name.

2. August 1989

Pamela Jones was the apartment manager at the Morrow Way apartment complex while Suff lived there. (31 RT 6227-6228.) On August 19, 1989, Jones hosted a slumber party of four to six girls for her daughter's 14th birthday. (31 RT 6231-6233, 6240-6241.) During the party, the girls dressed up "like Barbies," put on makeup including glitter and eye shadow, and went to Suff's apartment for him to judge which of the girls was the prettiest. (31 RT 6233-6234, 6240-6241.)

When Suff answered the door, he said that all the girls who were wearing makeup looked "like goddamn prostitutes," and that the one girl who wore no makeup was "more lady looking." (31 RT 6234, 6241.) Suff had on other occasions told Jones's daughter not to wear a lot of makeup but to look more natural, "more like a lady and not like a prostitute." (31 RT 6234-6235, 6241-6242.) Another time, when several women were upstairs on the balcony of a male neighbor's apartment, Suff said the women were there "for one thing" and that they were "just whores." (31 RT 6235.) Suff said it was degrading to other women to have to be around "something like that." (31 RT 6235.)

3. Early 1990

In early 1990, Kristina Seeger moved into Suff's Chestnut Street apartment. (31 RT 6244-6245; see also 31 RT 6324.) Seeger and Suff were friends. (31 RT 6245.) Suff took in Seeger after her brother threw her out. (31 RT 6246-6247.) During the month and a half Seeger lived with Suff, he told her several times that he did not like prostitutes and that they needed to be killed because they were "sluts." (31 RT 6245-6246, 6248-6249.) At the time, Seeger thought he was kidding. (31 RT 6251.) Seeger moved out of Suff's apartment within a week or two of his March 17, 1990 marriage to Cheryl Lewis. (31 RT 6245.)

4. December 1991

Correctional Officer James Dees of the Riverside County Sheriff's Department had visited the Washington Street warehouse weekly over the past year to year and a half to pick up supplies for his department. (32 RT 6464, 6467.) Officer Dees would see Suff about every second or third trip, and considered him a friend. (32 RT 6465, 6468, 6470.) During Officer Dees's visits, Suff occasionally would bring up the subject of the prostitute killings in Riverside, and they would discuss whom they thought was doing the killings. (32 RT 6465-6466, 6468.) Suff also inquired whether Officer Dees knew the detectives working on the investigation, and asked, "are they closing in on him?" (32 RT 6470.)

On one occasion shortly before Christmas 1991, Suff asked Officer Dees what kind of person he thought would do such a thing; the officer guessed that it was probably an act of revenge by someone who had picked up AIDS or something of that nature from a prostitute. (32 RT 6466.) Suff disagreed and said he thought it was someone who was "basically going to clean the place up." (32 RT 6466.)

Y. Suff's Knowledge Of Back Roads Near The Sites Of Victims' Bodies

In November 1989, Leah Gibbons moved into an apartment complex on Morrow Way in Lake Elsinore, where she met Suff. (28 RT 5682-5684, 5697-5698.) At the time, she did not have a car and was unfamiliar with the Lake Elsinore area. (28 RT 5699.) Gibbons and Suff became friends and would go places together. (28 RT 5684, 5698-5699, 5702.)

Suff sometimes took Gibbons driving off-road in his van on some of the roads around Elsinore and in the hills. (28 RT 5694, 5700-5701.) On one occasion, Suff took Gibbons for a drive on Railroad Canyon Road in Lake

Elsinore; on another occasion, they drove through Cottonwood Canyon. (28 RT 5684; see 28 RT 5701-5702.) During the time they were neighbors, Suff took Gibbons driving about four or five times. (28 RT 5702-5703.)

During the second search of Suff's apartment, police found on the floor of Suff's apartment a street map with locations marked on it. (30 RT 6058-6060, 6063.) Two of the marked locations coincided with where the bodies of Hammond and Zamora were found. (30 RT 6060-6062.)

Z. Suff's Clothing

1. Western-Style Shirts And Sleeveless T-Shirts

Bonnie Ashley testified Suff often wore sleeveless "muscle shirts" (29 RT 5773), and that he wore a size medium shirt (29 RT 5770). Although Suff did not regularly wear what Ashley considered to be "Western-style" shirts while they lived together, she did see him on occasion after their March 1989 separation, and he was wearing Western-style clothes and cowboy boots. (29 RT 5755-5756, 5771-5772.) Ashley also recalled that Suff had a belt buckle bearing his name, "Bill," and later found and provided to police photographs of Suff wearing the belt buckle. (29 RT 5753-5755.) Jetmore's attacker in January 1989 wore a belt buckle with the name "Bill." (20 RT 3839, 3850, 3892.) Ashley did not recognize the "B" belt buckle Suff was wearing when he was arrested. (27 RT 5758-5759.)

During the time he lived at the Morrow Way apartment complex from around March 1989 to December 1989, the apartment manager had seen Suff wearing sleeveless T-shirts and recalled that Suff wore Western-style clothing. (31 RT 6235-6237; see 29 RT 5757.)

Lyttle's body in June 1989 had been dressed in a blue, Western-style shirt with snaps down the front and on the sleeves, among scant other clothing. (21 RT 3965-3966, 3993, 3995; 31 RT 6269-6271.) Lyttle's friend, Janice

Farmer, did not recognize the Western-style shirt as something Lyttle would wear. (21 RT 3966; see 21 RT 3964.)

Cheryl Lewis recalled that while she lived with Suff from about February or March 1990 until his arrest, he wore Western-style clothing and muscle-type, sleeveless T-shirts. (31 RT 6379; see 31 RT 6324.) Similarly, Rebecca Ross said that during the time Suff had been friendly with her – from July 1991 to January 1992 – she saw Suff wearing Western-style shirts and a big belt buckle. (29 RT 5917-5918.)

The man whom Kelly Whitecloud identified as the van driver who picked up Kelly Hammond was described by a McDonald's manager as wearing cowboy boots, a Western shirt, and a Western-style belt buckle. (28 RT 5711.) The buckle was round, silver and gold in color, and had the initial "B" in the middle. (28 RT 5711.)

Leal's body was dressed in a T-shirt from which the sleeves had been cut off, which her brother Jesse did not know Leal to do. (21 RT 4043.)

Among several boxes of men's clothing removed from the master bedroom and the spare bedroom during the first search of Suff's apartment (29 RT 5982; 31 RT 6281-6285) were several Western-style shirts (31 RT 6283-6284), and a black, medium-sized sleeveless T-shirt (31 RT 6284). During his March 1992 visit to Suff's vacated apartment, Investigator Yeo collected various sleeveless and short-sleeved T-shirts in large and medium sizes. (31 RT 6274-6276.) He also took a Levi's brand Western-style shirt with snaps. (31 RT 6276-6277.)

When Suff was arrested on January 9, 1992, he was wearing a sleeveless blue T-shirt under a button-down shirt, and the buckle of his belt was silver and gold and bore the initial "B." (28 RT 5636-5637.)

2. Tennis Shoes

Suff owned a pair of black ProWing tennis shoes and a pair of gray ProWing tennis shoes that Cheryl had bought for him at Payless.^{16/} (31 RT 6351-6354, 6419-6420; 32 RT 6472; 33 RT 6860.) Cheryl bought the black pair of ProWing shoes before the gray pair. (32 RT 6474.) The gray ProWing tennis shoes were found at the foot of the living room couch during the initial search of Suff's Meadow Lane apartment. (29 RT 5966-5967; 30 RT 6051-6052; 31 RT 6352-6353.) Cheryl later found Suff's black ProWing shoes after moving out of the apartment. (31 RT 6366; 33 RT 6859-6860.) A ProWing shoe track had been identified at the McDonald crime scene. (30 RT 6052.)

Suff also owned a pair of black Converse tennis shoes that Cheryl bought for him on either December 6 or 20, 1991, as an early Christmas gift. (31 RT 6354-6356, 6419; 32 RT 6472.) Suff owned only three pairs of tennis shoes, between which he rotated. (32 RT 6473.) He also wore tennis shoes to work. (32 RT 6473.)

AA. Victims' Belongings Discovered At Suff's Workplace Or Distributed By Suff

Toward the end of 1991, about eight or nine employees and two to five supervised county work program participants, called "detainees," would be in the warehouse each day. (29 RT 5805; see 29 RT 5794, 5813.) The work program detainees typically were working to pay down a fine. (29 RT 5793-5794, 5824-5825, 5850, 5856-5857.) There were four to five stock clerks, with about two assigned to each side of the tables in the numbered aisles. (29 RT 5806.) Of those stock clerks, primarily Suff would use the packing table at the end of aisle six. (29 RT 5813, 5840.) Suff normally worked and ate his lunch

16. ProWing is a brand exclusive to Payless Shoe Stores which carries a patent on the sole design of its tennis shoes. (33 RT 6867-6868.)

at that packing station. (29 RT 5799-5802.) Although there were open shelves in the numbered aisles (29 RT 5806-5807), employees would put their coats and lunches underneath the tables or on top of the counter (29 RT 5806, 5841-5842).

1. Items Belonging To McDonald, Casares, And Zamora

Sometime after Christmas week in December 1991, county detainee Robert Guilliam was straightening up boxes underneath the packing table in front of aisle six. (29 RT 5857-5858, 5860, 5892.) On the middle of three shelves in the area of the table, Guilliam found a blue and white box for staples that contained three small purses. (29 RT 5857-5860.) One was a leather, zip-type of purse; the second was a smaller, faded red zip purse; the third was a zip purse in red and other colors, bearing an “Indian type” design. (29 RT 5859-5860, 5863.)

Guilliam looked inside the brown leather purse and saw some ticket citations and what looked like two photo identifications bearing female names with last names of McDonald and Casares. (29 RT 5861, 5869-5871, 5893.) From the photos on the two identifications, Guilliam guessed McDonald was African-American and Casares was “Mexican.” (29 RT 5861-5862, 5870.) The citations were folded up, and Guilliam did not look at the names on them. (29 RT 5862.) After looking inside, Guilliam left the brown purse inside the box. (29 RT 5862-5863.) The red purse felt empty and Guilliam placed the purse back inside the box without looking inside. (29 RT 5863.) The purse with the Indian pattern contained three sets of earrings. (29 RT 5863-5865.) Of the earrings, one pair was silver and turquoise; one pair was gold and turquoise; and one pair was of silver hoops. (29 RT 5865.) Guilliam returned that purse to the box also. (29 RT 5863.)

On Guilliam's last day, January 3, 1992, he retrieved the purse with the Indian pattern, removed the earrings to give to his daughters, and left the purse in the box with the other two. (29 RT 5864, 5892-5893. Later in January, Guilliam learned Suff had been arrested. (29 RT 5865.) After Riverside County Sheriff's Deputy David Shuck contacted Guilliam following Suff's arrest, Guilliam provided the deputy with the purses and three sets of earrings. (29 RT 5866.)

Zamora's sisters Anna Zamora and Dora Kelly, her mother Dina, and her niece Sylvia Rodriguez all identified as Zamora's the small purse with an Indian-type design that Guilliam found at Suff's work station. (30 RT 6003, 6007, 6014-6015, 6024, 6070.) Kelly had purchased two other, similar purses at the same time. (30 RT 6007, 6015-6017, 6066-6067.) A larger purse with an Indian-style design belonged to Kelly's daughter, Sylvia Rodriguez. (30 RT 6015, 6067.) At trial, Zamora's mother noted the purses were actually from Pakistan, and showed the jury her own purse with a similar brightly-colored pattern. (30 RT 6025-6026.)

Of the three sets of earrings found by Guilliam inside the small purse, Zamora's niece, Rodriguez, recognized the turquoise earrings with little hearts as belonging to Zamora. (30 RT 6067-6068, 6072.) Zamora liked hearts, turquoise, and Indian things. (30 RT 6005, 6024, 6027.)

2. Citations In Zamora's Name

Shortly after Suff's arrest in January 1992, a county detainee named Raymond Ramirez was looking underneath the work station of aisle six for a box in which to pack some pens, when he found a small, brown box containing a purse. (29 RT 5827-5829, 5843; see 29 RT 5824.) When Ramirez pulled out the box, which had been hidden in a far corner on the lower shelf, he saw it was already open and contained a coin purse. (29 RT 5829, 5844.) Ramirez

showed the brown leather coin purse to the other workers. (29 RT 5829-5830, 5843-5844; 30 RT 6134.)

The zipper-top purse was already open and appeared as if someone had already looked through it. (29 RT 5830-5831, 5844.) Ramirez looked inside the purse while in the presence of his co-workers. (29 RT 5831, 5844; 30 RT 6128, 6134.) Inside were folded ticket citations on thick paper, a couple Trojan condoms, a couple tampons, and what looked like phone numbers on a folded piece of paper. (29 RT 5830-5831, 5845; 30 RT 6128-6129.) Ramirez unfolded the citations to look at the names on them, and noticed that all three were in the name of Delliah Zamora, with a middle name he could not understand. (29 RT 5831-5832, 5844; 30 RT 6129.) Ramirez remembered the name “Zamora” because it sounded familiar. (29 RT 5846-5848.) One of his co-workers, Joseph Hayes, also remembered the name on the two citations he read. (30 RT 6131, 6136-6137.) Under “middle name,” the citation noted the initials “NMN,” in parentheses. (29 RT 5833.) The citations, which were for prostitution, possession of a syringe, and being under the influence, stated they were issued on University Avenue. (29 RT 5833-5834; 30 RT 6130-6133; see also 29 RT 5845-5846.) Of the three, the citation for prostitution was on top. (29 RT 5833-5834; 30 RT 6131-6132.)

The men began throwing some of the purse’s contents around at each other in jest, when one of the other supervisors approached, saying, “You guys better be working.” (29 RT 5834-5836.) Afraid of being caught fooling around, Ramirez tossed the condoms and tampons in the trash and threw the purse back under the counter. (29 RT 5835-5836.) Ramirez then went to the restroom and flushed the citations down the toilet. (29 RT 5836.)

The next day, Sheriff’s Deputy Shuck and an investigator interviewed Ramirez about the purse. (29 RT 5836-5837, 5849-5850, 5896.) Ramirez reported how and where he found the purse and its contents, including

information such as the name on the citations. (29 RT 5837-5838, 5849, 5896-5897.) Deputy Shuck separately interviewed each of two other men who had been with Ramirez when he found the purse. (29 RT 5850, 5897-5898; 30 RT 6081, 6130.) Based on the information the three men provided, Deputy Shuck later obtained duplicates of Zamora's citations from the Riverside Police Department. (29 RT 5897-5898; 30 6081-6082.)

3. Zamora's Pink And White Striped Shirt

When Deputy Shuck returned to the warehouse to show the citations to Ramirez and his co-workers, he saw items of clothing in the area of the packing tables in aisles six and seven. (30 RT 6083.) On the bottom shelf of packing table seven, Deputy Shuck found a white blouse with pink stripes. (30 RT 6083-6085.) It was folded up and lying on top of a white towel. (30 RT 6085.) After inquiring of the warehouse employees as to whether anyone owned the top, Deputy Shuck took it into evidence. (30 RT 6084-6086.)

Zamora's mother and niece identified the pink and white striped blouse as one Zamora's mother had bought for her at an estate sale. (30 RT 6021-6022, 6026-6027, 6066.)

4. Zamora's Blue Denim Purse

In early November 1991, Cheryl was visiting Brigitte at the hospital when Suff stopped by. (31 RT 6346.) As Cheryl and Suff left the hospital, Suff handed Cheryl a blue denim purse he said he received from his boss, Joe Pajak, who had found it. (31 RT 6346-6347.) Cheryl looked inside and saw a black notebook, some makeup, and an identification card. (31 RT 6347.) Cheryl did not want the purse, and left it in Suff's van. (31 RT 6347.)

Shortly thereafter, around November 3 or 4, 1991 (29 RT 5882, 5888-5889), Suff offered Swanson a blue denim purse, saying it was Cheryl's

that she no longer used. (29 RT 5879-5880, 5882, 5887-5888; see 30 RT 6034.) Swanson accepted the purse. (29 RT 5879.) She was absolutely certain Suff gave the purse to her after Halloween. (29 RT 5882, 5888-5889.)

At trial, Zamora's sister, mother, and niece recognized the blue denim Levi's purse that Suff gave to Swanson as belonging to Zamora. (30 RT 6002-6004, 6008-6009, 6011, 6021, 6065-6066; see also 37 RT 7864.) Zamora's sister Anna explained that a reddish stain on the purse was nail polish spilled by her niece. (30 RT 6003-6004, 6008, 6071.) The purse shoulder strap was in a knot, as Zamora's mother and sisters did out of habit. (30 RT 6011-6012, 6071.)

Tape lifts of a piece of Velcro from the blue denim purse revealed fibers similar to carpet fibers from Zamora's residence (35 RT 7312-7316, 7325-7326) and hair similar to Zamora's head hair (35 RT 7317-7319, 7325-7326). The DNA in the hair root was found consistent with Zamora but not Suff using one test (37 RT 7911-7912), but using another type of testing system the DNA matched both Zamora's and Suff's profile types (37 RT 7913-7915; see also 37 RT 7905). The recovery of both fiber and hair evidence established a strong association between Zamora and the purse. (35 RT 7332-7333.) None of the fibers from the Velcro were compared with fibers from Suff's van, as the relationship between Suff and the purse had already been established. (35 RT 7331-7332.)

5. Zamora's Gold Bracelet

Around Thanksgiving, Suff gave Swanson a gold bracelet he said he had recently purchased for Cheryl from a home TV show. (29 RT 5880-5883, 5889.) Suff told Swanson that because he and Cheryl had separated, he wanted Swanson to have it as an early Christmas present. (29 RT 5881, 5883.)

Zamora's niece, Rodriguez, identified the gold bracelet as one she had left at Zamora's house. (22 RT 6069-6070.)

6. Casares's Blue Jeans

When the group at Ross's house on December 23, 1991, decided not to watch a movie, Suff and Cheryl left Ross's apartment. (29 RT 5940.) They later returned with a pair of Lee brand jeans. (29 RT 5940, 5943.)

Suff had previously offered the Lee jeans to Cheryl, but they were too small. (31 RT 6368.) Suff told Cheryl he found the jeans on the apartment balcony, which Cheryl found strange. (31 RT 6368-6369.) Suff offered the jeans to Thompson, who declined because they were too big – she estimated they were a size 10 – and not her style. (29 RT 5940-5941.)

In early January 1992, Suff visited Swanson's apartment and gave a pair of blue jeans to Swanson's cousin, Yvonne Cady, who at the time was occasionally living with Swanson. (29 RT 5881-5885.) The jeans were too large for Swanson. (29 RT 5889.)

At trial, Casares's daughter, Rosemary Ureta, identified the size eleven blue jeans Casares had borrowed and wore before she last left the house as the same jeans Thompson declined and Swanson's cousin accepted.^{17/} (30 RT 5989-5994.) The jeans had been purchased as a Christmas gift the day before Casares's murder. (30 RT 5989-5990, 5997-5998.)

17. Although at trial Ureta described the jeans as Levi's brand jeans (30 RT 5988-5989), she also testified that she selects clothes based on style, rather than brand name (30 RT 5995), while Thompson particularly noted the Lee brand, as she did not like that brand of jeans (29 RT 5940).

7. Casares's Black Sweater

Sometime in December 1991, after Suff had done the laundry, Cheryl went to the apartment complex laundry room to get the clothes out of the dryer and found a black sweater mixed in with her clothes. (31 RT 6369-6373.) When Cheryl asked Suff whether he had put the sweater in the dryer or if it was from someone else's laundry, Suff said he found it in the spare bedroom of the apartment and thought it was hers. (31 RT 6373-6364.)

On January 9, 1992, between 4:00 p.m. and 6:00 p.m., Suff and his wife visited Ross at her office. (29 RT 5911-5912, 5925, 5929.) Suff gave Ross a size medium black sweater with a left breast pocket, made by "American Weekend." (29 RT 5911-5913, 5925-5926.) Ross threw the sweater on the shelf under her desk partition and left it there. (29 RT 5912-5913.)

Casares's daughter and sister both identified the black sweater that Suff had given Ross as the sweater Casares had borrowed from her daughter before she was killed. (30 RT 5991-5992, 5994-5995, 5999.) That day, Casares wore the black sweater, blue jeans, and a black jacket which were all purchased together earlier in the day. (26 RT 4987-4988, 5048; 30 RT 5988-5990, 5997-5999.)

When Casares's body was discovered the next day, her head was covered with a black "American Weekend" brand jacket. (30 RT 6124; see also 35 RT 7357, 7371.) Fibers lifted from the jacket were compared to those forming the fabric of the "American Weekend" brand black sweater Suff had given to Ross, and were found to be similar and possibly of common origin. (35 RT 7356-7359, 7364; see also 35 RT 7357, 7371-7372.) In addition, fibers taken from Casares's head hair were similar to the fibers composing the sweater. (35 RT 7356-7357, 7359-7360, 7363-7364.)

8. Zamora's Gold Chain And Two Rings

After she moved to her parents' residence following Suff's arrest, Cheryl found in her jewelry box a gold chain, a silver ring with a turquoise butterfly, and a broken gold ring with a heart shape and diamond-like stone in the middle, none of which were hers. (31 RT 6379-6381.) Suff was the only person other than Cheryl who had access to her jewelry box, which she had kept in their bedroom. (31 RT 6381-6382.)

The silver, butterfly-shaped turquoise ring belonged to Zamora. (30 RT 6005, 6009, 6022-6024, 6068, 6071-6072.) Zamora's niece, Rodriguez, identified as hers the gold, heart-shaped ring that had found its way into Cheryl's jewelry box after Zamora's death. (30 RT 6006, 6027-6028.) Rodriguez had loaned the ring to her cousin Marcella, who loaned it to Zamora. (30 RT 6068; see also 30 RT 6009, 6022-6023.) Rodriguez recognized the ring because it was broken. (30 RT 6069.) The gold necklace was also Rodriguez's, which she had left at Zamora's house. (22 RT 6069-6070.)

BB. DNA, Trace Evidence, And Shoe Track/Impression Analysis

Two methods of DNA analysis were utilized for each victim: the more comprehensive Restriction Fragment Length Polymorphism (RFLP) method, which types an individual in "millions and billions" of ways but requires a significant amount of DNA material for analysis, and the Polymerase Chain Reaction (PCR) method, which types a person in only twenty-one different categories but can be utilized when only small amounts of DNA or degraded DNA is available. (36 RT 7500, 7508-7509, 7520-7521, 7651.)

During PCR analysis in this case, the DNA was put through the DQa typing process, which examines a portion of the DQa gene to classify types of individuals. (36 RT 7757-7759.) In fewer situations a second PCR system of

typing was utilized, called the D1S80 process, which requires more DNA (see 37 RT 7894) and looks at the number of repeated sequences and the length of those chains within the DNA. (37 RT 7901-7902; see also 7825-7826, 7891.)

Suff was not excluded as a possible semen donor for any of the vaginal samples in which the DQa system of DNA analysis was used. (37 RT 7807.)

CC. Kimberly Lyttle (Count 1)

Microscopic comparison analysis of various fibers recovered from a blue towel that had covered Lyttle's body showed similarities to fibers from the carpet, side panel, and seats of Suff's van (34 RT 6941-6957); to fibers from the blue exterior, red interior, and white stuffing of the sleeping bag inside the van (34 RT 6957-6958, 6966-6973, 7057-7058, 7088-7089); and to fibers from one of the lengths of sisal rope found in the van (34 6977-6980). A fiber taken from the blue shirt on Lyttle's body also matched that of the sisal rope. (34 RT 6977-6980.)

Hairs removed from the blue towel were similar to Suff's head and pubic hair. (34 RT 7000-7001, 7006-7008, 7010.) That both Suff's head hair and pubic hair were present, and that multiple hairs were found on the towel that covered Lyttle's body created a stronger association between Suff and Lyttle. (34 RT 6978-6980.)

Insufficient DNA was present in Lyttle's blood, which had degraded over time, and in the vaginal swab samples to yield a result using the RFLP method of DNA analysis. (36 RT 7558-7568, 7574; 37 RT 7783.) The DQa system, however, resulted in a match of Suff's type to the male portion of the DNA extracted from Lyttle's vaginal swab sample. (37 RT 7783-7785.) The frequency of Suff's type in the general population was estimated to be about

one in nine among African-Americans, one in eleven among Caucasians, and one in five among “Hispanics.”^{18/} (37 RT 7783-7784.)

DD. Tina Leal (Count 2)

Around April 1990, about six months after she moved into the Morrow Way complex, Suff gave Suff’s neighbor, Leah Gibbons, a pair of red and white Vans tennis shoes. (28 RT 5694-5695, 5697-5698.) Gibbons did not wear the shoes very often because they were difficult to match and not her style, but her daughter wore them a few times. (28 RT 5705.)

Fibers from inside the red and white tennis shoes were similar to those on Leal’s socks (34 RT 6989) and on the shirt that was on Leal’s body (34 RT 6990). In addition, a hair fragment lifted from one of the shoes was similar to Leal’s head hair (34 RT 6987, 6990-6991), all indicating the shoes might be related to Leal’s hair or the clothing Leal was wearing (34 RT 6990-6991).

While Leal’s brother Jesse identified the socks on the body as Leal’s, he was certain she had never worn them pulled up over her pants. (21 RT 4042-4043.) Jesse also did not recognize the T-shirt on her body. (21 RT 4043.) Leal’s body was dressed in a Kings County T-shirt. (See 34 RT 6990.)

Around July 4, 1986 or 1987, Suff and Ashley had visited Kings Canyon National Park. (29 RT 5749-5751.) Ashley could not recall Suff buying a Kings Canyon T-shirt or seeing such a shirt while she did the laundry, but she

18. As the term is used in statistical analysis of the frequency of matching genetic profiles, the “Hispanic” database – unlike the Caucasian or African-American database – is not a “true” racial database, but a composite of a variety of different racial backgrounds including those of mixed race/ethnicity. (36 RT 7528-7529, 7575-7576; see also 37 RT 7914-7915.) The FBI also maintains a separate “American Indian” database, which identifies Native Americans as “Mongoloid” and therefore includes the Asian population. (36 RT 7528-7529, 7665.)

noted that the shirt found on Leal was the kind Suff might buy for her, because of its design. (29 RT 5751-5753.)

Fibers lifted from the T-shirt were similar to those of the red lining of the sleeping bag (34 RT 6973-6974) and of the gold pillow (34 RT 6982-6983) in Suff's van, as well as to the carpet in Suff's Morrow Way apartment (34 RT 6983-6986). A fiber from Leal's head hair was similar to exemplars of sisal rope from the van. (34 RT 6980-6981.)

Two hairs found on the same T-shirt were microscopically compared with, and found to be similar to, Suff's pubic hair. (34 RT 7008-7010.) Two hairs on Leal's socks, and one from the body bag in which her body was transported to the coroner's office, were similar to Suff's head hair. (34 RT 7001-7003.)

EE. Darla Ferguson (Count 3)

Physical and microscopic comparisons between the rope found in Suff's van and the rope that was tied around Ferguson's body showed they both appeared to be sisal, of similar construction, and the same size. (34 RT 7107-7110.) Fibers from Ferguson's body and one in her head hair were similar to those of the sisal rope in Suff's van. (34 RT 7110-7111.)

Other fibers from Ferguson's body were similar to those of the red lining and of the white stuffing of Suff's sleeping bag. (34 RT 7096-7103.) A hair similar to Suff's head hair was tape-lifted from Ferguson's arm. (34 RT 7123-7128.)

Also lifted from various areas of Ferguson's body were a number of paint chips that were of three layers – white, blue, and clear – and which appeared to be paint from something decorative, rather than automotive or house paint. (34 RT 7132-7139, 7146-7153, 7155.)

The DNA from Ferguson's blood sample had begun to degrade, but DNA testing of Ferguson's vaginal fluid using the RFLP technique yielded a match to Suff on two of the six probes. (36 RT 7568-7580; 37 RT 7785.) Based on the results, the combined probability of a profile matching Suff's was estimated at 1 in 3,800 African-Americans, 1 in 14,000 Caucasians, and 1 in 1,700 Hispanics. (36 RT 7580-7582.) The DQa results on Ferguson's sample showed the same match to Suff as on Lyttle's sample. (37 RT 7785-7787.) Combined with the results from the RFLP method of analysis, however, the combined profile frequency in the general population was estimated at 1 in 34,000 African-Americans, 1 in 154,000 Caucasians, and 1 in 8,500 Hispanics. (37 RT 7787.)

FF. Carol Miller (Count 4)

Fibers collected from the black T-shirt that was covering Miller's face were similar to those of the red lining (34 RT 7098-7100), white stuffing (34 RT 7102-7103), and blue exterior (34 RT 7103-7104) of the sleeping bag in Suff's van; to the van's gray carpet (34 RT 7113-7115); and to the van's striped seat upholstery (34 RT 7117-7119). Both the T-shirt and Miller's pubic hair yielded fibers similar to those of the sisal rope in the van (34 RT 7111-7113) and of the van's side panel upholstery (34 RT 7115-7117). A fiber from Miller's chest was similar to the van's light gray velour seat fabric. (34 RT 7117-7119.)

A hair taken from the T-shirt was similar to Suff's head hair (34 RT 7126-7129), and a hair from Miller's vaginal area was similar to Suff's pubic hair (34 RT 7129-7132).

At least four two-sided paint chips, which were similar in elemental and organic composition to those found on Ferguson's body, were lifted from the

T-shirt on Miller's face, thereby establishing a link between the two bodies. (34 RT 7132-7139, 7146-7153, 7155-7156.)

The DNA in Miller's blood sample had degraded considerably by the time of analysis. (36 RT 7583.) Analysis using the RFLP method showed the presence of a virus in the DNA, but the male DNA profile in Miller's vaginal swab sample matched Suff on three of the six probes. (36 RT 7588-7593.) With respect to the Caucasian population, the combined profile frequency was estimated at 1 in 97,000. (36 RT 7593-7594; 37 RT 7788.) Suff's type matched the male fraction of the DNA in Miller's vaginal swab sample using the DQa system, bringing the combined profile frequency result in the general population to 1 in 234,000 African-Americans, 1 in 1 million Caucasians, and 1 in 55,000 Hispanics. (37 RT 7788-7789.)

GG. Cheryl Coker (Count 5)

Criminalist Secofsky compared the shoe impressions found under the wood pallets with the three pairs of Suff's shoes obtained by law enforcement and found the measurements, sole design, and tread design to be consistent with test impressions of both the left and right of Suff's black ProWing tennis shoes. (31 RT 6432-6449; 32 RT 6475-6476, 6478-6483, 6486-6489, 6492, 6494-6498, 6501-6502, 6505-6518, 6541-6542, 6550, 6556-6558, 6560, 6581-6582, 6586-6588; see 32 RT 6525.)

A hair similar to Suff's head hair was taken from Coker's pubic area. (34 RT 7172-7174.) Also collected from Coker's pubic area were sisal rope fibers similar to those of the rope in Suff's van (34 RT 7156-7159) and fibers similar to those of the van's carpet (34 RT 7162-7164).

Using the RFLP method of DNA analysis, the sperm cells in the condom found at the scene matched Suff on five of six probes, which is an extremely uncommon. (36 RT 7594-7599.) The combined statistical probability of a

coincidental match was determined to be 1 in 540 million African-Americans, 1 in 1 billion Caucasians, and 1 in 150 million Hispanics. (36 RT 7598-7599.) In this case, DQa testing was not performed due to the five-probe RFLP match. (37 RT 7795, 7806-7807.)

HH. Susan Sternfeld (Count 6)

Analyzed fibers lifted from Sternfeld's buttocks were found similar to those of the interior carpet (34 RT 7164-7167), side panel upholstery (34 RT 7167-7169), seat upholstery (34 RT 7169-7170), rope (34 RT 7159-7161), and red lining of the sleeping bag (34 RT 7170-7171), in Suff's van.

The DNA in Sternfeld's vaginal swab sample was analyzed using RFLP testing and matched Suff on three of the six probes, resulting in a combined statistical probability of coincidental match of 1 in 540 million African-Americans, 1 in 1 billion Caucasians, and 1 in 150 million Hispanics. (36 RT 7601-7608, 7727-7728, 7731-7736.) DQa testing was not performed due to the three-probe RFLP match. (37 RT 7795, 7806-7807.)

II. Kathleen Milne (a.k.a. Kathleen Puckett) (Count 7)

A fiber similar to that of the carpet in Suff's van was found in Puckett's head hair. (35 RT 7208-7210.) A tuft of yarn recovered from the sock that had been stuffed in Puckett's throat was similar to the light gray, velour fabric on the seats of Suff's van. (35 RT 7210-7212.)

Analysis of the DNA in Puckett's vaginal swab using the RFLP method matched Suff in four of five probes, for a combined profile frequency result of 1 in 16 million African-Americans, 1 in 23 million Caucasians, and 1 in 13 million Hispanics. (36 RT 7608-7612, 7727-7728.) Results were inconclusive under DQa testing. (37 RT 7795-7798, 7806-7807-7836-7837, 7841-7843.)

JJ. Cherie Payseur (Count 8)^{19/}

Sometime in 1994, Bonnie Ashley provided police with a Rand McNally map of the Riverside area on which Suff had written a numbered listing of nine places. (29 RT 5760.) Ashley said Suff wrote the items on the map to help her navigate her way around Riverside. (29 RT 5760-5761.) Item number six was “Bowling alley.” (29 RT 5760-5761.) The location Suff marked was Concourse Bowling Alley on Arlington Avenue, where Suff belonged to a bowling league, and where Payseur’s body was found. (29 RT 5761-5762, 5773-5778.)

Criminalist Secofsky analyzed shoe impressions left at the crime scene and found, when compared with shoe impressions at the Coker crime scene and assuming continued wear to the shoe from the time of the murder, that Suff’s right black ProWing tennis shoe could have made impressions found at both crime scenes. (31 RT 6450-6455, 32 RT 6476-6483, 6486-6492, 6495-6518, 6541-6542, 6556-6558, 6560, 6581-6582, 6586-6587, 6655-6656.)

A hair from Payseur’s body bag was similar to hair from Suff’s adult cat. (35 RT 7214-7223.) Analysis of a blond pubic or possibly chest hair tape-lifted from Payseur was inconclusive because of its lack of color, but based on microscopic analysis it could have been one of Suff’s that had turned white. (35 RT 7223-7224, 7231-7234.)

DNA analysis of Payseur’s vaginal swab revealed two semen donors, requiring by FBI policy that the result be deemed inconclusive. (36 RT 7612-7615, 7634-7639, 7719-7720.) Suff could not be excluded as a donor, however, because the two most intense bands of the male fraction both matched Suff. (36 RT 7612-7615.) Similarly, under DQa testing the result could not be deemed a match, even though the most intense bands matched Suff, because the

19. The jury hung on this count and a mistrial was declared as to it.

sample showed two semen donors. (37 RT 7799-7800, 7835-7836.) Combining the DQa and RFLP results, the FBI's estimate of the frequency of individuals matching Suff's type in this sample was 1 in 7,000 African-Americans, 1 in 18,000 Caucasians, and 1 in 14,000 Hispanics. (37 RT 7801, 7806-7807.)

KK. Sherry Latham (Count 9)

Cat hairs lifted from Latham's buttocks were similar to those of Suff's cat. (35 RT 7236-7237; 7261-7265, 7270-7172.) Fibers collected from Latham's body and pubic area were similar to those of the red lining of Suff's sleeping bag (35 RT 7256-7258, 7260, 7272-7275, 7286-7287); other fibers from her body were similar to the fibers of the sleeping bag's white stuffing (25 RT 7258-7260, 7275-7277) and of the sisal rope in Suff's van (35 RT 7245-7246, 7265-7266). One gray fiber was microscopically similar to carpet fiber from Suff's van, but the comparison was inconclusive because the diameter of the fiber did not match any of the exemplars. (35 RT 7253-7254, 7266-7270.)

LL. Kelly Hammond (Count 10)

Hairs tape-lifted from Hammond's body were similar to hairs from Suff's cat. (35 RT 7236-7240, 7279-7280.) Natural plant fibers taken from Hammond's pubic area and other areas of her body matched two different kinds of sisal rope found in Suff's van. (35 RT 7240-7245.) Other fibers lifted from Hammond's body and head hair were similar to those of Suff's van upholstery (35 RT 7246-7248), the side panel upholstery of Suff's van (35 RT 7249-7250), carpet fiber from Suff's van (35 RT 7251-7253, 7278-7279), and the red lining of Suff's sleeping bag (35 RT 7254-7256).

RFLP testing of Hammond's vaginal swab sample DNA showed Suff's profile matched on two of the six probes, and although consistent with one a third band, it could not be considered a conclusive match on that probe due to shared bands with the victim's profile. (36 RT 7639-7646, 7727-7728.) Under DQa testing, the male fraction of Hammond's sample matched Suff, together with the RFLP matches resulting in combined profile frequencies of 1 in 7,000 for African-Americans, 1 in 18,000 Caucasians, and 1 in 4,000 Hispanics in the general population. (37 RT 7800-7801, 7806-7807.)

MM. Catherine McDonald (Count 11)

Criminalist Secofsky compared shoe track impressions from the scene with those from other crime scenes and from Suff's three pairs of tennis shoes, and determined the right and left of Suff's gray ProWing shoes could have made impressions found at the McDonald crime scene. (32 RT 6521-6530, 6532-6542, 6545-6550, 6557-6558, 6581-6584.)

A partial strand of head hair similar to McDonald's was lifted from the cargo area of Suff's van. (35 RT 7308-7312.)

Fibers lifted from McDonald's head hair, body, and face were similar to those from the red lining of Suff's sleeping bag. (35 RT 7284-7287.) Other fibers from her face were similar to the sleeping bag's white stuffing (35 RT 7287-7288) and Suff's gold pillow (35 RT 7295-7299). A fiber similar to that of Suff's van seat upholstery was found on McDonald's right thigh. (35 RT 7293-7294.) A tangled ball of hairs and fibers taken from McDonald's head hair contained two cat hairs similar to those of Suff's cat. (35 RT 7301-7304, 7324-7327, 7331-7333.)

Pubic hairs similar to Suff's were found in McDonald's pubic area and vagina. (35 RT 7304-7308.) The DNA at the root of the hair was insufficient for a more comprehensive testing, and a mixture of DNA was detected. (37 RT

7916-7919.) Under DQa analysis, however, a major contributor to the DNA mixture was of the same DQa type as Suff. (37 RT 7916-7918, 7922, 7927-7935.) The occurrence of the same DQa type as Suff's in the general population was about 1 in 15 African-Americans, 1 in 10 Caucasians, and 1 in 5 Hispanics. (37 RT 7934.)

Suff's DNA profile matched one of the six probes of McDonald's vaginal swab sample under RFLP testing. (36 RT 7646-7649.) The profile frequency of such a match in the general population would be 1 in 250 Caucasians, 1 in 115 African-Americans, and 1 in 119 Hispanics. (36 RT 748.) Insufficient DNA resulted in weak profiles on four of the remaining probes, therefore the least sensitive probe was not run. (36 RT 7649.) The bands that could be seen were in similar positions to Suff's profile, but were not intense enough to measure. (36 RT 7649.) When analyzed under the DQa process, one of the profile types was shared by both the male and female fractions of the sample. (37 RT 7801-7802.) Suff's DNA was consistent with the shared type, but due to the mixture the overall result of the test was deemed inconclusive. (37 RT 7801-7803.)

NN. Delliah Zamora (a.k.a. Delliah Wallace) (Count 12)

Fibers similar to the red fibers of Suff's sleeping bag were lifted from the front of Zamora's blouse. (35 RT 7288-7290.) A fairly large bundle of sisal rope fibers similar to those of rope in Suff's van were found on Zamora's right wrist (35 RT 7290-7292), and a gold fiber similar to those of the gold pillow in Suff's van was removed from Zamora's pink shirt and head hair (35 RT 7298-7301). None of the fibers from the upholstery fabrics or carpet in Suff's van (35 RT 7292-7293), and no cat hairs (35 RT 7304) were found on Zamora.

Zamora's vaginal swab sample yielded inconclusive RFLP test results due to lack of sufficient DNA, as the bands were barely visible but did not exclude Suff. (36 RT 7649-7653, 7722; 37 RT 7803.) Under DQa analysis, Suff's profile type matched that of the male fraction of the sample. (37 RT 7803.)

OO. Eleanor Casares (Count 13)

Sufficient similarities between shoe track impressions found at the Casares crime scene and those of Suff's left and right Converse tennis shoes such that Suff's shoes could have left the impressions. (32 RT 6561-6566, 6568-6581, 6583-6592, 6597-6600, 6603-6606.)

On Casares's black jacket were fibers similar to the gray carpet fiber of Suff's van (35 RT 7334-7337), the red fiber from Suff's sleeping bag (35 RT 7340-7342), the white fiber of the sleeping bag's stuffing (35 RT 7342-7343), and probable sisal rope fibers (35 RT 7343-7345, 7365-7368). Fibers taken from Casares's jacket and head hair were similar to those of Suff's gold pillow (35 RT 7339-7340). Cat hairs similar to those of Suff's adult cat were lifted from Casares's jacket and body. (35 RT 7347-7348, 7350-7351, 7369.)

A hair similar to Suff's head hair was also found on the jacket (35 RT 7351-7352), and hairs similar to Suff's pubic hair were recovered from Casares's jacket, body, and face (35 RT 7352-7355). Analysis of DNA from the root of one of the pubic hairs using the DQa and D1S80 typing systems both resulted in the same profile type for both Casares and Suff. (37 RT 7898-7906, 7922-7925, 7939-7940; see 35 RT 7354-7355.) Because the DNA type was consistent with Suff's, he could not be excluded as the donor of the hair. (37 RT 7904-7905.)

Two head hairs found on the green blanket in the back of Suff's van were similar to Casares's head hair (35 RT 7360-7362; see 35 RT 7390-7393),

and fibers similar to those of the green blanket were found in Casares's head hair and on her jacket (35 RT 7336-7339, 7362), creating a stronger association between the two (35 RT 7363).

Insufficient DNA was present in Casares's vaginal sample to reach a conclusive profile result using RFLP analysis. (36 RT 7652-7653, 7722.) DQa testing was also inconclusive, as both the male and female fractions of the sample – as with testing of the hair root – yielded the same profile type. (37 RT 7803-7804.)

The DNA of the blood on the kitchen knife found in Suff's van was analyzed using a more detailed polymarker test, which examined five different locations on four different chromosomes, for about 972 different ways of typing a person. (37 RT 7761-7763, 7805.) The polymarker test was only used in this instance during the overall investigation. (37 RT 7763.) Although the DQa test on the blood could not distinguish between Suff's and Casares's profile types (37 RT 7805), the polymarker test showed the blood could not have come from Suff but matched the DNA of Eleanor Casares. (37 RT 7805-7807; see also 37 RT 7900-7902.)

Guilt Phase: Defense Case

A. Rhonda Jetmore (Count 14)

Rhonda Jetmore's estimation of her attacker's weight as well as her recollection of the colors of his wire-framed glasses, belt buckle, and hair differed between 1989 and 1992, though at trial she was consistent with one prior description or the other. (Compare 20 RT 3850, 3879-3880, 3909, 3911 with 21 RT 3937; see also 20 RT 3880-3881 [weight]; compare 20 RT 3877 with 20 RT 3881 and 21 RT 3937-3938 [color of glasses frames]; compare 20 RT 3887-3888, 3899-3900; 21 RT 3939 with 20 RT 3877, 3909 [color of belt buckle]; compare 20 RT 3878, 3909 with 20 RT 3881; 21 RT 3937 [hair

color].) She also described Suff in 1992 and at trial as being neat in appearance but having two to three days' worth of stubble in his beard area, but she did not mention the stubble in 1989. (Compare 20 RT 3851, 3877-3878, 3881; 21 RT 3937 with 20 RT 3911.) Although she described the station wagon at trial as a four-door, she explicitly recalled during the 1992 interview that the car was a two-door. (Compare 20 RT 3868 with 21 RT 3936, 3956-3957; see also 20 RT 3869, 3883-3884.)

B. Kimberly Lyttle (Count 1)

Janice Farmer, the close friend of Lyttle's who testified for the prosecution (see 21 RT 3963), testified that in 1987 or 1988, Lyttle introduced her to Suff and he became a "regular john" of Farmer's. (38 RT 8204-8205, 8208-8209.) They would engage in sex acts at John's Service Center, where Suff was at the time working on weekends, and Suff would pay her without dispute. (38 RT 8205, 8209-8210.) Farmer also saw Suff when she was not prostituting. (38 RT 8205-8206.) She could con him out of a lot of money, and he would give her money from the Service Center's cash register. (38 RT 8209-8210.) Suff would contact other prostitutes along Main Street, but not often because "everybody" – meaning the other prostitutes – knew him. (38 RT 8210-8211.) At that time, Suff drove a blue Toyota Celica. (38 RT 8206, 8211.) Although Suff was nice to Farmer, he did not like the "gutter-bound" prostitutes who were "chasing drugs 24 hours a day." (38 RT 8211-8212.) Farmer stopped seeing Suff around the time he got married. (38 RT 8206.) By the time Suff got his van, she had been through drug treatment and no longer engaged in prostitution. (38 RT 8212.)

C. Tina Leal (Count 2)

Jesse Leal had a 1986 felony robbery conviction and a 1993 felony conviction for petty theft with a prior. (21 RT 4044.)

While Bonnie Ashley and Suff were at Kings Canyon in 1986 or 1987, Ashley did not see Suff buy a Kings Canyon T-shirt, and she did not purchase one. (29 RT 5751-5752.) Suff did not have a very extensive wardrobe and Ashley would usually do the laundry, so if he had a Kings Canyon T-shirt, she would have seen it. (29 RT 5770.)

D. Cheryl Coker (Count 5)

Boyd Coker had convictions for burglary and receiving stolen property in 1975, burglary in 1976 and 1981, receiving stolen property in 1989, and illegal drug possession in 1991. (23 RT 4303-4304.)

E. Susan Sternfeld (Count 6)

George Vivian had a 1986 felony conviction. (23 RT 4432.)

On December 19, 1990, the day Sternfeld disappeared, Suff's time card showed he worked from 7:00 a.m. to 4:30 p.m. (38 RT 8096-8105.) A defense investigator determined the distance between the Washington Avenue warehouse where Suff worked and the parking lot of what used to be Bob's Big Boy at Iowa and University Avenues ranged from 5.7 miles and 13 minutes, 58 seconds, to 6.9 miles and 14 minutes, 56 seconds, depending on the route driven. (38 RT 8108-8110.)

A hair removed from sisal rope in Suff's van was initially determined to be similar in microscopic features to Sternfeld's hair, but DNA analysis later excluded Sternfeld, as well as all other victims in this case and Suff, as its contributor. (35 RT 7373-7374, 7394-7395; 37 RT 7915-7916.)

F. Cherie Payseur (Count 8)^{20/}

The person who covered Payseur's body with the jacket was Andre Atkinson, a former Illinois correctional officer. (38 RT 8139-8140.) Atkinson stood in the planter area, wearing off-brand tennis shoes from Kmart, and felt Payseur's neck for a pulse. (38 RT 8140-8141, 8143.) Another man was in the planter, and Atkinson covered the naked body due to the presence of "a bunch of kids." (38 RT 8141.) After Atkinson identified himself to bystanders as a correctional officer, showed them an old identification card, and told them to get back, a man who appeared to Atkinson to be Mexican hopped over the fence. (38 RT 8141-8142.) Atkinson gave police a description of the man, who resembled Atkinson's friend in age, size, and body type. (38 RT 8142-8143.)

Payseur's vaginal swab sample was analyzed for blood type and PGM enzyme type of the combined fluids. (38 RT 8151, 8154-8164.) Suff and Payseur both had type O blood. (38 RT 8154, 8160.) The swab sample showed A and H antigenic activity, which was consistent with a mixture of fluids by persons of blood types O and A, but the PGM enzyme type was consistent with Payeur's type but not Suff's. (38 RT 8158-8162.) Unlike with DNA analysis, however, the test sample for antigen and enzyme typing is not separated into male and female fractions. (38 RT 8167-8168, 8174.) Assuming a second semen donor, however, Suff was "certainly not excluded" as a contributor to Payseur's vaginal sample. (38 RT 8173; see also 38 RT 8169-8176.)

20. A mistrial was declared as to this count after the jury hung as to it.

G. Sherry Latham (Count 9)

Latham's boyfriend, Joseph Garrett, Jr., testified Latham was a prostitute and used heroin and cocaine, but would suffer seizures "and stuff" if she drank alcohol while using cocaine. (39 RT 8279-8280.) From about a half-block away, Garrett would watch Latham get into customers' cars and wait for her to return. (39 RT 8280-8281.) Latham and her customers would go out to a field near the welfare office off of Minthorn and return after 10 or 15 minutes. (39 RT 8281-8282.) Garrett last saw Latham on July 2, 1991, about 8:30 or 9:00 p.m., when she got into an unfamiliar car similar to a black Nissan Maxima. (39 RT 8282-8284, 8287.) Rather than turning toward the field on Minthorn, the car turned another direction. (39 RT 8285.) Garrett waited an hour and a half, but Latham never returned. (39 RT 8286.) The driver had dark hair and no glasses or facial hair, but Garrett could not supply a more detailed description. (39 RT 8284-8285.) Garrett had used that day. (39 RT 8287.)

H. Kelly Hammond (Count 10)

Kelly Whitecloud had convictions in 1984 for a narcotics violation, in 1989 for kidnapping, and in 1992 for burglary, and at trial was serving prison time for a parole violation. (24 RT 4749.) Whitecloud testified that if it had come down to it, she would have "rip[ped] [Suff] off." (24 RT 4747.) The descriptions of the suspect that Whitecloud gave at trial, to Detective Keers, and to the grand jury differed. (24 RT 4751, cf. 24 RT 4717-4719.)

When Investigator Carl Carter and Detective John Davis of the Riverside County Sheriff's Department conducted a follow-up interview of Whitecloud on August 17, 1991, relating to Hammond's murder, Whitecloud was "unfocused" during the interview, "pretty distraught throughout the conversation," and appeared to be under the influence of something. (38 RT 8250-8253, 8255-8256.) She did not appear to have any injuries or to be in any

physical pain, and she did not tell the officers that she had jumped out of the van while it was moving. (38 RT 8254.) Whitecloud said, as Investigator Carter described using his own wording, that she did not care for Suff, that he had spooked her, and “they parted ways.” (38 RT 8255.) Investigator Carter did not go into exactly how the two “parted ways.” (38 RT 8255.)

Defense investigator Patricia Barnaby testified she interviewed Whitecloud at Central Women’s Facility in Chowchilla for about an hour and a half despite Whitecloud’s initial reluctance. (38 RT 8257-8261, 8263, 8265-8269.) During the interview, which was not tape recorded, Whitecloud said she was sure the book she saw between the front seats of the van was a Holy Bible, and that the words “Holy Bible” were written on it. (38 RT 8261-8262.) The black book on the van’s console was an appointment book, not a Bible. (28 RT 5567.) Whitecloud said she was maintaining a drug habit of about \$1,000 per day, and that she “tumbled out” of the van while it was moving, but had landed on her feet. (38 RT 8282.) Investigator Barnaby did not contact prison officials to request to tape record the interview. (38 RT 8263-8265.) During the interview she took “[j]ust a few” notes and destroyed them after writing her four-page report. (38 RT 8260, 8265-8266.)

Whitecloud denied making any statement to Investigator Barnaby and denied being under the influence of drugs at the time she gave police the information for the composite sketch of Suff. (24 RT 4747, 4752-4754.)

On the morning Jim Tyhurst found Hammond’s body, Filberto Beltran had arrived at the same location around 6:05 a.m., and drove into the alley, where he unlocked and opened the gate. (38 RT 8112-8115, 8127-8130.) Beltran was driving a two-ton flatbed “bobtail” with a raised cab, hauling a forklift. (38 RT 8127.) He parked, unhooked the forklift, and returned to the cab of his truck to lie down to nap until Tyhurst arrived. (38 RT 8114-8115, 8131.) It was still dark outside. (38 RT 8115, 8127-8128.) Beltran heard

someone driving up and assumed it was Tyhurst, looked up and saw some lights, but the vehicle went around Beltran's truck and back toward the alley. (38 RT 8115-8116, 8131-8132.) Two or three minutes later, Beltran got out of his truck and walked toward the alley, heard a "slam" like someone closing a car trunk, then saw some lights and heard the vehicle "peel out" as it made a right turn at the end of the building, nearly hitting Tyhurst's truck. (38 RT 8116-8117, 8132.) As the car peeled out, Tyhurst made a left turn, drove up to Beltran, and asked whether he had seen the "dead body" in the alley. (38 RT 8118, 8132-8133.) Tyhurst called 911 while Beltran walked over to the body. (38 RT 8118-8119.) Beltran said he would have seen the body, had it been there when he arrived. (38 RT 8118, 8134.) He never actually saw the vehicle that he heard. (38 RT 8116, 8131-8132, 8134.)

Riverside County Sheriff's Investigator Robert Joseph, a member of the homicide task force created to investigate the local serial killings, interviewed Debra Sosa on October 8 and 9, 1991, regarding Hammond's disappearance. (39 RT 8314-8315, 8321-8323.) Investigator Joseph had joined the task force earlier that month. (39 RT 8321.) During the second interview, Sosa appeared to be sober and said she had been clean for about two years, was in a methadone treatment program, and was clean the night she said she last saw Hammond. (39 RT 8316, 8320, 8324.)

That night, Sosa had gone to her friend Belinda's house and was waiting for Belinda's sister Lisa so Sosa could buy some cocaine. (39 RT 8316.) When Lisa failed to show, Sosa walked to Stern's Liquor Store on Seventh Street, west of Market Street, "looking to score some dope." (39 RT 8316-8317.) Sosa said she saw Hammond around midnight, wearing a "short, short" dress or short shorts, and then saw Hammond picked up by a blue pickup truck driven by a Caucasian male. (39 RT 8317-8318.) Sosa learned about Hammond's death from Whitecloud a few days after the murder. (39 RT 8325-8326.)

When Sosa realized she had seen Hammond on the night of her murder; she confronted Whitecloud about the composite Whitecloud had provided, since Whitecloud knew Sosa had seen Hammond later that night. (39 RT 8318-8319, 8326.) Although Sosa had previously spoken to Investigator Creed and did not want to be involved with the police at the time, she had since been pressured by others to talk to police. (39 RT 8319, 8325.) She provided a description for a composite of the male on the day of the second interview. (39 RT 8318-8320.)

Investigator Joseph learned prior to the second interview that Investigator Creed had previously spoken to Sosa several times and provided a statement. (39 RT 8323-8324.)

At trial, Sosa was in local custody.^{21/} (39 RT 8291.) She denied ever working as a prostitute, said she could not recall speaking to Investigator Joseph or other officers after Hammond's death, could not remember whether she was doing drugs at the time, and said she would not help Suff. (39 RT 8190-8291, 8307.) Sosa also denied knowing Hammond or Whitecloud and did not recall seeing Hammond on the night of her murder. (39 RT 8292, 8302-8303.) Even after reading the written report, Sosa continued to state that she did not remember Investigators Joseph or Creed, or any of her statements to Investigator Joseph. (39 RT 8299-8307, 8310-8311, 8313.) Murder victim Eleanor Casares was Sosa's relative. (39 RT 8291.) Sosa also went by the name of Debra Navarro, had a felony conviction for petty theft with a prior (39 RT 8308-8309), and admitted being arrested in for prostitution in 1993. (39 RT 8312-8313.)

21. After further examination outside the presence of the jury, the court permitted defense counsel to lead Sosa as a hostile witness. (39 RT 8298; see 39 RT 8293-8298.)

I. Eleanor Casares (Count 13)

Suff was home when his wife Cheryl woke up between 10:00 a.m. and noon on December 23, 1991. (31 RT 6402-6403, 6412, 6421-6422.) Cheryl believed she had the van that day, but was not sure. (31 RT 6404.)

Arlene Gomes testified she and Lisa Pereya saw Casares around 3:15 a.m. on December 23, 1991, at the USA Gast Station at Victoria and University and left her around 3:30 a.m. after offering her a ride home.^{22/} (38 RT 8178-8182.) Tony Thomas testified he did not see a body at the Casares crime scene between 9:00 and 10:00 a.m. on December 23, 1991, but had seen a car near the area of the body a couple days earlier. (38 RT 8184-8197, 8241-8243, 8248-8249.) Celia Gawrych testified she saw Casares between 9:00 and 10:00 a.m. on December 23, 1991, at the USA Gas Station at Victoria and University. (39 RT 8336-8342.)

On December 30, 1991, an officer stopped Ann Hawley and her husband, who were retired, at a police roadblock on Victoria Avenue asked whether they had seen anything in the last two or three days. (38 RT 8215-8217.) Hawley recalled that as they drove down Victoria Avenue between 2:00 and 3:00 in the afternoon she had seen a man with dark skin, who could have been Mexican, standing on the bank and facing the orange grove. (38 RT 8217-8218, 8220-8221.) She saw only his profile, but he appeared “hypnotized,” looking only into the grove and never turning his head. (38 RT 8218-8219, 8220-8221.) As they drove by, Hawley told her husband that she thought the man was going to steal some oranges. (38 RT 8221.) It was a brief encounter as Hawley and her husband “just flashed past it.” (38 RT 8218-8219.)

22. Casares’s sister, Adela Soliz, last heard from Casares between 10:00 and 11:00 a.m. on December 23, 1991. (26 RT 5000-5002, 5061.)

Carlos Looney, worked with Suff as a county “detainee” in December 1991 until the warehouse closed for Christmas, and did not recall ever seeing any injuries or scratches on Suff’s face or arms. (38 RT 8328-8331.) Although he believed he worked during the week of December 23, Looney could not recall what days he worked. (38 RT 8332.) On redirect examination, Looney testified he took several days off around the Christmas holidays, but he could not recall what day he returned to work. (38 RT 8331-8333.)

J. Suff’s Arrest

Roberta Gamboa had convictions for four felonies: robbery, possession of narcotics for sale, and two other narcotics offenses. (27 RT 5496.) Though the police bulletin described the van as a two-tone, medium blue over gray Chevy Astro van, Suff’s van was a silver-gray Mitsubishi van. (28 RT 5566-5567.)

K. Suff’s Attitude Toward Prostitutes

Suff’s brother, Robert, had a 1972 misdemeanor conviction for grand theft auto, a 1974 felony conviction for receiving stolen property, a 1975 felony conviction for burglary, and a 1986 felony conviction for larceny. (31 RT 6263.) Bonnie Ashley did not recall Robert visiting her residence in 1984, and testified the Dunes Casino is not visible from her property. (38 RT 8147-8149.) Defense investigator Barnaby was also unable to see the casino sign from Bonnie Ashley’s former residence on Orchard Street, assuming the sign was in the same position 11 years earlier. (38 RT 8270-8272.)

Florence Scharton testified that from her experience visiting Suff when he lived with Ashley on Orchard Street, a church blocked the view of the casino and the sign is not visible, either. (38 RT 8618.) Scharton, who had known Suff for about 13 years, never heard Suff say anything derogatory about

prostitutes. (40 RT 8615-8624.) The prostitution in downtown Lake Elsinore was a concern to an organization of which Scharton and her husband were members, however, and Scharton thought Suff was aware of their concerns, based on their conversations in his presence. (40 RT 8622.) Scharton was unaware that Suff had ever hired or dated a prostitute. (40 RT 8623-8624.)

L. DNA And Trace Evidence

The leaf fiber of sisal is very common, in twine as well as rope, and probably could not be distinguished from other sisal fiber absent some accidental or intentional contaminant such as coloring. (34 RT 7181-7183.)

On occasion, Suff picked up and transported county “detainees” from downtown Riverside to the warehouse to work, though the detainees had to find their own way home at the end of the day. (29 RT 5793-5794.) Many times the county vehicle was unavailable and Suff used his own van for this purpose. (29 RT 5793-5794; 38 RT 8100, 8104.) Some of the detainees were African-American or Hispanic/Latino. (38 RT 8100.) Regular employees, some of whom were African-American, also rode in Suff’s van once or twice for lunch or other occasions. (38 RT 8100-8101.)

Vaginal swab samples from Ferguson, Puckett, Hammond, and McDonald were tested for PGM enzyme type and found to have PGM types consistent with those victims but not with Suff. (38 RT 8222-8234.) However, the sperm level ratings for the Puckett and McDonald samples were low, and the ratings for the Ferguson and Hammond samples were low to moderate, making it more likely that the detected PGM activity was from the victims rather than the semen donor. (38 RT 8236-8239.)

Defense witnesses Dr. Laurence Mueller (39 RT 8430-8496; 40 RT 8605-8613) and Dr. John Gerdes (38 RT 8013-8057, 8089-8094) disputed the

accuracy of the profile frequency statistics and the reliability of the PCR results in this case.

Dr. Mueller, an associate professor at the University of California at Irvine, held a bachelor's degree in chemistry, a master's degree in biology, and a Ph.D. in ecology, and taught courses involving population genetics and evolution. (39 RT 8430-8431.) Regarding the FBI's calculation of match probability in the RFLP process of DNA analysis, Mueller opined that the techniques employed by the FBI resulted in a match probability that was more rare than appropriate because (1) to determine the frequency of genetic variance, the FBI uses a "fixed bin system" which used a small number of genetic databases that have been shown to contain genetically different subgroups, rather than a larger number of more homogeneous population groups; (2) the FBI used the "Product Rule," wherein all the frequency occurrence of all detected alleles are multiplied together and then multiplied by the number of genes used, rather than the "Ceiling Principle," in which the largest frequency in an array of populations is selected; and (3) there have been no studies on the independence between DQa and RFLP probes to justify combining the two numbers. (See, e.g., 39 RT 8447-8462, 8471-8472, 8487.) As an example, Mueller noted that Casares and Suff had matching DNA patterns on four of the five polymarkers, in addition to matching DQa and S1S80 results, for which the Product Rule would estimate a one in "thousands" probability.^{23/} (39 RT 8461.)

23. The polymarker test, which Mueller said matched both Suff and Casares on four of the five polymarkers (39 RT 8461) in fact matched the blood to Casares and excluded Suff as a donor. (37 RT 7805-7806.) The combined population frequency of the match shared by Suff and Casares – which was calculated by multiplying the DQa and D1S80 PCR typing statistics – estimated that 1 in 580 African-Americans, 1 in 180 Caucasians, and 1 in 100 Hispanics would share such a DNA profile. (37 RT 7906.)

At the request of “various agencies,” the National Research Council (NRC) reviewed “all aspects” of forensic DNA typing and issued a report in April 1992 that made a number of procedural recommendations concerning the computation of DNA typing match probability, which the FBI had not implemented. (39 RT 8467-8471.) The NRC had formed another committee to consider the statistical issues involving DNA typing but had not completed its work. (39 RT 8468, 8516; see also 38 RT 8063.) Re-calculating the frequency occurrence numbers according to NRC’s recommendations, Mueller testified the DNA match probabilities were: for Ferguson, 1 in 40; Miller, 1 in 111; Coker, 1 in 11,000; Sternfeld, 1 in 7,000; Puckett, 1 in 6,100; Hammond, 1 in 50; and McDonald, 1 in 23. (39 RT 8478-8486.)

Dr. Gerdes was the clinical director of a for-profit company responsible for matching organ donors and recipients for transplants. (38 RT 8014, 8016-8017, 8057.) He had a bachelor of science degree in microbiology and a Ph.D. in microbial genetics, which is now known as molecular biology and clinical virology, and did post-doctoral work in diagnostic virology and molecular biology. (38 RT 8014, 8057.)

Testifying with respect to the PCR method of DNA analysis, Gerdes said he had been involved in setting up the technique to determine precise matching for bone marrow transplants. (38 RT 8014-8015, 8017-8020.) For “solid” organs, Gerdes tends not to use DNA as it takes more time. (38 RT 8019.) In Gerdes’s opinion, from his experience, not only are crime scenes unsterile environments, but forensic lab personnel are not trained to aseptically collect biological samples to prevent contamination. (38 RT 8024-8029.) Because of the contamination problems and potential false exclusion and false inclusion that could result, Gerdes opined the PCR technique should not be used in a forensic setting until adequate controls are in place to guarantee such errors to not occur. (38 RT 8050, 8059–8060, 8063-8064.) Gerdes also testified that,

consistent with the NRC's April 1992 recommendations, samples involving mixed donors, such as in the Puckett sample, are inconclusive; major and minor donors should not be identified as "cannot be excluded" in such situations. (38 RT 8038-8039, 8043-8056, 8061-8062, 8075-8077.)

Guilt Phase: Prosecution Rebuttal

A. DNA And Trace Evidence

In preparing for this case, Mueller did not review the autorads or any lab notes. (39 RT 8513.) Mueller had never conducted any human DNA RFLP testing, was not qualified to read an autorad, had no training or experience in the area of forensic evidence collection with respect to human population genetics, was not a member of the American Academy of Forensic Sciences or the American Society of Human Genetics. (39 RT 8507-8508, 8522.) On a few occasions, Mueller failed to qualify as an expert in California state court in the area of human population growth. (39 RT 8506.)

Articles Mueller authored and submitted for peer review in 1990 to the journal Genetics and in 1991 to the journal Science were rejected for publication. (39 RT 8501-8502.) When Genetics rejected Mueller's article, the population geneticist who served as the corresponding editor for the article sent a letter to Mueller stating, "The consensus seems to be the paper does not quite make the mark. I am afraid that I must reject it." (40 RT 8613-8614.) Mueller testified for the defense in a San Luis Obispo County case during which the prosecution requested copies of the two rejected articles and Mueller refused. (39 RT 8502-8503.) In an Oregon case in which Mueller testified for the defense, a highly-regarded population geneticist named Dr. Bruce Weir brought to Mueller's attention what Weir felt was an erroneous use of Weir's linkage and Hardy-Weinberg equilibrium formulas during Mueller's testimony. (39 RT 8504-8505.) Dr. Weir testified for the prosecution in that case. (39 RT 8505.)

Mueller acknowledged that Dr. Weir and two other well-respected population geneticists disagree with Mueller and agree with the FBI regarding population substructuring. (39 RT 8517-8518.)

On average, Mueller has testified for the defense in eighteen to twenty DNA cases per year, each time charging between \$2,000 and \$2,200. (39 RT 8508-8509.) Since 1989, when he first testified for the defense, Mueller has continually testified for the defense in DNA cases. (39 RT 8509.) From 1990 to 1994, Mueller made between \$40,000 and \$70,000 per year by consulting and testifying for the defense in DNA cases. (39 RT 8511-8512.)

None of the articles Gerdes had published concerned forensic samples. (38 RT 8065.) Gerdes had never conducted any validation study to support the opinions to which he testified. (38 RT 8065, 8080.) He had not reviewed the FBI laboratory in Washington, D.C. (38 RT 8068) and was unaware of any training at the Department of Justice regarding collecting evidentiary samples at crime scenes using aseptic techniques (38 RT 8071). He had never been present in a hospital during collection of rape kit samples, nor had he ever been present when swabs were taken during an autopsy. (38 RT 8072.) Although Gerdes voiced a concern about the changing of gloves to handle different evidentiary samples, he had no personal knowledge of whether anyone did or did not change gloves. (38 RT 8073.) Gerdes also had never been to a murder scene; he was unaware of how evidentiary samples were collected in this case, he did not speak to anyone who was at a crime scene in this case, he did not speak to any of the pathologists or criminalists who collected samples in this case, and he did not review any trial transcripts of their testimony. (38 RT 8070-8071.) In the past, Gerdes did PCR typing, but it was currently mostly done by technicians in his lab. (38 RT 8067-8068.) Of the twenty-three times Gerdes testified in court, all were for the defense. (38 RT 8056, 8059, 8081.)

Dr. Bruce Budowle was a research scientist at the FBI, tasked with developing and evaluating different kinds of scientific methods to use for identification of body fluids found at crime scenes. (40 RT 8625-8626.) He had a doctorate in genetics, did a three-year postdoctoral fellowship through the National Cancer Institute, then began working for the FBI in 1983, developing genetic marking systems for identification of blood and other body fluids. (40 RT 8626-8627.) Budowle testified the PCR methodology was first used in the FBI laboratory in 1992, with continuing research and development of the methodology. (40 RT 8631.) He has authored or co-authored more than 100 papers on DNA analysis, two-thirds or more of which have been in peer-review journals. (40 RT 8634.) After extensive studies and collection of worldwide population data, Budowle opined DNA is a valid, reliable method, and that despite a small number of critics and some disagreement over frequency calculation methods, the scientific community is overwhelmingly in support of the procedures. (40 RT 8635-8664, 8667-8670.)

Though he once collaborated with Mueller on a project, Budowle did not hold him in high regard. (40 RT 8638-8641, 8655-8660.) Mueller's research involved fruit flies, and he did not appreciate the differences between the human and fruit fly populations. (40 RT 8655-8656.) Budowle also did not believe the NRC report was supported by "good science," as it was heavily criticized and there was much dissatisfaction with the creation of the "Ceiling Principle" approach. (40 RT 8632-8634, 8653-8655, 8687-8701.)

Brenda Battle worked in April 1990 as a detainee doing filing upstairs at the county supply warehouse. (40 RT 8753.) Battle rode in Suff's van three times, and each time was the only passenger. (40 RT 8754-8755.)

B. Kelly Hammond (Count 10)

Around 7:00 a.m. on August 16, 1991, at the Hammond crime scene, Corona Police Officer Daniel Leary asked Filberto Beltran whether he had noticed the body in the alleyway as he drove through it that morning. (40 RT 8729-8730.) Beltran said something to the effect that it may or may not have been there at that time. (40 RT 8730.)

Investigator Creed knew Debra Sosa prior to Hammond's murder through his involvement in the homicide task force investigation, and was aware of 14 or 15 aliases Sosa used. (40 RT 8760-8061.) Within a day or two of finding Hammond's body, Investigator Creed contacted Sosa about Hammond's murder. (40 RT 8761, 8772.) Sosa said she thought she last saw Hammond two or three days before the body was found. (40 RT 8772.)

Penalty Phase

Prosecution Case

While the jury deliberated during the guilt phase of his trial, Suff waived his right to a jury trial on the prior murder conviction special circumstance allegation. (Pen. Code, § 190.2, subd. (a)(2); 42 RT 9126-9129.) The afternoon after the jury delivered its verdicts, the trial court found beyond a reasonable doubt that on April 11, 1974, Suff was convicted in Texas of second degree murder and sentenced May 6, 1974, thus finding true the prior murder special circumstance. (42 RT 9201; see 5 CT 1151.) Thereafter, the penalty phase commenced before the jury.

During the autopsy of Tina Leal on December 15, 1989, the pathologist found a lightbulb inside her uterus. (44 RT 9697-9698.) Additionally, the pathologist found Catherine McDonald was about four months pregnant when

she was murdered (44 RT 9699), though she did not physically appear pregnant (44 RT 9700).

**A. Suff's 1973 Murder Of His Two-Month-Old Daughter,
Dijanet**

On September 25, 1973, then-Fort Worth Police Department Homicide Detective B.G. Whistler responded to John Peter Smith Hospital in Fort Worth, Texas, to investigate a report of a deceased baby girl named Dijanet Suff. (44 RT 9578-9579.) Later that day, Detective Whistler interviewed Suff, the baby's father, about Dijanet's death and attended the autopsy. (44 RT 9579, 9585.)

During the autopsy, the pathologist found numerous bruises which "virtually covered" the entire front of the baby's body, including the head, face, abdomen, and extremities. (44 RT 9629-9630.) Although bruising to Dijanet's body would have been observable prior to the baby's death, all the bruises likely occurred around or within several hours of the time of death, due to the lack of any healing. (44 RT 9634-9636.)

Focal areas of subarachnoid hemorrhage on the surface of the top of Dijanet's brain were indicative of either blunt-force trauma to the head or severe shaking of the baby. (44 RT 9630.) The brain also showed indications of swelling in reaction to the injury. (44 RT 9631.)

An injury consistent with a human bite mark appeared below the right nipple, in the chest or stomach area. (44 RT 9629-9630, 9636-9637.) What appeared to be a burn mark was on the bottom of Dijanet's left foot. (44 RT 9581-9582, 9634-9635.) The mark was consistent with a cigarette burn. (44 RT 9637.)

Dijanet's abdomen was protruding, very firm to the touch, and very taut. (44 RT 9629.) Inside her abdominal cavity was a large quantity of both fresh and coagulated blood, signaling a massive abdominal injury. (44 RT 9631.)

The pathologist later discovered two areas of rupture to the liver which would have required a great amount of force to cause. (44 RT 9631.) After such an injury, a two-month-old infant like Dijanet would probably survive between a matter of minutes to a short number of hours, due to the “fairly brisk pace” of bleeding. (44 RT 9632.)

The pathologist additionally found bruising of the mesentery, hemorrhage into one of the adrenal glands, and hemorrhage around the spleen due to the rupturing of the splenic vessels. (44 RT 9632.) Injury to the mesenteric tissue and other internal structures would have required “a tremendous amount of force” because of their location in the body. (44 RT 9632-9633.)

Several areas of hemorrhage were also visible at the periphery of the lungs. (44 RT 9633.) Chest x-rays and internal examination showed the baby had multiple rib fractures, all several weeks into the healing process. (44 RT 9633, 9636.) A fracture of the left humerus also appeared to have been healing for several weeks. (44 RT 9633.) The broken ribs and arm may, but would not necessarily, have exhibited external signs of fracture observable to the naked eye. (44 RT 9637.) Because the bones of young children are more malleable, they are more difficult to break; fractures of the type suffered by Dijanet require much more force than just rough handling, such as significant blunt-force trauma. (44 RT 9638.)

The acute cause of Dijanet’s death was blunt-force trauma resulting in extensive abdominal injuries. (44 RT 9634.) From the injuries, it appeared that an initial event at least two to three weeks prior to her death resulted in multiple fractures of Dijanet’s ribs on both sides and a fracture of her arm. (44 RT 9634, 9636.) In the second, fatal event, Dijanet sustained injuries to her abdomen, lungs, and brain. (44 RT 9634.)

Detective Whistler arrested Suff the next morning for the murder of his two-month-old daughter. (44 RT 9582.) At the time of his arrest, Suff had

another pending felony matter for the theft of property valued between \$200 and \$10,000, for which Suff pled guilty and was sentenced. (44 RT 9583.) A jury returned a unanimous guilty verdict against Suff for Dijanet's murder. (44 RT 9582, 9588-9590.)

B. The 1988 Murder Of Lisa Lacik

Around mid-day on the Martin Luther King, Jr., Day holiday of Monday, January 18, 1988, a couple hiking in the Manzanita Flats area found a body down the bank of a steep gully. (42 RT 9234-9238.) The couple immediately returned to their car and drove to the ranger station about five miles from the body and reported their discovery. (42 RT 9237.)

San Bernardino County Sheriff's deputies and personnel arrived at the scene around 4:00 and 5:00 p.m. (42 RT 9242, 9248-9249, 9260.) The body was in an area of brush and rocks about 20 to 25 feet below a dirt forestry road off of Highway 330 and appeared to have tumbled downhill after being tossed or pushed over the roadside. (42 RT 42 RT 9239, 9243-9244, 9246, 9251, 9255.)

The body was identified through fingerprints as Lisa Lacik (42 RT 9245, 9253), a prostitute and drug user from the San Bernardino area (42 RT 9253-9254; 43 RT 9314). She was 21 years old. (43 RT 9297.)

Of the various bruises and abrasions on Lacik's body, some appeared to have been inflicted before her death, but the lack of associated bleeding indicated that most could have occurred at or after her death. (43 RT 9288-9290, 9306.) Lacik also suffered minor antemortem blunt-force trauma to the forehead. (43 RT 9292-9293, 9305-9306.)

Lacik's most prominent injuries were a stab wound just above the navel and the postmortem excision of her right breast. (43 RT 9288, 9293, 9295-9296; see also 42 RT 9255.) Both the breast tissue and pectoralis muscle had

been removed, leaving her bare rib cage. (43 RT 9295.) From characteristics such as marks at the edges of the wound, the pathologist opined a serrated blade was used to remove Lacik's breast. (43 RT 9296, 9303.)

The stab wound into Lacik's abdomen was about one to one and one-half inches long. (43 RT 9293.) As the wound was a little over six inches deep, the pathologist estimated a knife of at least four inches long was used. (43 RT 9296, 9300.) Though there was only one entry wound, several internal stab wounds resulted, including some which cut and nearly severed major veins that drain into the inferior vena cava. (43 RT 9293-9295.) Such injuries were consistent with the victim struggling as she was being stabbed. (43 RT 9294-9295, 9300-9301.) Lacik was five feet, four inches tall and weighed 118 pounds at the time of autopsy. (43 RT 9297.)

The pathologist determined Lacik's death resulted from the stab wound into her abdomen. (43 RT 9297.) Lacik probably died within five to eight minutes of being stabbed. (43 RT 9310.) As she died, she was injured at the neck. (43 RT 9311-9312.) Very faint bruises and scrapes in the area of Lacik's neck appeared to have occurred when she was nearly dead. (43 RT 9291-9292, 9308.) Though he could not say with certainty that Lacik was strangled, the pathologist also could not rule out the possibility of strangulation or asphyxiation (43 RT 9304-9305) or the use of a thin ligature on Lacik's neck (43 RT 9309-9310). From the level of decomposition and rigor mortis of her body, and considering the cold weather, Lacik had probably been dead for a period of at least 48 hours and up to four or five days before she was found. (43 RT 9297-9298.)

Connie Andersen last saw Lacik in January 1988 on the corner of 8th and H Streets in downtown San Bernardino. (43 RT 9314-9315; see 45 RT 9908.) At the time, Andersen and Lacik were both working as prostitutes and trying to get a "date." (43 RT 9314-9315.) From about four to five feet away, Andersen

saw a man pull up in a car and talk to Lacik. (43 RT 9316, 9318, 9327-9328, 9331.) Lacik told Andersen that the man had offered her \$100 and she would be right back, then she got into the man's car and they drove off. (43 RT 9316.)

The man was in his 30s, "greasy-looking," unkempt, and heavy-set, with dirty-blond hair; Andersen was concerned and distrustful of the man because he did not appear to be the type who would pay \$100 for a date. (43 RT 9319, 9330-9331, 9333, 9339-9340; accord 45 RT 9909-9910.) His hair was about to his collar. (43 RT 9338.) He was also unshaven and had a mustache. (43 RT 9333-9334, 9338-9339.) His car was similarly "raggy" – not well-kept. (43 RT 9330.) However, Andersen paid more attention to the man than his car, which she described simply as an older model, mid-sized, possibly light-colored car that reminded her of her grandmother's Dodge Polara. (43 RT 9318-9319, 9328-9329; 46 RT 10189-10190.) She guessed the car was a two-door, but was not sure. (43 RT 9319.) Because she had "a real bad feeling" about the man, Andersen tried to remember the licence plate number. (43 RT 9325-9326.) About four or five days later, Andersen heard Lacik had been killed. (43 RT 9323.)

A couple weeks later, in late January 1988, Andersen spoke with members of the San Bernardino Sheriff's Department about her observations the day she last saw Lacik and to generate a composite drawing of the man in the car. (43 RT 9317-9321, 9326-9327, 9335-9336; 45 RT 9908-9909.) Andersen viewed photos of various cars and selected one she found most similar to the man's car. (43 RT 9321-9322, 9329-9330.) She also reported a partial license plate number of 776 or 778. (43 RT 9324.) After about 20 minutes of working on the composite drawing, however, she became upset at the officers and ceased to cooperate. (43 RT 9335-9339.)

About four years later, San Bernardino Sheriff's Detective Frank Gonzales contacted Andersen about Lacik's disappearance and showed

Andersen a photographic lineup of six men. (43 RT 9322-9324; 45 RT 9924.) Andersen selected Suff's photo from the lineup, 100 percent certain of her choice. (43 RT 9323-9324, 9347-9348; 45 RT 9924.)

On April 22, 1988, Suff was driving a two-door 1975 Dodge Duster in some shade of green when a Riverside County Sheriff's deputy issued him a traffic citation. (43 RT 9352-9353.) The car's licence plate number was DPT 770. (43 RT 9354.)

C. The 1990 Near-Death Of Suff's Three-Month-Old Daughter, Bridgette

Cheryl Lewis married Suff on March 17, 1990. (44 RT 9599.) In August 1990, Lewis befriended a woman named Terry Woodruff. (44 RT 9600-9601, 9642.) Lewis discovered in October 1990 that she was pregnant. (44 RT 9601.)

In December 1990, Lewis and Suff moved into a two-bedroom apartment on North Beechwood Avenue, in Rialto. (44 RT 9601.) Woodruff and her then-fiancé, Jeremy Taylor, moved into the apartment with Lewis and Suff on July 3, 1991. (44 RT 9601-9602, 9643.) Neither Woodruff nor Taylor had a car. (44 RT 9604, 9643.)

Lewis gave birth to her daughter, Bridgette, on July 26, 1991. (44 RT 9602, 9644.) That September, Lewis and Woodruff attended school in Ontario to become airline ticketing agents. (44 RT 9603, 9644.) Classes were held Monday through Thursday, 6:30 p.m. to 10:00 p.m. (44 RT 9603, 9645.) Taylor worked nights, so Suff took care of Bridgette during the evening while Lewis and Woodruff were in class. (44 RT 9604, 9622, 9645.)

On Thursday, October 25, 1991, Lewis and Woodruff drove to their evening class in Ontario. (44 RT 9604, 9647.) When they returned, Bridgette was "fussy," crying inconsolably and not "acting her normal self." (44 RT

9605, 9666.) Prior to that date, Lewis had not noticed anything unusual about her daughter. (44 RT 9604.) Thereafter, Bridgette did not open her eyes when Lewis lifted her up. (44 RT 9605.)

Concerned for the baby's health, Lewis wanted to take her to the hospital that night. (44 RT 9606.) Suff refused, however, saying he had to work the next day. (44 RT 9606.) It was about 10:30 p.m., and Suff usually awoke at 5:30 a.m. to go to work. (44 RT 9615.) Bridgette continued to act fussy, prompting Lewis to call the nurse at Kaiser Hospital in Riverside. (44 RT 9606-9607.) The nurse told Lewis to bring in the baby, but Suff again refused. (44 RT 9607.) When Lewis offered to go by herself, Suff insisted, "If she's going, we're both taking her." (44 RT 9607.) Lewis did not have a driver's license, and Suff had threatened in the past to call police if she drove his van. (44 RT 9608.)

The next morning, Bridgette awoke shortly after 7:45 a.m., screaming, which was abnormal. (44 RT 9608.) Lewis changed Bridgette's diaper and clothes, but did not notice anything alarming. (44 RT 9621.) The baby continued to cry and still "just wasn't herself." (44 RT 9609.) Lewis made an appointment to see a doctor at 10:50 a.m. that day and called Suff, who gave her a ride to the hospital. (44 RT 9609-9610.)

The baby became more fussy. (44 RT 9617.) Dr. Eiko Furusawa, Bridgette's treating pediatrician, visually examined the three-month-old but saw no bruises, sign of ear infection, or other physical finding aside from noticeably extreme fussiness. (44 RT 9661, 9665-9666.) To determine the cause of the baby's fussiness, Dr. Furusawa ran a blood test for infection and asked Suff and Lewis to return at 1:30 p.m. for the results of the blood tests. (44 RT 9660-9661; cf. 44 RT 9610-9611.) Suff said he had to return to work, and left his home and work number for the doctor to call with the results. (44 RT 9661-9662.)

Blood test results showed a highly elevated white blood cell count, suggestive of infection. (44 RT 9611, 9662.) After unsuccessfully reaching anyone at home, Dr. Furusawa called Suff at work and the couple returned with the baby the same day. (44 RT 9611, 9662.)

On the second visit, the baby was seizing on one side of her body. (44 RT 9612, 9663.) Lewis told Dr. Furusawa that she had noticed the seizures. (44 RT 9663.) Dr. Furusawa admitted Bridgette to the hospital and ordered additional blood tests, a spinal tap, and a CT scan. (44 RT 9663-9664, 9667.) Lewis later learned her daughter had suffered cranial hemorrhaging and several broken ribs, and might die. (44 RT 9612.)

A pediatric neurologist examined the baby and saw retinal hemorrhages in the baby's eyes, suggesting Shaken Syndrome. (44 RT 9664, 9667, 9683.) Retinal hemorrhages in an infant are "pretty typical" of Shaken Syndrome. (44 RT 9690.)

Bridgette's seizures shortly led to respiratory depression, requiring incubation. (44 RT 9664-9665.) Had she not been at the hospital under observation when she stopped breathing, Bridgette probably would have died. (44 RT 9686-9687.) Due to her unstable condition, the baby was transferred to Kaiser Hospital in Fontana the next day, October 27, 1991. (44 RT 9664-9665.)

Dr. Robert Stevenson, a radiologist and a member of the Suspected Child Abuse and Neglect (SCAN) Team at Kaiser Hospital, reviewed and interpreted x-rays of Bridgette's wrists and ankles while she was being treated. (44 RT 9670-9671.) He also later reviewed other x-rays, bone scans, and a CT scan of Bridgette's head. (44 RT 9671-9675, 9677.)

One of Bridgette's ankles had a corner-type fracture at the lower end of the bone just above the ankle joint. (44 RT 9672, 9674.) In Dr. Stevenson's training and experience, such injury is "highly specific" for child abuse, i.e. "well above 90 percent" the result of non-accidental trauma. (44 RT 9672,

9678; see 44 RT 9677-9678.) A twisting type of injury, which would not necessarily cause bruising, is required to cause such injury. (44 RT 9678.)

Bone scans alerted doctors to areas of possible fracture, which they then x-rayed. (44 RT 9695; see 44 RT 9674-9675.) Chest x-rays showed fractures in four ribs on Bridgette's left side. (44 RT 9673-9674, 9678.) Based on evidence of new bone forming around them, the fractures likely occurred approximately two to three weeks earlier. (44 RT 9673-9674.) The ribs were in the back of the rib cage, near the spine. (44 RT 9673.) An infant's bones, particularly ribs, tend to be resilient. (44 RT 9673.) Rib fractures are "highly suggestive" of child abuse, as they almost never occur accidentally. (44 RT 9674, 9678.) Such injuries do not necessarily cause or accompany bruising of the skin. (44 RT 9677, 9696.) Bridgette's rib injuries were consistent with her being grabbed or squeezed. (44 RT 9674, 9677.) The application of pressure also could have caused the fractures. (44 RT 9698.)

Bridgette had widespread swelling of the brain, which occurs after circumstances such as whiplash from a car accident or a baby being grabbed and violently shaken. (44 RT 9675, 9679, 9683.) Had Bridgette not been under the controlled environment of the hospital, her brain would have continued to swell, eventually cutting off blood flow to the brain and causing death. (44 RT 9687-9688.) From the time of the CT scan at the Kaiser Hospital in Fontana, Dr. Stevenson estimated the brain injury occurred eight to ten days earlier. (44 RT 9675-9676.) Such injury was indicative of non-accidental injury. (44 RT 9676.) It can also result in seizures in a child. (44 RT 9679.) Due to the immaturity of a child's brain, not much force is required to cause injury. (44 RT 9679.)

Another SCAN Team member and a forensic pediatrician, Dr. Bertica Rubio, estimated the initial injury to Bridgette's brain was sustained during the 12 to 24 hours before she began to show symptoms. (44 RT 9684-9685.) The trauma to Bridgette's brain nearly caused her death, both because she stopped

breathing at one point, and because of the swelling of her brain. (44 RT 9685-9688.) Generally, a baby shaken hard enough to cause retinal hemorrhaging but not instant death “could probably do well” for up to 12 hours before symptoms such as irritability begin to show. (44 RT 9690.) Though the rib fractures most likely occurred at an earlier date than the brain injuries, ribs take longer to show signs of healing than other bones and therefore are difficult to date. (44 RT 9685.)

Woodruff testified Suff was “real short-tempered,” and she had seen Suff physically mistreat or shake Bridgette. (44 RT 9647-9648.) She recalled three to four occasions when Bridgette began to fuss and Suff picked her up from underneath her shoulders, shook her back and forth, called her name and yelled at her to shut up. (44 RT 9648.)

During a tape recorded interview on October 30, 1991, Woodruff told Rialto Police Detective Joseph Cirilo about Suff shaking, losing patience with, and yelling at the baby. (44 RT 9654.) Woodruff recalled that once, on a Friday, Saturday, or Sunday between 6:00 and 8:00 p.m. (44 RT 9651) she saw Suff shake the baby three or four times over a period of a couple seconds (44 RT 9649). At trial, Woodruff recalled telling the officer that on her estimate of two or three occasions, she had seen Suff shake the baby for “approximately two to three, maybe four seconds.” (44 RT 9649-9650.)

On cross-examination, Woodruff acknowledged she told a Rialto police officer who visited the apartment that she never saw Suff or Lewis shake Bridgette. (44 RT 9648-9649.) However, the officer had awoken and questioned her at 3:30 a.m. (44 RT 9653.)

Woodruff also acknowledged that sometimes she or Taylor watched Bridgette while Lewis was gone. (44 RT 9613.) But usually Lewis would be away for at most a half-hour, to run an errand or visit the mailbox. (44 RT 9622, 9645.) Woodruff also admitted that a couple days to a week or two before

Bridgette's unusual behavior, Bridgette had a lump on her head after Woodruff watched her. (44 RT 9613, 9617, 9646, 9650.) Woodruff immediately told Lewis about the injury, however, and said Bridgette got the lump when she tried to turn over while underneath a metal-frame bed. (44 RT 9614, 9622-9623, 9646.) Lewis was gone for 20 minutes at most, while she cashed check. (44 RT 9622, 9646.)

D. Victim Impact Evidence

Kimberly Lyttle's father testified that "Kimmy" was 16 years old when she had a daughter, Sarah. (43 RT 9365, 9374.) Lyttle's drug use began in high school with marijuana, then escalated. (43 RT 9365-9368.) When Lyttle's father first learned of her death, he thought she had overdosed on drugs. (43 RT 9368-9369.) After Lyttle's death, Sarah's father raised the child, who was by that time 16 years old. (43 RT 9366, 9374-9375, 9377.)

On cross-examination, Lyttle's father said he felt she was the smartest of his four children, and it hurt to see her potential slip away due to drug use. (43 RT 9372-9373.) He had tried many times to convince her to quit. (43 RT 9373.) Lyttle would sometimes promise she was going to change, but her father thought it was just to humor him. (43 RT 9373.)

Tina Leal's brother, Jose, testified that prior to her death, Leal and her four children were living with their mother in Perris. (44 RT 9567.) After Leal's death, the children went to Mexico to live with Leal's husband's parents. (44 RT 9576.) Jose lived in Washington and last saw Leal when he and his wife visited in July 1989. (44 RT 9568.) Leal told them she was getting off the drugs, and hugged them both. (44 RT 9568.) She was "clean" and looked good. (44 RT 9569.) Jose said he could have faced his sister dying from an overdose, which he had anticipated, "[b]ut to be killed this way was just – it was really hard on me – well, the whole family." (44 RT 9570, 9575.) After Leal's death,

Jose began drinking “a lot more than I should have,” but had since stopped. (44 RT 9571, 9573-9574.)

Darla Ferguson had an 11-year-old daughter, Jennifer, who was being raised by her paternal grandmother, Mary Bucher. (43 RT 9378-9379, 9383.) Even while alive, Ferguson relied upon Bucher to care for Jennifer, and left Jennifer with Bucher quite often. (43 RT 9383-9384.) Bucher had tried many times to help Ferguson quit drugs, and Ferguson also attempted to quit “[q]uite a few times.” (43 RT 9380-9381, 9385.) Ever since Bucher told Jennifer how her mother died, the child had been filled with a lot of anger, fear, and sadness. (43 RT 9381-9382, 9386.) Jennifer had been in counseling in the five years since Ferguson’s death. (43 RT 9386.) Ferguson’s own mother could not afford a funeral and remained in denial of her death. (43 RT 9382.)

After her eldest sister, Kathy, was murdered when Carol Miller was 16 or 17 years old, Miller began using drugs. (43 RT 9472.) Miller’s younger sister, Maria Harrison, tried to help Miller get off of drugs. (43 RT 9466.) Miller’s 24-year-old son was now a single parent and could use his mother’s help. (43 RT 9466, 9470.) Miller died before meeting her grandson, who was three years old at trial. (43 RT 9467.) Miller’s son had lived with Harrison since he was five years old. (43 RT 9471.)

Miller’s arrests would cause a lot of heartache for her mother. (43 RT 9472.) Shortly before Miller’s death, however, she was attending Narcotics Anonymous and church to better her life for her son and herself. (43 RT 9467.) Harrison was currently under medical care for respiratory infections, which she blamed on major depression resulting from her sister’s death. (43 RT 9470.)

Susan Sternfeld had an 11-year-old son, Mikey, and had “desperately” attempted to quit heroin for his sake. (43 RT 9401, 9409, 9411, 9416.) Long waiting lists precluded Sternfeld from participating in no-cost programs, however, and neither Sternfeld nor her mother could afford the fee-based

programs. (43 RT 9416.) Sternfeld's other son, Tony, was only about a year old when she was killed. (43 RT 9413.)

Sternfeld spent the year or two before her death in and out of prison or jail, and her mother would care for Mikey with help from Sternfeld's siblings. (43 RT 9407-9409, 9421.) Despite that her drug use kept her from being with her son, Sternfeld could not quit. (43 RT 9408-9409.) Sternfeld had lived with her mother most of the time. (43 RT 9421.) After Sternfeld's death, her mother took custody of Mikey. (43 RT 9405, 9407, 9410, 9415.) Sternfeld's older brother Chris, who had been planning his 21st birthday with her, became despondent and extremely withdrawn after her death. (43 RT 9403-9404, 9419.)

Kathleen Puckett's older sister, Sylvia Griggs, described how Puckett began using drugs as "a young adult" and started using heroin at age 19 or 20. (43 RT 9389.) Griggs and other family members had tried to help Puckett end her addiction over the years, gaining "lots of successes" but none permanent. (43 RT 9390.) Puckett had three children – her eldest son and two teenaged daughters. (43 RT 9391.) After her death, Griggs raised Puckett's daughters. (43 RT 9391.)

Kelly Hammond had two daughters, ages 14 and 8, and a 10-year-old son named Sean. (43 RT 9502.) Since her death, Hammond's father was raising the two girls, and Sean's father's sister was raising Sean. (43 RT 9502.) As a result of court proceedings, Hammond's parents had assumed custody of her daughters when they were babies. (43 RT 9508.) During the two years prior to her murder, Hammond lived with her parents off and on. (43 RT 9408.) Hammond's younger brother, David, knew Hammond used drugs, but she never used them at their parents' home. (43 RT 9504, 9509.) Hammond's drug use was difficult for her parents to accept. (43 RT 9509.)

Three months before Hammond's death, her mother suffered a stroke. David believed that Hammond cared for and respected their mother more than

did his other two sisters, and that Hammond was a better daughter to their mother. (43 RT 9504-9506.)

Catherine McDonald's eldest sister, Ida Simmons, encouraged her to move to Riverside when McDonald told Simmons she had a drug problem. (43 RT 9484, 9488-9490.) McDonald had two daughters, ages 16 and 5, and two sons, ages 13 and 11. (43 RT 9475, 9477.) Compared to Watts in Los Angeles County, where McDonald had lived with their mother, Simmons felt Riverside was a safer place to live; she even picked out her sister's apartment. (43 RT 9484, 9488.) Simmons thought that if McDonald were to die it would be from a drug overdose, and could not understand why her sister "was killed in that way." (43 RT 9486.) She was unaware McDonald was working as a prostitute. (43 RT 9488-9489, 9493.) Simmons was also shocked to learn that one of McDonald's breasts had been cut completely off (43 RT 9487) and did not know her sister was pregnant (43 RT 9489).

McDonald's younger son was placed with his paternal grandmother after McDonald's death, but then went to live with an aunt in Los Angeles after his grandmother also died. (43 RT 9491.) The youngest went to her father in Texas. (43 RT 9492.) On the night police told McDonald's 16-year-old daughter of McDonald's murder, the police drove the 16-year-old and her 11-year-old brother to their grandmother's home in Watts. (43 RT 9475, 9478-9479, 9483-9484, 9491.)

Delliah Zamora's sister, Anna, was nine years younger. (43 RT 9425.) Anna and Zamora used to work and live together, and Zamora taught Anna how to cook and to be independent. (43 RT 9425-9426.) Zamora had six children, including four sons whose ages ranged from 12 to 21. (43 RT 9427.) Photos at trial showed how the "boys" periodically visited Zamora's grave to leave flowers and handwritten notes to tell Zamora how much they loved her. (43 RT 9440-9441.) Anna knew Zamora had a drug problem, but Zamora mainly spoke

of it to their mother, and in the context of wanting to quit. (43 RT 9426-9427, 9431.) Zamora's death left an emptiness in Anna's life. (43 RT 9429.)

Zamora prevented her siblings from knowing the extent of her drug use. (43 RT 9426-9427, 9461.) During her time in jail and prison, her husband raised their children. (43 RT 9432.) Zamora's brother Jose took care of the children when her ex-husband was unable. (43 RT 9462.)

Ever since Zamora's October 30, 1991 murder, Jose Zamora's own children no longer went trick-or-treating on Halloween. (43 RT 9457.) In addition, for the past five years the extended family had spent every holiday at the cemetery. (43 RT 9456.)

Eleanor Casares had a 19-year-old daughter named Rosemary Ureta, a 27-year-old son, David, and an 18-year-old daughter, Rosanne. (43 RT 9514.) The night they learned of their mother's death, Rosanne had just gone shopping with her grandmother and aunt for remaining Christmas gifts. (43 RT 9516.) Casares's children were in a state of disbelief. (43 RT 9516.) Ureta said she had a good relationship with her mother: "She understood us. We could talk to her, tell her things." (43 RT 9516.) During the time after her mother's death, Ureta wanted to kill herself. (43 RT 9518.)

Before her death, Casares was living with her mother and helped care for her paralyzed brother. (43 RT 9521.) Adela Soliz, her younger sister, spoke with or saw Casares nearly every day; Casares called her the morning she was killed. (43 RT 9521-9522.) Casares also baby-sat Soliz's six children. (43 RT 9521.) Soliz knew Casarez had a drug problem. (43 RT 9522.) Despite the drug use, Soliz said, "She had a heart like all of us. She had feelings. [¶] She didn't deserve to die this way." (43 RT 9524.)

Defense Case

A. Lisa Lacik

San Bernardino County Sheriff's Sergeant Larry Brown first met prostitute Connie Andersen while investigating the Lacik homicide in 1988. (45 RT 9907-9908.) Sergeant Brown interviewed Sam Gomez, a friend of Lacik's, who said Andersen had been with Lacik when she was picked up for the last time. (45 RT 9908.)

Sergeant Brown interviewed Andersen over the phone and she described the man whom she had last seen with Lacik as a grubby-looking, heavysset male adult in his late 30s to early 40s. (45 RT 9908-9910.) According to Andersen, Lacik was in hiding after witnessing the murder of a prostitute at the Central City Motel in San Bernardino. (45 RT 9908.) The San Bernardino Police Department, however, indicated no such murder occurred. (45 RT 9910-9911.)

After Suff's 1992 arrest, Detective Frank Gonzales conducted a taped interview of Andersen on April 1, 1992. (45 RT 9920, 9923.) Although Detective Gonzales knew Andersen to be a drug user, she was not under the influence at the time. (45 RT 9920.) Andersen described the man she last saw with Lacik as being 30 to 40 years of age. (45 RT 9921.) Detective Gonzales recalled Andersen saying he may have had stubble or something, but she did not recall any other facial hair. (45 RT 9922.) Later in the interview, he asked Andersen about the composite she had drafted in 1988, and she said the hair was shorter than what appeared on the composite. (45 RT 9922-9923.)

After the April 1 1992 interview, Detective Gonzales assembled a photographic lineup and showed it to Andersen. (45 RT 9924.) Andersen reviewed all the photographs and selected Suff's photo without hesitation. (45 RT 9924-9925.)

At the time of the original investigation, San Bernardino County Sheriff's Detective Daniel Finneran described the man's car to Andersen as "a brown

'70s beat-up Dodge, its exhaust pipe hanging down, and it's got a California plate," to which Andersen responded, "Yeah. 776." (45 RT 10192, 10199.) Detective Finneran then confirmed the alternate possibility plate number Andersen had given of 778. (45 RT 10199.) The subject of the license plate's state was not mentioned at any other time during the tape recorded interview. (45 RT 10201.) At trial, Andersen could not recall whether the license plate on the man's car was a California license plate. (45 RT 10191-10194.)

Robert Allen worked as a driver for Riverside County Supply Services, in the purchasing department, where he met Suff before losing his job in January 1988 due to illness. (46 RT 10239-10240, 10253.) In March 1988, Allen was a recovering alcoholic and addict who was living in Rubidoux – an area with “too much drugs, too much drinking” and temptation – so he accepted Suff's offer of a safer environment and moved into his apartment. (46 RT 10240-10241.) At that time, Suff was living back and forth between his and Bonnie Ashley's apartment. (46 RT 10240.) Prior to moving in, Allen's contact with Suff was through work. (46 RT 10241-10242.) Allen never came to know Suff very well because he spent a lot of time at Ashley's house. (46 RT 10258-10259, 10263.)

Allen owned a green Dodge Dart. (46 RT 10242.) The paint job was bad, as it was beginning to oxidize from the sun. (46 RT 10242.) He could not remember what year it was or whether the tailpipe was hanging down. (46 RT 10242.) The car had Arizona license plates, and Allen could not recall the color of the plates on his car, but recalled generally that Arizona plates were burgundy with white letters. (46 RT 10242-10243.) Allen said he let Suff use his car, but not prior to moving into Suff's apartment in March 1988. (46 RT 10243.)

When Allen moved in, Suff had a blue Toyota Celica that had broken down. (46 RT 10243.) Several months after Allen moved in, the transmission of his Dodge went out while Suff was driving it. (46 RT 10243.) Allen

borrowed Suff's motorcycle a couple times. (46 RT 10244.) Suff was hospitalized after a motorcycle accident in June 1988. (46 RT 10247-10248.) When Suff returned to the apartment, he had trouble sleeping at night and was more quiet. (46 RT 10248.) Suff then moved back to Ashley's residence, and Allen went into a recovery home for eight months. (46 RT 10248-10249.)

Allen knew Suff to be clean-cut and well-groomed. (46 RT 10246.) Suff always wore glasses to work, to read, and when he drove his car. (46 RT 10246-10247.) Allen never saw Suff with prostitutes or heard him say anything derogatory about prostitutes. (46 RT 10247.)

On cross-examination, Allen acknowledged that between his first telephonic interview by a sheriff's deputy in February 1992, and three subsequent interviews by defense investigators in April 1994, January 1995, and July 1995, Allen's memory of dates of events became clearer. (46 RT 10250-10252.) When interviewed by Deputy Ted Hoffman in February 1992, Allen could not recall exactly where or when Suff drove his car, but he remembered he borrowed and drove it on occasion. (46 RT 10252.)

While Allen was in the hospital with double pneumonia during the first two weeks in January 1988, he left his Dodge parked on Stobbs Way by his apartment complex in Rubidoux, and left the keys with another co-worker at the Supply Services Warehouse, named Leslie. (46 RT 10253-10254, 10262.) Allen asked Leslie, whom he considered a friend, to start the car periodically because Allen did not know how long he would be in the hospital. (46 RT 10254, 10262-10263.) Leslie was also a friend of Suff's and had herself borrowed Allen's car a couple times. (46 RT 10254.) Allen had no knowledge whether Leslie allowed Suff to use his car while he was in the hospital. (46 RT 10255.)

B. Dijanet Suff

Suff's then-wife, Teryl Suff, was also arrested in connection with the murder of their daughter.^{24/} (44 RT 9584-9585.) The couple's 21-month-old son also lived with them at the time. (44 RT 9584.) Any adult, male or female, could have caused Dijanet's injuries. (44 RT 9638-9639.)

C. Bridgette Suff

When Sergeant Cirilo asked Terry Woodruff on the afternoon of October 30, 1991, whether she had ever seen Suff shake the baby, she had mentioned only one occasion in which Suff shook Bridgette three or four times, and said she did not see any other abuse by Suff. (45 RT 9902.) However, Woodruff said the baby was crying at the time and Suff yelled, "Bridgette, shut up," while shaking her with both hands. (45 RT 9904-9905.) Woodruff also mentioned to Sergeant Cirilo that on the Wednesday or Thursday before Bridgette's injury, Bridgette crawled underneath the bed and "would bump up against things." (45 RT 9902.)

D. Institutional Adjustment

James Park, a "correctional consultant" testified as an expert in California prisons and classifications based on his 31 years with the California Department of Corrections (CDC) at three different prisons, prior to working off and on as a correctional consultant for about 20 years. (45 RT 9845.) Starting as a clinical psychologist, Park worked in a variety of positions including

24. The Texas Court of Criminal Appeals reversed Teryl's conviction but upheld Suff's in *Suff v. State* (Tex. 1976) 531 S.W.2d 814, finding insufficient evidence to convict her as either the primary actor or a principal in her child's murder.

associate warden and assistant director of policy. (45 RT 9850-9852.) He retired from the CDC in 1983. (45 RT 9864.)

To familiarize himself with Suff's charges, Park read the grand jury transcripts. (45 RT 9854.) He then interviewed Suff at the Riverside County jail for between an hour and an hour and a half (45 RT 9867), and found Suff to be "an intelligent, very verbal person who presents himself well (45 RT 9855). While Park did not notice any "social ineptitude" problems during the interview, he found evident that Suff had "some problems" relating socially. (45 RT 9856.)

Park also reviewed disciplinary work records and other records from Suff's ten-year incarceration in Huntsville, Texas. (45 RT 9856.) Suff had two disciplinary markers in the ten years – one for taking the volume control to another inmate's radio system, possibly to replace his own, and the other for taking a suture needle and "a couple of other items" from the pharmacy. (45 RT 9857.) Park considered the contraband in both incidents to be minor, and did not see any record of violence during Suff's term in Texas. (45 RT 9857-9858.)

On cross-examination, Park acknowledged the "couple of other items" he had forgotten was Suff's possession of a pair of scissors, but maintained it to be a minor violation. (45 RT 9876.) Park said that while a pair of scissors could be used as a weapon, they could also be utilized "as a piece of housekeeping material." (45 RT 9876.)

While a Texas inmate, Suff worked "pretty steadily" and completed high school, an associates degree, and a bachelors degree. (45 RT 9858.)

Based on Suff's past prison record, Park opined Suff "would be an excellent, conforming prisoner, nonviolent, will work as assigned, do what he's told." (45 RT 9859.) Park believed that two disciplinary markers in ten years was "an exceptional record, particularly in Texas, which is not an easy system in which to get along." (45 RT 9859.)

During the three and one-half years Suff had spent in Riverside County jail, Suff had one disciplinary marker for contraband, specifically a safety pin, a staple, and “one other item” Park could not recall. (45 RT 9860.) Riverside County Sheriff’s Deputy David Russell, an administrative lieutenant at the Robert Presley Detention Center, had viewed Suff’s records at the Riverside County jail and testified Suff’s single disciplinary marker while in jail was for having contraband of a safety pin, a paper clip, and a staple. (45 RT 9896-9897.)

Despite that Suff murdered twelve woman after adjusting, in Park’s opinion, “somewhere between average and above average” in the Texas prison system, Park drew a distinction between prison behavior and “outside” behavior. (45 RT 9877.) If Suff received a sentence of life without possibility of parole, he would be classified as a “Level 4” prisoner and could participate in hobbies and earn money by working. (45 RT 9877-9878, 9893-9894.) Level 4 prisoners were also able to have conjugal visits with a legal spouse, even overnight or with other family members. (45 RT 9879-9880, 9892.) A spouse or family member was also permitted to bring groceries, subject to inspection, and fix dinner for the inmate. (45 RT 9880.) If Suff did well in the prison system, he could earn a lower level rating and go to a less secure prison. (45 RT 9880.)

Park observed that Suff’s prison record supported Suff’s representation that he wanted to work while in custody, and that Suff’s age – nearly 45 years – placed him “well over the time when he . . . would be a . . . disciplinary problem.” (45 RT 9860, 9882.) Suff also had a positive work record while out of custody and had been in a “stable enough situation to get married.” (45 RT 9861.) Park concluded that despite Suff’s “disciplinaries” in jail and in prison, all of which Park viewed as minor, Suff’s adjustment to his incarceration “overall was very good.” (45 RT 9861.) Considering his past adjustment, along with his history, Park opined he would make “an excellent adjustment in

prison.” (45 RT 9862.) Another important consideration was that Suff had not engaged in any violence while in custody, therefore Park did not believe Suff would pose a danger to other inmates or to correctional personnel. (45 RT 9863.) Suff might, however, be attacked due to the offenses for which he was convicted and to his prior conviction for killing a baby. (45 RT 9863.)

Park could not recall various details from records he reviewed, such as the length of Suff’s original Texas sentence. (45 RT 9869-9870, 9889.) On cross-examination, Park acknowledged that while Suff was incarcerated in Texas, he had incentive to be a good prisoner because Suff’s original sentence was 70 years, of which he served only 10 years. (45 RT 9869.) Park did not know how Suff’s sentence in Texas had been reduced by 60 years. (45 RT 9870-9871, 9890.) In addition, although he noted he had visited the specific Texas prison where Suff had been housed, Park had not visited more recently than the early 1980s. (45 RT 9874; see 45 RT 9856.) He also was not familiar with the particular unit where Suff had been housed, and was unaware it was the prison’s high security unit. (45 RT 9875.) Further, Park acknowledged that the possibility of parole “is a major incentive” for good behavior, and such incentive would not be available to Suff in this case. (45 RT 9871-9872.)

Despite that Suff would likely encounter female correctional officers and possibly female counselors, psychologists, and instructors, Park did not believe the amount or degree of violence perpetrated against the women in this case necessarily had any effect on his character or his ability to adjust in prison. (45 RT 9872-9873.)

Park opposed the death penalty and had appeared on television talk shows and panels voicing his views against the death penalty. (45 RT 9884-9886.) On one occasion in the past, Park testified that if he supported capital punishment, he would not be testifying in these types of cases. (45 RT 9886-9887.) However, Park said even if he were in favor of capital punishment, his

testimony would not change. (45 RT 9887.) Park said there have been “a number of times” in the past when he has told a defense attorney that his testimony would not be helpful, because he will not testify that someone will adjust well to prison if they will not. (45 RT 9890-9891.)

E. Suff's Character Witnesses

1. Dennis Lee Boyer

Suff took Dennis Boyer's fall 1984 Introductory to Computer and Data Processing and spring 1985 Computer Program I classes at Mount San Jacinto College. (45 RT 9913.) Suff received “B” and “A” grades in the respective classes. (45 RT 9914.) Boyer thought Suff was an excellent student; he was energetic, enthusiastic, and helpful with other students. (45 RT 9913-9914.) Previously, Suff had taken regional occupational program classes from Boyer in Lake Elsinore. (45 RT 9916.) Suff appeared to Boyer to have some talent in computers. (45 RT 9916.)

The classes were fairly large and Boyer did not have very much outside contact with Suff, but Suff's participation in class was above average. (45 RT 9915.) Suff gave Boyer a plaque or gift at some point, “just out of friendship,” and requested that Boyer write a letter of recommendation for the position that Suff ultimately obtained with the County of Riverside. (45 RT 9915.) His convictions came as a shock to Boyer. (45 RT 9917-9918.)

2. Bradley Wilhelm

Suff performed customer service, data entry, and some warehouse shipping and receiving work for about six months at Bradley Wilhelm's distribution company for medical and fitness equipment and supplies. (45 RT 9929-9930.) In addition to himself, Wilhelm's company consisted of his wife

and another female employee, both of whom worked part-time. (45 RT 9929-9930.) Wilhelm found Suff to be an excellent employee who “[g]ot along fine” with both women. (45 RT 9930-9931.) Though Suff completed an application for employment, Wilhelm had no knowledge of any felony conviction or prison sentence. (45 RT 9931.) Suff left the job for an opportunity with a computer company. (45 RT 9932.) Wilhelm did not know Suff outside an employer-employee relationship. (45 RT 9932.)

3. Janet Surber

A nurse for five years at the Riverside County jail, Janet Surber first encountered Suff during his first week of incarceration. (45 RT 9934-9935.) During the three and one-half years Suff had been in custody, Surber and Suff had met in the medical office or at his cell when she dispensed medications, or when she stopped to say something to him as she passed by. (45 RT 9935-9936.) Unlike other inmates she typically sees, Surber had seen Suff watching public television often, reading books, and writing a cookbook. (45 RT 9936-9937.) Suff seemed to Surber to be making productive use of his time in jail, and he was always pleasant and polite during their conversations together. (45 RT 9937-9938.) On cross-examination, Surber acknowledged her contacts with Suff were usually quite brief and very limited. (45 RT 9939.)

4. Joseph Beeson

From 1949 to 1979, Joseph Beeson taught at Perris High School. (45 RT 9942.) Beeson was a vice principal when Suff was a student there, but could not remember whether he was the advisor for Suff’s graduating class of 1968. (45 RT 9942-9944.) Suff was a member of a reading club and of the band. (45 RT 9944-9946, 9949.) Beeson recalled Suff was “just a normal student” whom he saw in his office very seldom. (45 RT 9945.) Suff was a “loner” and was not

someone who dated a lot or was always around females. (45 RT 9946, 9948-9949.) Beeson's last contact with Suff was when he graduated in 1968. (45 RT 9950.)

5. Elizabeth Ann Mead

Suff's mother, Elizabeth Mead, testified Suff was the eldest of five full siblings – four boys and one girl, the youngest. (45 RT 9952, 9956, 9973-9974.) Suff had a "normal" childhood. (45 RT 9952.) After Suff was born in Torrance, the family moved to various other cities in California until they ended up in the Lake Elsinore/Perris area. (45 RT 9952-9953.) When Suff was about 16 years old, his father took Mead to work one morning and said, "I'll see you at 3:30," but never returned. (45 RT 9953-9954, 9974.) Mead found a ride home and discovered all of her husband's belongings were gone. (45 RT 9954.)

To keep her children out of foster care, Mead was forced to apply for state aid, and the family had to move out of the house. (45 RT 9955-9956.) Suff took a part-time job with the forestry to help with expenses, and helped take care of his siblings. (45 RT 9956, 9975.) Mead was unaware how Suff reacted as an adult around a crying baby. (45 RT 9957.)

In high school, Suff's siblings described him as a "nerd." (45 RT 9967.) Suff was in an honor band at Perris High School, as well as in the jazz band. (45 RT 9966-9967.) While in high school, Suff met Teryl at the Rose Bowl when his band played for the game. (45 RT 9958, 9976.) The two continued to correspond by letter. (45 RT 9958-9959.) Suff joined the Air Force shortly after graduating high school and left for training in January or February 1969, but continued to correspond with Teryl from Texas. (45 RT 9958-9959, 9975.) In March 1969, Mead married her second husband, Earl. (45 RT 9957-9958, 9975.)

Teryl initially accepted Suff's marriage proposal by letter, but then called it off. (45 RT 9959.) She later explained she was carrying another man's child, but if Suff still wanted to marry, she would. (45 RT 9959-9960.)

On December 13, 1969, the couple married in Perris. (45 RT 9961.) Teryl was about 17 years old. (45 RT 9961.) At the couple's request, Mead raised Teryl's daughter as her own. (45 RT 9960.) Suff and Teryl moved to Texas in April 1970. (45 RT 9960.) Bill Suff, Jr. was born in November 1971, followed by Dijanet in July 1972. (45 RT 9961-9962.) Though Mead and Suff corresponded by letter, she was unaware he was having difficulty with his marriage until some time between 1972 and 1973. (45 RT 9962.)

In 1973, Suff called Mead and told her Dijanet had been killed and that he had been arrested. (45 RT 9962.) Mead and her second husband went to Texas for a week while Suff was in custody. (45 RT 9962-9963.) She was aware Suff was convicted and sentenced to prison. (45 RT 9963.) Later, when Suff graduated from college while in prison in May 1983, Mead attended the ceremony. (45 RT 9963.)

Upon his release from the Texas prison, Suff returned to California and stayed with Mead for about a month to six weeks. (45 RT 9964.) He then found a job and moved out. (45 RT 9964.) Mead observed Suff to be more withdrawn. (45 RT 9968.) Suff visited when he found time, but Mead did not know where he was living. (45 RT 9964.)

At some point, Suff began seeing Bonnie Ashley. (45 RT 9965.) Mead later learned Suff was in a motorcycle accident. (45 RT 9965.) Suff gave Mead \$2,000 from the settlement money for Mead, Earl, and their daughter to move to another spot at the Salton Sea. (45 RT 9991.) Later on, however, Suff wanted Mead to pay it back. (45 RT 9993.)

Mead never saw Suff around his children, nor did she have much information about how he interacted with his children. (45 RT 9970.) She never saw the children other than in photos. (45 RT 9970.)

On cross-examination, Mead stated she believed Suff could have committed the murders. (45 RT 9978.) Mead had also provided the prosecutor with a copy of a letter she wrote to Suff on September 5, 1993, indicating that all the murders had occurred on a special day or date. (45 RT 9979.) When Mead heard about the injuries to Bridgette, “it ran cold chills all through” her because of their similarity to Dijanet’s injuries. (45 RT 9979.) Mead told the prosecutor and his investigator that she stood behind Suff in Texas, but this time she would not, as the coincidence was too close for her to be sure. (45 RT 9979-9980.)

During one jail visit, Mead brought up the killing in the orange groves and asked Suff why he was picking oranges when he hated oranges. (45 RT 9984.) Suff said he picked them for his wife Cheryl. (45 RT 9984.) Mead also asked Suff why he took the knife out of the victim’s chest, and Suff admitted taking the knife but did not know why. (45 RT 9984, 9989.)

6. Donnella Shearer

From September 1983 to March 1988, Donnella Shearer was a clerk at the Riverside County supply warehouse on Washington Boulevard. (45 RT 10019.) Shearer worked about 15 feet away from Suff’s desk and had daily contact with him. (45 RT 10020.) Three other females worked with Shearer and Suff. (45 RT 10020.) In Shearer’s opinion, Suff was a good co-worker; he was always courteous and nice, and went out of his way to be helpful. (45 RT 10020, 10022.) Suff played on a softball team with some of the other employees. (45 RT 10020, 10025.) Other than the softball games, Shearer

spent very little time with Suff outside of work or of a personal nature. (45 RT 10025.)

7. Bonnie Ashley

In April 1984, Bonnie Ashley and Suff began living together. (45 RT 10030, 10043.) Ashley worked as a substitute teacher in addition to receiving state money for taking care of her aging grandmother. (45 RT 10030-10031.) Suff helped Ashley with various aspects of her job as a substitute teacher, from correcting papers to raising quail. (45 RT 10031-10032.) At that time, Suff was working part-time at McDonald's, and Ashley was the primary breadwinner with the only vehicle. (45 RT 10032.)

Ashley severely injured her back from a bookcase in January 1985, and decided to change careers. (45 RT 10032.) The same year, Suff helped Ashley prepare for the real estate exam and accompanied her to the testing location in San Diego. (45 RT 10033.)

Suff also helped Ashley with the property upkeep and personal care of her grandmother, who lived on three-quarters of an acre with 52 fruit trees and a garden. (45 RT 10033-10034.) Ashley's grandmother passed away in February 1989. (45 RT 10034-10035.)

When Ashley began her real estate business, Suff would enter listings into his computer, assist with open houses, and print out fliers for her. (45 RT 10035.) In 1987, Suff helped protect the rural home of one of Ashley's clients from an encroaching brushfire. (45 RT 10036.)

Sometime in 1987, Ashley found her grandmother's driver's license and a withdrawal slip in Suff's wallet after her mother notified her that \$900 was missing from her grandmother's bank account. (45 RT 10037-10038; see 45 RT 10044-10045.) The money had been withdrawn in increments, over a period of one month, when Suff was supposed to be depositing one of the grandmother's

checks at the bank ATM. (45 RT 10044.) Suff admitted taking the money, but complained he should have received some money for all the work he had done for Ashley. (45 RT 10038-10040.) Ashley entered into an agreement with Suff to pay back the money, and Suff paid back “every penny that he felt he owed.” (45 RT 10040, 10049-10050.) Suff agreed to pay \$450. (45 RT 10045, 10050.) They also agreed that once the money was repaid, Suff would move out, so he vacated late July 1987. (45 RT 10044.)

Suff moved back in with Ashley in 1988 until March 1989 to recuperate after he was involved in a motorcycle accident. (45 RT 10036-10037.)

Ashley said Suff was never abusive to her, and that he was “[e]xtremely caring, attentive,” and “went over and above expectations in . . . working.” (45 RT 10041, 10046.) During cross-examination, however, when asked whether she “constantly had to give [Suff] money” while they were living together, Ashley acknowledged Suff did not have to pay much rent, but said her grandmother lived to the age of 102 because of Suff’s efforts. (45 RT 10046.) Ashley was aware Suff was working full-time for Riverside County when he stole the \$900 from Ashley’s grandmother in 1987. (45 RT 10046-10047.) She did not know, however, that he was dating prostitutes while they were living together. (45 RT 10047.)

Suff bought Ashley a wedding ring in 1985, but in 1988 he took the ring without her knowledge and used it as collateral for a loan. (45 RT 10048, 10050-10051.) When Suff moved out of Ashley’s residence for the second time in 1989, he took personal pictures, jewelry he had given her over the years, and other gifts and mementos of the relationship, without asking for her permission or ever returning them. (45 RT 10048, 10054.)

8. Diane Anderson

After reading a newspaper article about the penalty phase testimony of Suff's mother, whom she knew as Ann Mead, Diane Anderson contacted defense counsel. (45 RT 10071-10072.) Mead was once a regular customer at a bar where Anderson's boyfriend often played as a musician, and Anderson came to know Mead and eventually Mead's second husband, Earl. (45 RT 10072-10073.)

Sometime in early 1968 (45 RT 10075, 10082), when Anderson was unmarried, pregnant, estranged from her parents, and only 18 or 19 years old, Anderson went to live with Mead at her house in Perris. (45 RT 10073-10074, 10082.) Earl moved in later. (45 RT 10076, 10082.) In lieu of rent, Anderson "kind of helped a little bit with food or whatever was needed." (45 RT 10074.) She also contributed what she received from public assistance. (45 RT 10087.) Anderson lived at Mead's house off and on for a total of three to four months. (45 RT 10075, 10082.)

After Earl moved in, Anderson did not remember seeing Mead hug or compliment any of her children; everything said to them was derogatory. (45 RT 10076-10077.) Earl's son "was always put on a pedestal," while Mead's children "could never do anything right." (45 RT 10077.) Anderson said she used to wonder why Mead's five children "didn't run away from home" and "whether they were going to hate women" when they grew up. (45 RT 10077.) Anderson later explained that Earl "immediately took control of the children" when he moved in, and Mead never defended them. (45 RT 10084-10085.) The family environment seemed to Anderson to be cold and uncaring. (45 RT 10077, 10081.) However, Earl did not live in the home until the last time Anderson stayed there, and Earl had himself just moved in. (45 RT 10082-10083.)

Anderson recalled that Suff did well in school and was involved with the church in Perris. (45 RT 10078-10079.) She never saw Suff act in an aggressive or violent manner. (45 RT 10080.)

Her own son was born in May 1968. (45 RT 10082.) Anderson “vaguely” remembered Suff going into the military but did not remember much about when he left. (45 RT 10083-10084.)

Rebuttal

Riverside County Sheriff’s Deputy William D’Angelo had been working at the Riverside County jail as a correctional deputy from the time it opened until about two months prior to his testimony. (45 RT 10089-10090.) Since January 1994, Suff had been assigned to an isolation cell by himself on the seventh floor. (45 RT 10090.)

On April 15, 1995, after the start of Suff’s trial (45 RT 10103), Deputy D’Angelo searched Suff’s cell and found a paper clip taped underneath the wall table bench, a safety pin hidden in a box of medical ointments, and a legal-size staple that had been removed from the paper and mixed with some of his legal paperwork. (45 RT 10091-10093.) The staple was about three quarters of an inch and of a heavier gauge steel than regular staples, which are normally about a half-inch. (45 RT 10093.)

Paper clips, staples, and safety pins can be fashioned in a way that they can work like a handcuff key. (45 RT 10095-10096, 10099-10100.) Staples, pins, and paper clips have also been sharpened down and attached to items like toothbrushes to form jail knives or shanks. (45 RT 10103.)

ARGUMENT

I.

BASED ON AN ACTUAL CONFLICT OF INTEREST, THE TRIAL COURT PROPERLY REMOVED THE RIVERSIDE COUNTY PUBLIC DEFENDER AS SUFF'S COUNSEL

Suff argues that because the deputy public defender assigned to him had not personally represented any of the victims or witnesses from this case and did not personally possess any confidential information arising from such representation, the trial court abused its discretion by granting the Riverside County District Attorney's motion to recuse the Riverside County Public Defender as Suff's counsel, entitling him to a per se reversal under the Sixth Amendment. (AOB 140, 146-156, 169-174.) Suff claims it was misconduct for the prosecutor to advance and participate in the removal motion. Additionally, Suff avers the trial court abused its discretion in finding a conflict of interest existed and granting removal, rather than accepting Suff's offer to waive any conflict or consider "reasonable alternatives to removal." (AOB 140, 156-169.) The prosecutor acted properly in moving for removal based on an actual conflict of interest involving victims, surviving and deceased, and potential prosecution witnesses. The trial court properly exercised its discretion in removing the Riverside County Public Defender after finding a conflict of interest based on the office's prior representation of victims and potential witnesses.

Suff had no absolute right to be represented by the attorney of his choice, Deputy Public Defender Zagorsky, and Suff could not waive the attorney-client privilege held by the deceased victims, their family members, or the single surviving victim. Moreover, trial courts are granted substantial latitude to refuse waivers of conflicts of interest, including in situations where a potential for conflict exists. Suff victimized individuals who had been previously represented

by the Riverside County Public Defender's Office on prostitution and drug charges. The character of all the victims would be at issue if the case advanced to the penalty phase. Given the gravity of the offenses in this case, the number of deputy public defender -- including the former co-counsel of the assigned deputy public defender -- who had been involved in the representation of the deceased victims, their family members, and the surviving victim, the trial court did not abuse its discretion in determining the potential and actual conflicts of interest required new counsel to be appointed to represent Suff.

Two and a half years prior to commencement of Suff's trial, and ten months after his arrest, on October 19, 1992, the prosecutor filed a motion to recuse the Riverside County Public Defender as Suff's counsel due to conflict of interest. The motion was supported by declarations of victim Rhonda Jetmore (Count 14, attempted murder), eight other victims' family members, and other potential prosecution witnesses attesting that Jetmore, the eight murder victims, and eleven potential witnesses had been represented by the Riverside County Public Defender's office. None of these individuals were willing to waive their respective attorney-client privileges. (2 CT 257-343; 349-435; 2 RT 79.) The prosecutor noted in his moving and responsive papers that one of the prosecution's theories in the case was that Suff "purposely and continually preyed upon women who were prostitutes and drug users." The prosecution argued that due to information the Public Defender possessed from past representation of Jetmore and eight of the homicide victims on largely prostitution and/or drug charges, a conflict of interest existed because: (1) the victims' status as prostitutes or drug users was at issue, and (2) if victim impact evidence was presented, the victims' character and background would be at issue. (2 CT 261-268, 353-360; 2 CT 486-487.) To further support the motion, the prosecutor submitted a State Bar opinion on the issue of whether a public defender may represent a criminal defendant where a potential prosecution

witness is a former client of the public defender's office. (State Bar Standing Com. on Prof. Responsibility & Conduct, Formal Opn. No. 1980-52; 2 CT 492-495; 2 RT 104, 132-134.)

Suff's Deputy Public Defender, Floyd Zagorsky, countered that he had "built a substantial relationship . . . of trust and confidence" with Suff, that nothing in rule 5 of the Rules of Professional Conduct prohibits an attorney from representing a new client in a matter adverse to a former client "if the matter has no relationship to confidential information acquired by reason of or in the same course of his employment by the former client," or if the new matter is not adverse to the former client, and that disqualification of a particular deputy public defender would not necessarily disqualify all the attorneys in that office. (2 CT 466-476, 478.) At the time of the motion, Deputy Public Defender Zagorsky had represented Suff for approximately 10 months. (2 CT 478.) In addition, Deputy Public Defender Zagorsky stated, "[t]he Public Defender's Office questions the actions of the Riverside District Attorney's Office in contacting and acquiring affidavits from fo[r]mer clients of the office, particularly without notification." (2 CT 476.)

At the November 20, 1992 hearing, the prosecutor sought to call as witnesses several attorneys from the Riverside County Public Defender's Office, including Deputy Public Defender Zagorsky's former co-counsel, Toni Healy. (2 RT 115-118; see also 2 RT 106-112.) While the prosecutor sought to ask attorney Healy whether she thought a conflict of interest existed in the case, Deputy Public Defender Zagorsky and Supervising Deputy Public Defender Gary Myers objected that such an opinion was protected under the attorney-client privilege. (2 RT 119-122.) While the trial court disagreed with the assertion of the privilege, it nevertheless ordered the prosecutor to proceed without any witness testimony. (2 RT 122.)

During argument, the prosecutor stated that the Riverside County Public Defender had on at least seven occasions represented Jetmore, who was the surviving victim of, at that time, two of the charged counts. (2 RT 125.) Jetmore's testimony would not be minimal, unrelated, or inadmissible, and because of the extent of their prior representation, the Public Defender's Office had an actual conflict of interest by having to attack the credibility of their previous client to defend Suff. (2 RT 124-125, 128-129.) In addition, having previously represented eight of the homicide victims, the Public Defender would not be able to "effectively and ethically" challenge whether the victims were prostitutes "with the knowledge that these women were in fact prostitutes" (2 RT 126-127.) Some of the victims were represented by the Public Defender's Office on more than ten separate occasions, thus the prior attorney-client relationship was not minimal. (2 RT 127.) At the time of the motion, the prosecutor anticipated that at Suff's trial he would call about twenty-five witnesses who were previously represented by the Public Defender and who would not waive any conflict. (2 RT 130.) It was not too late to appoint substitute counsel, the prosecutor argued, because Suff had been arraigned only two months earlier and the trial date had not yet been set. (2 RT 127-128.) The prosecution also noted the defense had objected to the District Attorney's Office contacting prior Public Defender clients without advance notice. The prosecutor pointed out the contradictory position of the Public Defender in claiming there was no attorney-client relationship with the prospective prosecution witnesses, while at the same time demanding notice before the former clients were contacted by the prosecution. (2 RT 129-130.) Finally, the prosecutor argued Suff could not waive the conflict in this case because the deceased victims maintained an attorney-client relationship. Accordingly, it was improper for the Public Defender to continue to represent Suff under the circumstances. (2 RT 131-133.)

Deputy Public Defender Zagorsky argued his relationship with Suff over the prior ten to eleven months of representation had been “very substantial.” (2 RT 137-138.) He further noted that the original complaint had only involved two victims, and as to the twelve witnesses, aside from relatives of the victims and the surviving victims, the defense had never seen ten of the names and had only limited information on the remaining two. (2 RT 139-141.) While not contesting that those listed in the prosecutor’s motion were former clients, Deputy Public Defender Zagorsky argued that the confidences of those former clients would not be violated, and represented that he would not review any of those files or use any confidential information in this case. (2 RT 144-147, 156-157.) Deputy Public Defender Zagorsky further disclosed that after reviewing the court files of all the listed witnesses, he had “made an appearance in one particular case,” on December 31, 1991, when that (unnamed) client failed to appear in court. Deputy Public Defender Zagorsky did not believe he had any contact with the client and could not recall any information from the case. (2 RT 146-147, 158-159.) As to that case only, a member of the office looked in the Public Defender’s file to confirm that Deputy Public Defender Zagorsky in fact made the appearance and represented to Deputy Public Defender Zagorsky that the file contained no confidential information. (2 RT 146-147.) Further, defense counsel argued case law that knowledge is not imputed between attorneys in the Public Defender’s Office. (2 RT 147-155.) Defense counsel added that he was unable to find any authority to support that the attorney-client privilege of a deceased client survives the death of that individual (2 RT 155-156), and that he felt the issue of potential victim impact evidence was premature (2 RT 156). Finally, Deputy Public Defender Zagorsky argued that if the trial court found a conflict existed, it should consider alternatives to recusal such as appointing “backup counsel” from outside the Public Defender’s

Office who would be shielded from any confidential information. (2 RT 158-163.)

The prosecutor discouraged “a wait-and-see approach,” in favor of the presupposition of the possibility of a penalty phase to avoid a conflict. The prosecutor acknowledged there was no discovery on some of the people he intended to call during the penalty phase, and that the defense had ample discovery on Jetmore, whom defense counsel had not mentioned during argument. (2 RT 164-166.) Further, the prosecutor provided court minute orders to show that despite being noticed two months earlier of her potential testimony as a prosecution witness in Suff’s case, the Public Defender’s Office appeared on two separate felony cases representing Joan Paysuer, the mother of one of the homicide victims, the Friday before the motion hearing. (2 RT 167-168.)

Prior to ruling on the motion, the trial court took judicial notice of the criminal cases listed by the prosecutor and noted,

[A] cursory observation of those cases shows the Court that 38 current and former public defenders represented all these individuals in various cases throughout the history of those cases that have been cited. At least 25 of those are current public defenders in the office. On two occasions Mr. Healy, who was the acting public defender until two days ago and has been a supervisor in that office for a number of years, made appearances on those matters. He is in fact the husband of one Toni Healy who is co-counsel on this case – it appears to be co-counsel until a couple of days ago as well. And that’s obvious to the Court by the signature on the various motions that their confidential relationship has existed between Miss Toni Healy and the defendant Mr. Suff. On one former occasion Miss Toni Healy has appeared on one of those cases as attorney of record, and without question pled this individual to a series of misdemeanor offenses not related to this at all, but there had to have been a confidential relationship existing there or her duties would have been amiss by pleading someone to misdemeanor offenses.

(2 RT 172.)

The trial court concluded there had been “confidences, numerous and replete, by the public defender’s office with these various potential witnesses.” (2 RT 172.) In particular, the trial court found “[t]he enormity of the representation” of the surviving victim Jetmore to be “staggering as compared to the representation as to the cases cited by both parties.” (2 RT 172-173.) The trial court then discussed and distinguished various cases cited by the parties, and noted that the news reports and other press put the defense on notice of the potential for additional murder charges. (2 RT 172-175.) Based upon the information before the trial court, it found an actual conflict of interest as well as “a potential conflict of interest that is so replete, that is so staggering, that I think I would be remiss in not granting the motion.” (2 RT 174.) Concluding the case was “so mired with” people previously represented by the Public Defender’s Office, the trial court stated, “I think the only fair and just thing – and this is an endeavor to seek the truth in a just and reasonable means – I think the only way to do it is to recuse [the Public Defender] at this early stage and not at any later date” (2 RT 175.) The court added, “we’re not going to wait until any potential penalty phase. We will address the issue head-on as early as we can.” (2 RT 175.) With that, the trial court recused the Riverside County Public Defender and appointed the Conflicts Panel. (2 RT 175.)

The standard of review on appeal of a motion to disqualify counsel is “abuse of discretion.” (*Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566, 1573, citing *People v. Jones* (2004) 33 Cal.4th 234, 244.) Where supported by substantial evidence, the trial court’s express or implied findings are conclusive, and the party opposing disqualification has the burden of proving the facts establishing that disqualification is inappropriate. (*Rhaburn v. Superior Court, supra*, 140 Cal.App.4th at p. 1573, quoting *City National Bank v. Adams* (2002) 96 Cal.App.4th 315, 322.) If the evidence conflicts, the trial court’s findings “concerning the nature and extent of the past and present attorney-client

relationship” are conclusive on appeal. (*People v. Belmontes* (1988) 45 Cal.3d 744, 776, quoting *People v. Yorn* (1979) 90 Cal.App.3d 669, 674.)

Although disqualification motions ultimately involve “a conflict between the clients’ right to counsel of their choice and the need to maintain ethical standards of professional responsibility,” the court’s “paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar.” (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 846, quoting *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145; *Rhaburn v. Superior Court, supra*, 140 Cal.App.4th at p. 1573; *People v. Jones, supra*, 33 Cal.4th at p. 240.) “[T]he essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant *rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.*” (*People v. Peoples* (1997) 51 Cal.App.4th 1592, 1597, original italics, quoting *Wheat v. United States* (1988) 486 U.S. 153, 159 [108 S.Ct. 1692, 100 L.Ed.2d 140]; *People v. Jones, supra*, 33 Cal.4th at p. 241.) As the United States Supreme Court has noted,

[A trial court] must recognize a presumption in favor of [defendant’s] counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict. *The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court.*

(*Wheat v. United States, supra*, 486 U.S. at p. 164, emphasis added; *People v. Peoples, supra*, 51 Cal.App.4th at p. 1597.) Thus, trial courts have the discretionary power to remove counsel with a conflict of interest, regardless of whether the defendant is willing to make a voluntary and informed waiver. (*People v. Daniels* (1991) 52 Cal.3d 815, 847-849; see also *Wheat v. United States, supra*, 486 U.S. at p. 162-163.)

“When a trial court is aware, or should be aware, of a possible conflict of interest between a criminal defendant and defense counsel, the court is required to inquire into the circumstances of the possible conflict and take whatever action may be appropriate.” (*People v. Frye* (1998) 18 Cal.4th 894, 999, citing *People v. Jones* (1991) 53 Cal.3d 1115, 1136.) The trial court’s duty in this regard should be discharged “with sound and advised discretion, . . . and with a caution increasing in degree as the offenses dealt with increase in gravity.” (*Glasser v. United States* (1941) 315 U.S. 60, 71 [62 S.Ct. 457, 86 L.Ed. 680]; see also *People v. Bonin* (1989) 47 Cal.3d 808, 839.) Failure by a trial court to inquire or to take action on the basis of the inquiry is a denial of due process requiring reversal. (*Wood v. Georgia* (1981) 450 U.S. 261, 271-273 [101 S.Ct. 1097, 67 L.Ed.2d 220]; *People v. Frye, supra*, 18 Cal.4th at p. 999.)

A. The Trial Court Did Not Abuse Its Discretion In Determining A Conflict Of Interest Existed Which Warranted Recusal

Article I, section 15 of the California Constitution and the Sixth Amendment to the federal Constitution provide criminal defendants with the right to a competent attorney who is free from conflicts of interest, however, the defendant cannot chose a particular attorney. (*People v. Jones, supra*, 33 Cal.4th at p. 241-244; *People v. Cox* (2003) 30 Cal.4th 916, 948; *Wheat v. United States, supra*, 486 U.S. at p. 159.) “[O]nce counsel is appointed to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained.” (*Smith v. Superior Court* (1968) 68 Cal.2d 547, 562; *People v. Jones, supra*, 33 Cal.4th at p. 243.) A defendant may insist on retaining his attorneys, despite the possibility of significant conflict, if the danger of proceeding with such counsel has been generally disclosed to the defendant and he knowingly and intelligently waives the conflict for purposes of the criminal trial. (*Maxwell v. Superior Court*

(1982) 30 Cal.3d 606, 619.) However, a trial court “must be allowed *substantial latitude* in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.” (*People v. Jones, supra*, 33 Cal.4th at p. 241, original italics, quoting *Wheat v. United States, supra*, 486 U.S. at p. 163.)

Unlike Suff’s cited case of *Rhaburn v. Superior Court, supra*, 140 Cal.App.4th 1566, where only one potential prosecution witness was represented by the Public Defender’s Office on an unrelated misdemeanor (*Id.* at pp. 1569-1570), this case involved 25 potential prosecution witnesses who were represented by the public defender (2 RT 130), some of whom were represented on as many as ten separate occasions (2 RT 127), and one who was then currently represented (2 RT 167-168). Indeed, Deputy Public Defender Zagorsky himself appeared on behalf of one of the former clients, who had failed to appear in court, though he did not believe he had any contact with the former client who was a prospective prosecution witness. (2 RT 146-147, 158-159.) Further, eight of Suff’s murder victims who were former public defender clients were represented on drug, prostitution and/or theft-related charges – offenses which were highly relevant to the prosecution’s theory that Suff preyed on prostitutes and drug users. (2 CT 266-267, 358-359.) Also unlike *Rhaburn*, where the single deputy public defender who had handled the prior case worked in the office for less than six months and had left the public defender’s office ten years earlier (*Id.* at p. 1570), this case involved thirty-eight current and former deputies public defender, at least twenty-five of whom were still working in the office, and one of whom was the acting Public Defender. (2 RT 172.) In fact, the trial court determined Deputy Public Defender Zagorsky’s former co-counsel, Toni Healy, had developed a confidential relationship with Suff despite

having appeared as attorney of record on one of the prior clients' cases "and without question pled this individual to a series of misdemeanor offenses not related to this at all, but there had to have been a confidential relationship existing there ore her duties would have been amiss" (2 RT 172.)

Also unlike Suff's cited case of *Baez v. Superior Court*, which was decided with *Rhaburn v. Superior Court, supra*, 140 Cal.App.4th 1566, the surviving victim in this case was represented by the public defender on at least seven occasions (2 RT 125), and on drug-related charges (2 CT 342-343, 433-434), which again were directly relevant to the prosecution's theory that Suff targeted drug users (2 CT 266, 358). Additionally, the trial court took judicial notice of and examined the court files in this case, allowing the court to make observations regarding the number of deputies involved and whether they were still in the office. (2 RT 171-172.) The prosecutor in *Baez* did not allege any direct relevance of the charges on which the public defender had represented that victim, and the record did not indicate that the trial court had any information regarding the four deputies who had previously represented the victim. (*Rhaburn v. Superior Court, supra*, 140 Cal.App.4th at pp. 1570-1571, 1572, fn. 6.)

Moreover, *Rhaburn* and *Baez* were both petitions for writ of mandate, not post-conviction appeals like this case. Notably, Suff did not petition for writ of mandate in this case. Even the *Rhaburn/Baez* Court acknowledged, "the trial court has the authority to remove appointed counsel over a defendant's wishes if it is necessary to do so to protect the client's Sixth Amendment right to conflict-free counsel." (*Rhaburn v. Superior Court, supra*, 140 Cal.App.4th at p. 1580.) In addition, both *Rhaburn* and *Baez* raised objections concerning their late filing and the delay of trial which would result in their cases. (*Id.* at pp. 1569-1571.) Those concerns were not present in this case because here a trial date had not yet been set. (2 RT 127-128.)

Although defense counsel “is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop” (*People v. Clark* (1993) 5 Cal.4th 950, 1002; *People v. Belmontes, supra*, 45 Cal.3d at p. 776; *Levenson v. Superior Court* (1983) 34 Cal.3d 530, 537), “it is not enough to rely upon counsel, who may not be totally disinterested, to make sure that each of his joint clients has made an effective waiver” (*People v. Mroczko* (1983) 35 Cal.3d 86, 112, quoting *United States v. Lawriw* (8th Cir. 1977) 568 F.2d 98). In *Mroczko*, for example, the appointed attorney represented co-defendants Mroczko and Brindle after having spoken with two former suspects, who were clients of his employer. (*People v. Mroczko, supra*, 35 Cal.3d at pp. 98-99.) Despite repeated objections by the prosecution, which even petitioned for writ of mandate in the Court of Appeal for separate counsel due to the public defender’s “unwaivable conflict of interest,” the defendants’ appointed counsel doggedly represented that he had no attorney-client relationship with either of the former suspects and that no conflict existed in his representation of the co-defendants. (*Id.* at pp. 98-102, 110-113.) This Court reversed finding the defendants’ repeated waivers to be “fatally flawed.” (*Id.* at p. 110.)

In *Peoples*, the Court of Appeal held that despite an attorney’s claims that she could effectively represent her brother while being the victim’s ex-wife and the mother of three percipient witnesses, the trial court correctly removed her from the case because the defendant could not waive the conflicts of the attorney’s children or ex-husband, nor could he waive the consideration of “the appearance of justice itself.” (*People v. Peoples, supra*, 51 Cal.App.4th at p. 1599.)

Here, Suff’s deceased victims were incapable of executing a waiver of conflict, and the surviving victim, Jetmore, was unwilling. (2 CT 280-343; 371-435; 2 RT 130.) Contrary to Suff’s claim, and as this Court has recognized, “[i]t

has been generally, if not universally, accepted, for well over a century, that the attorney-client privilege survives the death of the client in a [criminal] case. . . .” (*Swidler & Berlin v. United States* (1998) 524 U.S. 399, 410 [118 S.Ct. 2081, 141 L.Ed.2d 379]; *Miller v. Superior Court* (1999) 21 Cal.4th 883, 901.) In *Swidler*, the government sought an attorney’s interview notes from a client interview for use in a criminal investigation after the client’s suicide. (*Swidler & Berlin, supra*, 524 U.S. at pp. 401-402.) Finding “weighty reasons that counsel in favor of posthumous application,” the high court held that attorney-client communications remain confidential even after death.^{25/} (*Id.* at pp. 407, 410.) In *Miller*, this Court acknowledged the holding in *Swidler & Berlin*, explaining, “*Swidler & Berlin* clarifies that the ‘federal constitutional need for relevant evidence in criminal trials’ recognized in *Nixon* (*United States v. Nixon* (1974) 418 U.S. 683 [94 S.Ct. 3090, 41 L.Ed.2d 1039]) does not alter the scope of privileges and immunities *well established in the law.*” (*Miller v. Superior Court, supra*, 21 Cal.4th at p. 901, emphasis added.)

Additionally, the attorney-client privilege was not waived by any of the surviving relatives or other witnesses through their declarations in support of the motion to recuse the public defender. (See AOB 155.) “[T]he [attorney-client] privilege is not waived by the mere disclosure that a witness has talked to his attorney about his case.” (*Littlefield v. Superior Court* (1982) 136 Cal.App.3d 477, 484, citing *Los Santos v. Superior Court* (1980) 27 Cal.3d 677, 685-686, *People v. Kor* (1954) 129 Cal.App.2d 436, 444-445.)

25. During its discussion the high court particularly noted California’s Evidence Code sections 954 and 957, but explained that they and other state statutes “do not address expressly the continuation of the privilege outside the context of testamentary disputes” and therefore “do not refute or affirm the general presumption in the case law that the privilege survives.” (*Swidler & Berlin, supra*, 524 U.S. at p. 405, fn. 2.) The case cited by Suff, *HLC Properties, Ltd. v Superior Court* (2005) 35 Cal.4th 54, is similarly off point. (See AOB 154.)

For Jetmore, who had been represented by the public defender on numerous occasions, the legal proceedings would hardly seem fair if the same office which had represented her on drug charges then cross-examined her about drug use in this case. (See *People v. Peoples*, *supra*, 51 Cal.App.4th at p. 1599.) The same could be said of Joan Payseur, the mother of one of Suff's murder victims, who was then represented by the public defender and whose credibility would likely be at issue while testifying in both the guilt and penalty phases. (See 2 RT 167-168.) The trial court in this case gave appropriate consideration to "the seriousness of the case." (2 RT 174; *People v. Bonin*, *supra*, 47 Cal.3d at p. 839.) In addition, the trial court clearly gave due consideration to the appearance of fairness in the proceedings when it stated, "I think the only fair and just thing – and this is an endeavor to seek the truth in a just and reasonable means – I think the only way to do it is to recuse [the Public Defender] at this early stage and not at any later date" (2 RT 175.)

This Court has recognized the importance of "the appearance of justice" when determining the existence of a conflict:

Inherent in the question whether a trial court may disqualify a criminal defense attorney over the defendant's objection is the conflict between the defendant's preference to be represented by that attorney and the court's interest in "ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them."

(*People v. Jones*, *supra*, 33 Cal.4th at p. 240, quoting *Wheat v. United States*, *supra*, 486 U.S. at p. 160; *People v. Peoples*, *supra*, 51 Cal.App.4th at p. 1599; see also *Rhaburn v. Superior Court*, *supra*, 140 Cal.App.4th at p. 1573 [in motion to disqualify counsel, the "paramount concern is the preservation of public trust in the scrupulous administration of justice and the integrity of the bar."].)

Moreover, the Supreme Court in *Wheat* observed, "[t]he likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even

for those thoroughly familiar with criminal trials.” (*Wheat v. United States, supra*, 486 U.S. at pp. 161-163; *People v. Jones, supra*, 33 Cal.4th at p. 241.) This Court has held that in exercising its discretion regarding potential conflicts, a trial court must be act with particular caution in capital cases. (*People v. Bonin, supra*, 47 Cal.3d at p. 839, citing *Glasser v. United States, supra*, 315 U.S. at p. 71.)

Finally, this Court has held:

The *removal* of an indigent defendant’s appointed counsel, which occurred here, poses a greater potential threat to the defendant’s constitutional right to counsel than does the refusal to *appoint* an attorney requested by the defendant, because the removal interferes with an attorney-client relationship that has already been established. But when, as here, a trial court removes a defense attorney because of a potential conflict of interest, *the court is seeking to protect the defendant’s right to competent counsel*. In such circumstances, *there is no violation of the right to counsel* guaranteed by article I, section 15 of the state Constitution, notwithstanding the defendant’s willingness to waive the potential conflict.

(*People v. Jones, supra*, 33 Cal.4th at p. 244, emphasis added.)

Here, the trial court removed Deputy Public Defender Zagorsky due to what it reasonably viewed as actual and potential conflicts of interest caused by the considerable number of potential witnesses who had been -- and one of whom still was -- represented by a significant number of attorneys still employed at the Public Defender’s Office. (2 RT 172-175.) Particularly in the case of Jetmore, who was the victim of an attempted murder and, at that time, assault with the intent to commit rape (Pen. Code, § 220; 1 CT 13), Suff’s interests were directly in conflict, as he would likely seek to discredit her account of events and her identification of him, most likely by questioning her sobriety that night. (See 2 CT 266, 358.) Deputy Public Defender Zagorsky himself had made a personal appearance for one of the victims or witnesses, though he did not believe he spoke to the client. (2 RT 146-147, 158-159.) The clients’ files were still accessible, as Deputy Public Defender Zagorsky

represented that he had someone look through one of them. (2 RT 146-147.) Former co-counsel Toni Healy, who had begun a confidential relationship with Suff, was also attorney of record for one of the victims or witnesses and pled that person to a “series” of unrelated misdemeanor offenses, which the trial court found established a confidential relationship with that person as well. (2 RT 172.) Here, the trial court used the appropriate level of caution for a capital case by recusing the public defender and appointing counsel who would have no ethical restrictions to cross-examining Jetmore about her drug habits. (See *People v. Bonin*, *supra*, 47 Cal.3d at p. 839.) Because the trial court in this case sought to protect Suff’s right to competent, conflict-free counsel, there was no violation of Suff’s right to counsel under the state Constitution. (*People v. Jones*, *supra*, 33 Cal.4th at pp. 244-245.) Further, the substitution of counsel was required to preserve the appearance of fairness and “public trust in the scrupulous administration of justice and the integrity of the bar.” (See *Rhaburn v. Superior Court*, *supra*, 140 Cal.App.4th at p. 1573; *People v. Peoples*, *supra*, 51 Cal.App.4th at p. 1599; *People v. Jones*, *supra*, 33 Cal.4th at p. 240; *Wheat v. United States*, *supra*, 486 U.S. at p. 160.) As the *Wheat* Court noted, the possibility another court might have reached a different or opposite conclusion with equal justification does not make that decision “right” and another “wrong.” (*Wheat*, at p. 164.) On this record, there has been no showing that the nature of the defense afforded deprived Suff of any constitutional right. (*People v. Mroczko*, *supra*, 35 Cal.3d at p. 105, quoting *People v. Keese* (1967) 250 Cal.App.2d 794, 798; *People v. Clark*, *supra*, 5 Cal.4th at p. 998.)

B. Suff Has Forfeited Any Claim Of Prosecutorial Misconduct; Regardless, The Trial Court Did Not Abuse Its Discretion In Allowing The Prosecutor To Advance The Motion To Recuse

While “[d]efense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest

arises during the course of trial” (*Cuylar v. Sullivan* (1980) 446 U.S. 335, 346 [100 S.Ct. 1708, 64 L.Ed.2d 333]; *Leverson v. Superior Court, supra*, 34 Cal.3d at p. 537), the prosecution may also raise the possibility of defense counsel having a disqualifying conflict of interest, which invokes the trial court’s duty to inquire (*Wood v. Georgia, supra*, 450 U.S. at pp. 272-273; see also *People v. Daniels, supra*, 52 Cal.3d at pp. 845, fn.5, 846-847). However, “the district attorney has little to gain and much to lose in allowing himself to become involved” in matters involving the selection of counsel for indigent defendants. (*People v. Peoples, supra*, 51 Cal.App.4th at p. 1596, fn. 2, quoting *Vangness v. Superior Court* (1984) 159 Cal.App.3d 1087, 1091-1092.)

Suff alleges the prosecutor committed misconduct while participating in the motion hearing, through “misrepresentations half-truths, and possibly worse . . . which infected Suff’s trial with such unfairness as to make the conviction a denial of due process” (AOB 160-162.) By failing to timely raise an objection and seek appropriate sanctions, however, Suff has forfeited this claim. (*People v. Arias* (1996) 13 Cal.4th 92, 151.) Moreover, there is nothing in the record to suggest that the prosecutor did not act in good faith to avoid the risk of a conviction tainted by defense counsel’s conflict of interest. (See *People v. Daniels, supra*, 52 Cal.3d at p. 845, fn. 5.)

While Suff argues the prosecutor had no standing to bring forth the recusal motion (AOB 159-160), appellate courts have found no error when a prosecutor has done so. (See, e.g., *People v. Daniels, supra*, 52 Cal.3d at p. 845; *People v. Peoples, supra*, 51 Cal.App.4th at p. 1596.) In *Mroczko*, this Court even recognized the “experienced and competent . . . prosecutorial personnel” for doing “virtually everything in its power to bring [the] conflict to the attention of the court.” (*People v. Mroczko, supra*, 35 Cal.3d at pp. 113-114.)

Suff additionally accuses the prosecutor of giving legal advice to the witnesses, which he claims created an irreconcilable conflict of interest between

their interests and his duties to see that justice was done. The record contains no evidence to support this contention, however, nor did Suff raise such an objection below; it therefore cannot be considered by this Court. (See *In re Hochberg* (1970) 2 Cal.3d 870, 875 [“Matters not presented by the record cannot be considered on the suggestion of counsel in the briefs.”]; *People v Siplinger* (1967) 252 Cal.App.2d 817.) Further, Suff argues (1) the prosecutor’s statement of intent regarding the presentation of victim impact evidence differed from his statement eight months later (AOB 161); (2) the prosecutor listed Joan Payseur as a witness only “in connection with [his] mission to have Zagorsky removed from the case” (AOB 161); and (3) only four of the seventeen potential witnesses who were represented by the Public Defender’s Office testified at Suff’s trial (AOB 161). The trial court’s ruling, however, is reviewed by this Court based on the evidence before the trial court at the time of the motion; any subsequent evidence is not relevant to this determination and should be disregarded. (See *People v. Welch* (1999) 20 Cal.4th 701, 739.) As to Suff’s complaint that “almost half of the 35 potential witnesses named” in the prosecutor’s motion were not represented by the Public Defender’s Office (AOB 161), the prosecutor made clear both in the moving papers, the attached declarations, and during argument that several of the witnesses were the surviving family members of the former public defender clients killed by Suff. (2 CT 272-343, 364-434.) Moreover, the prosecutor never represented that he would definitively call all the family members as witnesses. (See 2 CT 272, 364.)

Regarding the trial court’s conduct, Suff complains that the court refused to allow Deputy Public Defender Zagorsky to respond to the prosecutor’s remarks in camera, then deprived him of the opportunity to respond to the prosecutor’s rebuttal, which deprived the court “of the ability to hear and consider crucial information in determining whether a conflict of interest

existed.” (AOB 162-163.) To the extent his complaint is one of not having ample opportunity to make his point, the record belies his claim. Deputy Public Defender Zagorsky had the opportunity to argue for 28 pages of Reporter’s Transcript, which included one 15-minute recess. (2 RT 136-164.)

In addition, the record shows that although Deputy Public Defender Zagorsky filed his responsive pleading under seal, the trial court observed, “I don’t understand why that was originally . . . not made public. There’s nothing that I can see in this other than a legal discussion on whether or not a conflict of interest exists. No confidentiality has been divulged in anybody’s points and authorities or declarations.” (2 RT 136.) Deputy Public Defender Zagorsky provided no reasonable basis to warrant an in-camera response to the prosecutor’s argument. It has been recognized that a defendant may have to disclose information in hearings under *People v. Marsden* (1970) 2 Cal.3d 118, which may “conceivably lighten the burden which the prosecution bears in bringing about a conviction,” thereby implicating his or her Fifth Amendment right against self-incrimination. (*People v. Dennis* (1986) 177 Cal.App.3d 863, 871, 874, citing *People v. Madrid* (1985) 168 Cal.App.3d 14, 19, and *In re Misener* (1985) 38 Cal.3d 543, 555.) Suff was not required to make any statements at this hearing, and Deputy Public Defender Zagorsky offered no explanation why he felt an in-camera hearing was necessary, aside from comparing the procedure to a *Marsden* hearing and citing to “where they talk about the in-camera tool being utilized” in *People v. Dennis, supra*, 177 Cal.App.3d at pages 870-871. (2 RT 134-135.) Moreover, while it is the “better practice” for *Marsden* hearings to be in-camera, it is not a requirement unless “information would be presented during the hearing to which the district attorney is not entitled, or which could conceivably lighten the prosecution’s burden of proving its case.” (*People v. Dennis, supra*, 177 Cal.App.3d at p. 871; *People v. Madrid, supra*, 168 Cal.App.3d at p. 18.) The trial court did not

abuse its discretion in denying the defense request to conduct the hearing in-camera, or in allowing the prosecutor to advance the motion to recuse the public defender.

C. The Trial Judge Was Not Required To Accept Suff's Waiver Of Conflict Or To Implement Any Alternative To Removal; There Was No Abuse Of Discretion

Suff complains the trial court's refusal to accept his waiver of conflict and failure to consider "reasonable alternatives" before recusing the public defender was an abuse of discretion requiring reversal. (AOB 165-174.) Even with Suff's willingness to execute a voluntary and informed waiver, however, the trial court had the authority to disqualify the public defender in the furtherance of justice (*People v. Jones, supra*, 33 Cal.4th at pp. 240, 244, fn. 2; *Wheat v. United States, supra*, 486 U.S. at pp. 160-162; *People v. Peoples, supra*, 51 Cal.App.4th at p. 1599), and to protect Suff's Sixth Amendment right to conflict-free counsel (*People v. Jones, supra*, 33 Cal.4th at pp. 244-245; *Rhaburn v. Superior Court, supra*, 140 Cal.App.4th at p. 1580). As discussed above, the public defender's deceased former clients were incapable of waiving their conflict, and Jetmore was unwilling to waive hers. (2 CT 280-343; 371-435; 2 RT 130.) Moreover, the court's "independent interest in ensuring that . . . legal proceedings appear fair to all who observe them" demanded that new counsel be appointed, rather than for Jetmore to be cross-examined by the public defender as to the same drug habits that the public defender had previously represented her. (See *People v. Jones, supra*, 33 Cal.4th at p. 240; *People v. Peoples, supra*, 51 Cal.App.4th at p. 1599; *People v. Pennington* (1991) 228 Cal.App.3d 959, 965.)

California courts have held a criminal defendant is "the master of his fate" and, absent flagrant attorney misconduct or incompetence (*People v. Burrows* (1990) 220 Cal.App.3d 116, 125), may insist on retaining counsel

despite the possibility of significant conflict (*Maxwell v. Superior Court, supra*, 30 Cal.3d at p. 619), or the perceived incompetence of counsel (*Smith v. Superior Court, supra*, 68 Cal.2d at p. 562). While trial courts recognize a presumption in favor of a defendant's preferred counsel, however, the purpose of the Sixth Amendment "is to guarantee an effective advocate for each criminal defendant *rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.*" (*People v. Peoples, supra*, 51 Cal.App.4th at p. 1597, original italics, quoting *Wheat v. United States, supra*, 486 U.S. at pp. 159, 164; *People v. Jones, supra*, 33 Cal.4th at p. 241.) When made aware of a possible conflict of interest, a trial court has the discretion to accept *or refuse* a waiver. (*People v. McDermott* (2002) 28 Cal.4th 946, 990.)

This Court has also explained,

While we recognize that courts should exercise their power to remove defense counsel with great circumspection [citations], they nevertheless retain the obligation to supervise the performance of defense counsel to ensure that adequate representation is provided. [Citations.] Thus, a trial judge may remove defense counsel despite the objections of the defendant and his attorney if a serious conflict of interest arises during the trial proceedings resulting in "an obviously deficient performance. Then the court's power and duty to ensure fairness and preserve the credibility of its judgment extends to recusal even when an informed defendant, for whatever reason, is cooperating in counsel's tactics."

(*People v. McKenzie* (1983) 34 Cal.3d 616.)

In this case, as discussed earlier, the trial court anticipated the considerable conflicts likely to arise from the public defender's prior – and in one case, current – representation of the deceased victims, witnesses, and particularly of Jetmore if the matter advanced to a penalty trial, and also considered its duty to ensure fairness. (2 RT 172-175.) Contrary to Suff's contention (see AOB 168), the trial court not only considered alternatives to recusal, it in fact requested alternatives from Zagorsky when it stated, "I wish you to address the potential, . . . if the Court were to find that conflict, how you

would resolve that short of recusal.” (2 RT 159.) After considering those alternatives, the trial court concluded, the potential conflict of interest was “so replete, . . . so staggering,” that “the only fair and just thing . . . in an endeavor to seek the truth in a just and reasonable means” was to recuse the Public Defender’s Office and appoint new counsel. (2 RT 174-175.) Under the totality of the circumstances, the trial court did not abuse its discretion in refusing to accept a waiver of conflict from Suff or to implement an alternative to recusal. (See *Wheat v. United States*, *supra*, 486 U.S. at p. 163; *People v. Jones*, *supra*, 33 Cal.4th at p. 241.)

II.

THE TRIAL COURT PROPERLY DENIED SUFF’S MOTION FOR CHANGE OF VENUE; NO CONSTITUTIONAL VIOLATION RESULTED

Suff claims the trial court constitutionally erred in denying his motion for change of venue because the pretrial publicity in this case was “[i]nflammatory and highly-prejudicial” and prevented him from obtaining a fair trial. (AOB 175-193.) Yet, Suff exercised only half of his peremptory challenges, the bulk of the media coverage occurred three years prior to his trial, the trial occurred in a large and diverse county of a population numbering well over one million, and neither Suff nor his victims had any particular status or popularity in the community. Further, any particularly notorious aspects of Suff’s crimes would have been apparent regardless of where he was tried, and of the collective panel of twenty jurors and alternate jurors ultimately selected in this case, six had absolutely no prior knowledge and four had very limited knowledge about the case. The trial court properly denied Suff’s motion to change venue.

Prior to voir dire, Suff moved for change of venue on the basis of “sensational, prejudicial, and unprecedented” pretrial media coverage of the case. (See 5 CT 1199-1214, 1290-1310, 1312-1318.) The venue motion

hearing occurred on January 26, and 27, 1995, with Suff presenting Edward Bronson, Ph.D., as the only witness. (5 CT 1312.) Bronson, a Chico State professor who had previously qualified as an expert witness on venue in more than fifty cases throughout the country, testified he reviewed the pretrial publicity of the case and oversaw a telephone public opinion survey to measure the public's awareness of the case, knowledge of particular facts, and the extent to which the people may have prejudged certain issues in the case. (7 RT 1302-1441, 1526-1541.) Professor Bronson's colleague at the university conducted the survey, in which university students and former students called 654 people and conducted 403 interviews, 396 of which were counted in the survey results. (7 RT 1377-1378, 1382-1383, 1481-1482; see 7 RT 1374-1433.) The survey results confirmed the initial opinion Bronson reached after reviewing the publicity: that there was a reasonable likelihood Suff could not receive a fair trial in front of a Riverside County jury. (7 RT 1433.) In Bronson's opinion, the students, graduate students, and former students who conducted the on average seven-minute telephone interviews could more accurately assess prejudgment than could the trial court during voir dire. (7 RT 1519-1520.) Professor Bronson acknowledged his opposition to the death penalty. (7 RT 1439-1440, 1486-1487.)

On January 31, 1995, the trial court ruled that although "impressed by sheer numbers of statistics about how much publicity has been generated," it disagreed with Professor Bronson's opinion. (7 RT 1559.) Because of the "impressive" amount of publicity, however, the trial court stated it would not make a final ruling on Suff's change of venue motion until after the jury was empaneled or empaneling was attempted. (7 RT 1559-1560.)

On March 23, 1995, after the jury was empaneled, the trial court again entertained Suff's motion for change of venue. (7 CT 1892-1893.) During argument, defense counsel recalled from reviewing the juror questionnaires that

between twenty-five and twenty-seven percent of the 112 people chosen essentially said they knew nothing about the case; nine or ten percent said they could not remember whether they had heard of the case, and between 65 or 70 percent responded with “various amounts of information” ranging from “I read just the headlines,” to remembering fiber evidence found in Suff’s van. (19 RT 3598.) Defense counsel explained he chose to use only ten peremptory challenges because in his experience the defense “should never use that last peremp[tory challenge], not when the prosecution still has many left.” (19 RT 3599.) At that time, the prosecution had used only seven challenges, and the defense felt “the mix was as good as we were going to get.” (19 RT 3599-3600; see also 19 RT 3602.)

Prior to announcing its ruling, the trial court noted that each potential juror who had indicated any exposure to the case through the media or any knowledge of the case had been questioned in detail outside the hearing of the others. (19 RT 3603.) The trial court also looked at the 20 people who comprised the jury panel – 12 jurors and 8 alternates – and noted, “there are 6 persons who put on their questionnaire they new nothing – zero, nada, zip about this case” (19 RT 3604.) The trial court also categorized four jurors as having a limited knowledge about the case: one had “skimmed an article” – specified in the singular form – and recalled nothing; one could not remember what he/she heard or read from the Press Enterprise; one “Can’t remember reading about it at all. May be a possibility”; and one moved to the area in 1992 and had read about the case since then. (19 RT 3604.) Adding those four to the previous six, the trial court note, “That’s half of the 20 that we have in the pool.” (19 RT 3604.) The trial court therefore found, “I am convinced that [Suff] can get a fair trial, based upon this publicity issue. I am more convinced than ever by virtue of going through these with these people.” (19 RT 3604.)

Expounding further, the trial court acknowledged the view that some people might not give full disclosure, but stated that due to the manner in which the prospective jurors were individually questioned, “Those persons who had extensive knowledge were – it was brought out.” (19 RT 3604-3605.) The court stated there was “no question in my mind” that Suff can get a fair trial from the individuals selected to the jury, and concluded that through use of the questionnaires and the court’s questioning, “a huge percentage” of the resulting jury knew “nothing” about the case. (19 RT 3605-3606.)

A. When All Relevant Factors Are Considered, The Trial Court Properly Denied Suff’s Motion To Change Venue

“A trial court should grant a change of venue when the defendant demonstrates a reasonable likelihood that in the absence of such relief, he or she cannot obtain a fair trial.” (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 44, quoting *People v. Weaver* (2001) 26 Cal.4th 876, 905.) A reviewing court must independently examine the record for a de novo determination of whether a fair trial was obtainable. (*People v. Daniels, supra*, (1991) 52 Cal.3d 815, 851; *People v. Alfaro* (2007) 41 Cal.4th 1277, 1321.) “The factors to be considered are the nature and gravity of the offense, the nature and extent of the news coverage, the size of the community, the status of the defendant in the community, and the popularity and prominence of the victim.” (*People v. Kelly* (1990) 51 Cal.3d 931, 955, quoting *People v. Harris* (1981) 28 Cal.3d 935, 948.)

Preliminarily, Suff’s claim is undermined by his failure to exercise all available peremptory challenges. (See *People v. Alfaro, supra*, 41 Cal.4th at p. 1322; see also *People v. Prince* (2007) 40 Cal.4th 1179, 1216.) Indeed, Suff used only half of the twenty challenges provided by statute. (Code Civ. Proc. § 231, subd. (a); see 19 RT 3599-3601.) Although defense counsel stated the defense had not exercised all twenty peremptory challenges because “we felt this

was as good as we were going to get,” while categorizing potential jurors such as “favorable” and “unfavorable,” the defense never identified a single empaneled jury members as biased or unfair. (19 RT 3599.)

Although the nature and gravity of the charged offenses in this case weigh in favor of granting a change of venue, “the same could be said of most multiple or capital murders. This factor is not dispositive” (*People v. Dennis* (1998) 17 Cal.4th 468, 523, quoting *People v. Pride* (1992) 3 Cal.4th 195, 224; see also *People v. Weaver, supra*, (2001) 26 Cal.4th 876, 905; *People v. Coffman and Marlow, supra*, 34 Cal.4th at p. 45; *People v. Panah* (2005) 35 Cal.4th 395, 447-448.) Given the totality of the circumstances, the factor is appropriately not dispositive in this case.

In his written opposition to Suff’s change of venue motion, the prosecutor noted of the media coverage in this case could essentially be grouped into four stages: the first and most substantial, which constituted about 85 percent of all the written articles, occurred in January and February of 1992, when Suff was arrested and charged; the second occurred six months later, when Suff was indicted in July 1992; the third was in May 1993 when the grand jury transcripts were released; the last was in October 1993 when Suff’s motion to suppress evidence was heard. (5 CT 1296.) While DNA evidence was being processed in the year prior to the January 1995 change of venue hearing, “newspaper and other media articles have been rare.” (5 CT 1296.)

Further, the prosecutor noted that “while the media did report on many of the facts described by defense counsel in their moving papers,” there was both television and newspaper coverage “of a sympathetic and positive nature with regard to the defendant.” (5 CT 1294-1295.) The prosecutor quoted from various articles and television reports from early 1992 which described Suff, among other ways, as “no different than the average American,” “likeable,” and a “model employee.” (5 CT 1294-1295.) The headline of a February 17, 1992,

article in the Los Angeles Times read, “Nice-Guy Neighbor: Could He Really Be Serial Killer?” while KCBS television in Los Angeles interviewed two admitted prostitutes in Riverside who stated their belief that while Suff may have been responsible for some of the killings, a lot of individuals on the street “think there’s two more out there. A copy cat.” (5 CT 1294-1295.)

Moreover, newspaper articles contained in the record indicate that during the year prior to jury selection, there was considerable press coverage of the arrest and grand jury indictment of then-Sergeant Christine Keers, which reportedly led to her being fired from the Riverside Police Department in December 1994. (5 CT 1281-1289; see also 5 CT 1210.) Three of the articles described Sergeant Keers as either “instrumental” or playing a “key role” in investigating this case (5 CT 1281, 1283, 1285); one of those articles stated Suff “is in jail largely because of Keers’ detective work” (5 CT 1283).

Even Professor Bronson testified it was difficult for him to base an opinion on publicity alone, “particularly because some of this publicity is a bit dated.” (7 RT 1374.) He acknowledged the “heavy part” of the publicity had occurred “three years ago or so,” though in his opinion there had been “a fair amount” of publicity since then. (7 RT 1374.) “The passage of time weighs heavily against a change of venue.” (*People v. Dennis, supra*, 17 Cal.4th at p. 524; see also *People v. Prince, supra*, (2007) 40 Cal.4th at p. 1214; *People v. Panah, supra*, 35 Cal.4th at p. 448; *People v. Anderson* (1987) 43 Cal.3d 1104, 1130.) “Even the passage of several months can dispel the prejudicial effect of pretrial publicity in a large community.” (*People v. Dennis, supra*, 17 Cal.4th at p. 524, citing *People v. Proctor* (1992) 4 Cal.4th 499, 525.)

In addition, Professor Bronson’s telephone survey was essentially the same as what he presented in *People v. Coffman and Marlow, supra*, 34 Cal.4th at page 45. Just as the trial court in that case “distinguished the prejudgments of guilt ‘glibly’ espoused by the telephone survey participants from the ‘decision

made by a jury sworn to abide by the law, carefully voir dired and instructed as to the law and having a tremendous sense of their responsibility for the lives of the defendants” (*ibid.*), the trial court in this case commented to Professor Bronson of the telephone survey responses, “I’ve heard these comments over my history. . . . [¶] . . . I went through this and – was rather strenuous going through all these answers, but I thought them very typical – and I honestly mean that – very typical in my courtroom of responses.” (7 RT 1405.)

Moreover, of the people contacted for the telephone survey, the largest age group of respondents, 24.8 percent, was 65 years or older. (7 RT 1485-1486.) The survey was conducted just after the election in which the Three Strikes Law appeared on the ballot amid considerable publicity. (7 RT 1481, 1486.) Although Professor Bronson reported that 67 percent of those who recognized this case, or 49 to 50 percent of all respondents, said they believed to some extent that Suff was guilty (7 RT 1393), prior to being asked any questions about this case, the respondents were asked general questions including, “Regardless of what the law says, a defendant in a criminal trial should be required to prove his or her innocence” – to which 63.7 percent of those who responded agreed either strongly or somewhat. (7 RT 1486-1488.)

While Suff disagrees with the trial court’s characterization of the jurors’ media exposure or prior knowledge of the case, he acknowledges that twenty-five percent of the jurors and alternates had no knowledge of the case. (AOB 189.) Suff acknowledges that five of the jurors and alternates indicated they had no knowledge of the case (Juror Nos. 4, 9, 11; Alt. Juror Nos. 2, 8). (AOB 188; see 3 Supp. CT 471, 666; 4 Supp. CT 744; 5 Supp. CT 859, 1093.) Of the remaining jurors and alternates, Suff acknowledges that Juror Number 8 responded he could not remember whether he had read articles about the case (3 Supp. CT 627-628), Juror Number 3 wrote that he “skimmed the initial article” about the case in the Press-Enterprise newspaper (2 Supp. CT 432), and

Alternate Juror Number 7 wrote that he “Probably read about [the case] in local papers but didn’t give it much attention. I lived in Ohio until 1992” (5 Supp. CT 1054). While Suff complains that what Juror Number 8 “knew or did not know about the case was never established,” there is no indication he was unable to explore the area or request the court to do so during voir dire. More important, the function of the voir dire examination was to expose actual bias or prejudice, and as in *Prince*, “the voir dire in this case did not demonstrate a biased or prejudiced jury.” (*People v. Prince, supra*, 40 Cal.4th at p. 1215.)

The mere fact of prospective jurors’ pretrial exposure to publicity about the case does not necessitate a change of venue. (*People v. Alfaro, supra*, 41 Cal.4th at p. 1323, quoting *People v. Panah, supra*, 35 Cal.4th at p. 448; see also *People v. Prince, supra*, 40 Cal.4th at p. 1215; *People v. Dennis, supra*, 17 Cal.4th at p. 523.) “It is not required . . . that the jurors be totally ignorant of the facts and issues involved.” (*People v. Kelly, supra*, 51 Cal.3d at p. 956, citations omitted; see also *Mu’Min v. Virginia* (1991) 500 U.S. 415, 430 [111 S.Ct. 1899, 114 L.Ed.2d 493].) “It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.” (*People v. Prince, supra*, 40 Cal.4th at p. 1214, quoting *People v. Panah, supra*, 35 Cal.4th at p. 448, internal quotation marks omitted; *People v. Alfaro, supra*, 41 Cal.4th at p. 1323; *People v. Kelly, supra*, 51 Cal.3d at p. 956.)

Suff compares this case to *People v. Daniels, supra*, 52 Cal.3d 815, which on appeal of a federal habeas corpus petition in *Daniels v. Woodford* (9th Cir. 2005) 428 F.3d 1181, 1212, the Ninth Circuit Court of Appeals disagreed with this Court and held that “[t]he nature and extent of the pre-trial publicity, paired with the fact that the majority of actual and potential jurors remembered the pretrial publicity warranted a change of venue,” and accordingly, the trial court’s denial of the motion denied the defendant his right to due process. Three months before the trial in *Daniels*, however, the media covered the local school

board’s proposal to rename a football stadium in honor of one of the two police officers the defendant was accused of murdering. (*Id.* at p.1211.) One month before trial, a nine-foot-tall memorial statue honoring fallen police officers was unveiled across the street from the courthouse where the defendant was tried, and “[t]he publicity surrounding the memorial and its unveiling ceremony largely referred to” the two officers Daniels was charged with murdering. (*Ibid.*) Moreover, in closing argument, the *Daniels* prosecutor referred to the monument, saying, “The monuments that we build to these people are appropriate, ‘Lest we forget.’” (*Ibid.*) Press coverage included editorials and letters to the editor calling for Daniels’s execution. (*Id.* at p. 1212.) No such comparisons can be drawn in this case, where not only did the jurors indicate they could be fair, but they were unable to reach a verdict as to one of the murder counts (Cherie Payseur, Count 8). The news coverage did not prejudice Suff’s trial.

In 1990, this Court described Riverside County as containing “a large and diverse population.” (*People v. Kelly, supra*, 51 Cal.3d at p. 955.) This Court quantified the Riverside County population at roughly 600,000 in 1979. (*People v. Anderson, supra*, 43 Cal.3d at p. 1131.) As of January 1, 1994, however, the population of Riverside County had reached 1,357,400. (5 CT 1209.) Venue changes are seldom granted from counties of such size. (See *People v. Fauber* (1992) 2 Cal.4th 792, 818 [Ventura County (619,300)]; *People v. Dennis, supra*, 17 Cal.4th at p. 523 [Santa Clara County (1.4 million)]; *People v. Panah, supra*, 35 Cal.4th at p. 449 [San Fernando Valley (“over a million”)].) “The larger the local population, the less likely it is that preconceptions about the case have become embedded in the public mind.” (*People v. Fauber, supra*, 2 Cal. 4th at p. 818, citing *People v. Balderas* (1985) 41 Cal.3d 144, 178; see also *People v. Dennis, supra*, 17 Cal.4th at p. 523.) Here, the size and population of Riverside County supports the trial court’s denial of Suff’s change of venue motion.

The victims in this case were all prostitutes and current or former drug addicts. In *People v. Jennings* (1991) 53 Cal.3d 334, 363, this Court observed, “The victims, save one, were prostitutes. Although they could be seen as especially vulnerable, they do not occupy an elevated position in society.” As in *Jennings*, neither Suff nor the victims were prominent or well-known in the area. (See *ibid.*) Although Suff claimed that the pretrial publicity had caused his name to be “highly recognized in Riverside county” (5 CT 1210), any “uniquely heightened features” of this case and the crimes that may have given the victims or Suff any prominence, which normally a change in venue attempts to alleviate, would inevitably have become apparent no matter where Suff was tried. (*People v. Prince, supra*, 40 Cal.4th at p. 1214; *People v. Dennis, supra*, 17 Cal.4th at p. 523.) Neither factor supported a change of venue. (*People v. Jennings, supra*, 53 Cal.3d at p. 363.)

B. Harmless Error Analysis

Assuming, arguendo, the trial court erred in refusing to change venue, the decision had no demonstrable effect, much less did the decision reasonably likely effect the fairness of the trial. (See *People v. Jenkins* (2000) 22 Cal.4th 900, 943.) In determining whether a reasonable probability exists that Suff did not receive a fair trial, this Court considers the voir dire “to determine whether the jurors may have been prejudiced by the pretrial publicity surrounding the case.” (*People v. Proctor, supra*, 4 Cal.4th at p. 526.)

As set forth above, the majority of the 20 people who comprised the jury panel – 12 jurors and 8 alternates – 6 knew nothing about Suff or his crimes. (19 RT 3604.) Four of the jurors had limited knowledge about the case. (19 RT 3604.) So over half the jurors knew little of nothing about Suff and his crimes. (19 RT 3604.) Even the fact some jurors had heard of the case prior to trial simply will not allow Suff to prevail, as “there is ‘no presumption of a deprivation of due process of law aris[ing] from juror exposure to publicity

concerning the case.” (*People v. Jenkins, supra*, 22 Cal.4th at p. 945, citing *People v. Proctor, supra*, 4 Cal.4th at p. 527.)

The trial court properly found that Suff could get a fair trial (19 RT 3604), because on this record Suff has not and cannot demonstrate a reasonable likelihood that he did not receive a fair trial in Riverside County. (*People v. Jenkins, supra*, 22 Cal.4th at p. 943.)

III.

GIVEN THE CIRCUMSTANCES SURROUNDING SUFF’S DETENTION AND ARREST, THE TRIAL COURT PROPERLY DENIED HIS MOTION TO SUPPRESS EVIDENCE

Suff argues evidence was obtained as a result of his warrantless detention and arrest, and that the trial court’s refusal to suppress the evidence violated his Fourth Amendment and state constitutional rights. (AOB 194-233.) On the contrary, the traffic officer’s cumulative years of experience with the particular geographical area, coupled with the information he had about the serial killer suspect and vehicle, gave him reasonable suspicion sufficient to stop and briefly detain Suff for further investigation under the totality of the circumstances. When Suff provided an expired driver’s license, the officer had further cause to detain him. Officer Orta had probable cause to arrest Suff once he became aware Suff’s driver’s license was in fact suspended, his vehicle registration was expired, and the registration sticker on his license plate was fraudulent. To the extent Suff claims that Vehicle Code section 21453 “specifically authorizes” motorists to turn without signaling, he failed to raise this point below and is thus precluded from raising it for the first time on appeal. (*Damiani v. Albert* (1957) 48 Cal.2d 15, 18 (“[P]oints not urged in the trial court may not be urged for the first time on appeal”).) Substantial evidence supports the trial court’s denial of Suff’s motion to suppress evidence on Fourth Amendment grounds.

In August 1991, Riverside Police Detective Christine Keers, part of a joint investigative task force with the Sheriff's Department, drafted and distributed a police bulletin and sketch of a possible suspect of several serial killings which had occurred in the city of Riverside. (4 RT 624-626, 640.) The bulletin included a physical description of the suspect, who wore metal-frame glasses, and the van he drove. (4 RT 502, 533, 626, 640.)

On January 9, 1992, Riverside Police Officer Frank Orta was on motorcycle patrol, working as a traffic enforcement officer during his regular 2:00 p.m. to midnight shift. (4 RT 489.) He was in full uniform and on a police motorcycle. (4 RT 489-490.) Officer Orta had been a police officer fourteen and a half years, eleven with the city of Riverside. (4 RT 485.) For the last seven years, Officer Orta had been a motorcycle officer in traffic enforcement. (4 RT 486.) Most of that time—about five years—he was assigned to the north end of the city and had become particularly familiar with the area of University Avenue from Victoria Avenue and east to Chicago Avenue. (4 RT 487-488.) Officer Orta knew the area to be a very busy area with a lot of gang activity, narcotics dealing, prostitution, and DUI arrests. (4 RT 488.) He usually patrolled during the same shift, from 2:00 in the afternoon until midnight. (4 RT 488.) During the five years Officer Orta patrolled the area, he estimated he saw prostitutes or prostitution activity hundreds or close thousands of times, and had become familiar with their activities. (4 RT 488-489.)

Around 9:30 p.m., as Officer Orta rode eastbound along University Avenue just past Victoria Avenue, he saw a gray or silver mini-van make a U-turn within the dirt lot directly east of the Discount Liquor Store located at 2619 University Avenue. (4 RT 491-497.) Officer Orta watched as the van stopped and a female who appeared to be a prostitute walked from the area of Discount Liquor toward the driver's side of the van. (4 RT 497-499, 559.) When she reached about the left front fender of the van (4 RT 536-537), the female looked

over her shoulder and upon seeing Officer Orta, turned around and returned toward the direction from where she had come. (4 RT 499-500, 505, 539.)

At that time, Officer Orta was aware a suspected serial killer was killing prostitutes in Riverside County, but he was unaware that several of the victims had been prostitutes from the University Avenue area. (4 RT 500.) Officer Orta had received the police bulletin describing the suspect and the suspect's vehicle in connection with the killings. (4 RT 500, 502.) The suspect's vehicle was described as a late model Chevrolet Astro van, two-tone, medium blue over gray. (4 RT 502, 533.) A pencil-type sketch of the suspect, along with a general description, were also printed on the police bulletin. (4 RT 502-503.)

This van appeared to be two-tone in color in the evening light. (4 RT 583.) When Officer Orta first saw the van and that its colors were similar to those described in the police bulletin, his intention was to ride to a position where he would not be seen, observe their activity, and if the female got into the van he would follow the van and stop it. (4 RT 503-504.) The female saw Officer Orta as he rode past the van, however, before the officer could reach his vantage point. (4 RT 504-505.) Officer Orta decided he would nevertheless make contact with the van to get field information for Detective Keers. (4 RT 505-506, 541-542, 554-555.) As the female walked away from the van, the van drove out of the lot and turned westbound onto University Avenue. (4 RT 505-506.) Officer Orta made a U-turn and eventually caught up to the van. (4 RT 506-508.) The driver of the van was its only occupant. (4 RT 514, 554.)

After coming to a complete stop at the intersection of University Avenue and Park Avenue, the van suddenly made a right turn without any signal and without moving over toward the curb. (4 RT 509, 555.) Officer Orta decided to additionally stop the van for making an illegal right turn. (4 RT 510.) Officer Orta followed the van onto Park Avenue and immediately turned on the emergency lights on his motorcycle, which consisted of a solid red light to the

front on the left-hand side, a strobe flashing blue light to the right-hand side on the front, and a strobe blue light to the rear. (4 RT 512, 543.) The van continued for another 80 feet, turned left on Seventh Street, and pulled over. (4 RT 512-513, 543.)

When Officer Orta told Suff of his failure to signal, Suff acknowledged the violation. (4 RT 555.) Suff provided an expired driver's license in the name of "Bill Lee Suff" and told Officer Orta he did not have his vehicle registration with him. (4 RT 515-516.) Suff was wearing glasses and in Officer Orta's opinion, somewhat closely matched the police artist's sketch of the serial killer suspect. (4 RT 516-518.) Officer Orta also noticed that on Suff's driver's license was a Lake Elsinore address, scratched out, with another Lake Elsinore addresses and a Rialto address on the back. (4 RT 517.) These addresses were significant to Officer Orta because he was aware some of the victims' bodies had been dumped in the Lake Elsinore area, and one victim was dumped near Rialto. (4 RT 518.) Suff provided Officer Orta with a current address in the city of Colton. (4 RT 519.)

Officer Orta returned to his motorcycle to issue a citation and confirmed with the police dispatcher that Suff's driver's license had not only expired, but had also been suspended. (4 RT 520, 523.) The police dispatcher also relayed that the vehicle registered under Suff's personal license plate, "BILSUF1," had expired in 1990, though the sticker on the plate was for 1992. (4 RT 520, 523-524.) Officer Orta believed the registration sticker on the plate was fraudulent. (4 RT 524.) Based on the information from dispatch, Officer Orta decided to impound Suff's van under Vehicle Code section 22651, subdivisions (o) and (p). (4 RT 527-528.) On a violation of Vehicle Code section 4462.5 (display of false sticker), it was Officer Orta's practice to always impound a vehicle that had been unregistered for more than a year. (4 RT 548-549.) If the vehicle had no licensed driver occupants, it was also Officer Orta's practice to always impound

a vehicle on a violation of Vehicle Code section 12500 (driving without a valid license). (4 RT 549-550.)

Just as Officer Orta was about to write the citation, Riverside Police Officers Don Taulli and Duane Beckman stopped by to check on their fellow officer, a common practice among local police. (4 RT 521-522, 524, 551, 567-568, 591, 614-615.) About five or six minutes had passed from the time Officer Orta pulled over Suff. (4 RT 524, 550-551.) When Officer Orta learned the two other officers were members of the task force investigating the serial killings in the area, he described his previous observations regarding the prostitute and the driver's license. (4 RT 521-522, 568, 592-593.) Officer Orta asked whether the officers had a camera to take photos of the driver and the vehicle, which Officer Orta intended to send along with the driver's license information to Detective Keers. (4 RT 522, 524-525, 595.) As he also indicated his intent to impound the van and send the vehicle impound report to Detective Keers. (4 RT 529-530, 569, 596-597, 617.)

Officer Orta walked back to Suff's van, told Suff his license was suspended and the van's registration was expired, and that the officer would be impounding the van. (4 RT 530-531.) Suff then got out and walked to the rear of the van as requested by Officer Orta. (4 RT 531, 595.)

Suff allowed Officer Beckman to take photos of him. (4 RT 570-571, 595.) While Officer Beckman took photographs of Suff and the van, Officer Orta completed the citation and other paperwork. (4 RT 525-528, 571, 595.) Suff was wearing metal-frame glasses. (4 RT 570, 596, 618-619, 643.) The suspect described in the police bulletin, as well as in the police artist sketch, was wearing similar glasses. (4 RT 570-571.) In Officer Taulli's opinion, Suff's van very closely resembled that of the suspect van described in the police bulletin (4 RT 594), and Suff very closely resembled the suspect (4 RT 596).

As Officer Orta continued to complete other paperwork, he asked Officers Beckman and Taulli to conduct the inventory search of Suff's van. (4 RT 530, 572.) Officer Beckman looked into the right passenger window and noticed it was "kind of messy" in the back with blankets, soda cans, and "things of that nature." (4 RT 572-573.) At the front of the van, he saw what looked like a CHP hat on a CB radio that was mounted there. (4 RT 572-573.) Officer Beckman opened the passenger door and noticed a different pair of eyeglasses, with clear lenses and wire frames, on the center console. (4 RT 573.)

Directly behind the driver's seat, Officer Beckman saw a large, black, notebook-type calendar. (4 RT 573-575, 582.) Because of its size, width, thickness, and color, the notebook resembled a Bible, like the police bulletin had mentioned. (4 RT 575, 612.)

Also behind the driver's seat was a mesh elastic map-holder, which held a white, 8 ½ by 11-inch folder. (4 RT 575.) Behind the folder and protruding from the top of it were numerous pieces of nylon, clothesline-type cord, which appeared to have been "freshly cut" to several lengths. (4 RT 575-576, 606.)

Next to the eyeglasses on the console was a set of clear plastic credit card sleeves normally found inside a wallet. (4 RT 573.) In the sleeves, Officer Beckman saw a State of California parole card bearing Suff's name. (4 RT 573, 582.) Officer Beckman asked Suff whether he was on parole, to which Suff responded he was on parole for 10 years out of Texas. (4 RT 576.)

Meanwhile, Officer Taulli had stuck his head in the driver's side window and looked inside. (4 RT 597, 616.) He saw the butt of a brown-handled revolver sticking out from directly below the driver's side seat. (4 RT 597-600, 617-618.) Officer Taulli opened the door and removed what looked like a holstered Colt Python heavy-frame revolver from underneath the driver's seat of the van, and immediately notified Officer Beckman. (4 RT 577-578, 598-599, 601, 618.) Officer Beckman handcuffed Suff and told him he was under

arrest for possession of a firearm. (4 RT 577-578, 600.) Suff said it was a pellet gun. (4 RT 578.) Officers Beckman and Taulli inspected the gun out of the holster and confirmed it was a pellet gun, though it appeared real. (4 RT 578-579, 601-602, 620-621.)

A few minutes later, in the vicinity of the gun, Officer Taulli found a fishing-type or steak knife with a fixed blade about four and one-half or five inches in length. (4 RT 579, 582-583, 600, 602.) The knife was wedged between the runners of the driver's seat, upon which the seat slides. (4 RT 602-603.)

Officer Beckman went back to Suff and acknowledged the gun was a pellet gun, but informed him he was still being arrested for a parole violation of having a fixed-bladed knife. (4 RT 579.)

When Officer Beckman returned to the van, Officer Taulli showed him what appeared to be blood where the blade met the handle of the knife. (4 RT 579, 604.) Inside the van, Officer Taulli also observed, in the same red color as the substance on the knife, a spray that reached from the driver's side of the middle of the van, across the top, to the other side of the van. (4 RT 604-606.) Officers Beckman and Taulli contacted their supervisor, Sergeant Blythe, who in turn called Detective Keers. (4 RT 579-580, 606-608.)

Detective Keers was aware, from criminalist Steve Secofsky, that tire tracks from the most recent crime scene attributed to the serial killer indicated that the suspect's vehicle had a Yokohama brand left front tire, and Uniroyal brand right front and right rear tires. (4 RT 627-629, 633-634.) Criminalist Secofsky also informed Detective Keers that Converse brand tennis shoes had left shoe impressions at the most recent crime scene. (4 RT 630.)

Through Sergeant Blythe, Detective Keers asked Officer Taulli, "What kind of tires are on the van?" (4 RT 608.) Officer Taulli relayed that Suff's van

had a Yokohama tire on the driver's side front tire. (4 RT 608-609.) He was then told to "Freeze the scene." (4 RT 609-610.)

Detective Keers arrived about 20 minutes later. (4 RT 531, 551, 661, 620.) In addition to the front driver's side tire being a Yokohama brand tire, Detective Keers observed the right front and right rear tires of Suff's van were Uniroyal brand tires. (4 RT 633.) Also, Suff was wearing Converse tennis shoes, the same brand that had left shoe impressions at the most recent crime scene. (4 RT 637.) Detective Keers obtained consent from Suff to search his van, and found fibers which appeared to be consistent with those found at previous homicide scenes. (4 RT 635-637.)

After hearing testimony from the officers and argument from both sides, the trial court noted, "Experienced officers can use that particular experience that they have developed in developing any probable cause or reasonable suspicion. It's obvious." (4 RT 681.) Under the totality of the circumstances, considering the particular area's reputation for prostitution and drugs, Officer Orta's experience concerning how the prostitutes in that area worked, the information the officer had regarding the suspect vehicle, and the suspected prostitute's reaction upon seeing Officer Orta, the trial court held Officer Orta had reasonable suspicion that Suff had been involved in criminal activity. (4 RT 681-682.) The trial court added, "This is, in fact, in my opinion, good police work." (4 RT 682.)

When Officer Orta began to follow the van, the trial court held the officer "objectively could have stopped the vehicle for an improper turn, turning without a signal." (4 RT 682.) Once the officer stopped Suff's van and asked for Suff's driver's license and registration, further information developed "that only would heighten one's sensibility or impression that criminal activity was afoot and this vehicle, in particular, if not the person associated with the vehicle, was involved in this prior criminal activity." (4 RT 682-683.)

On appeal of a motion to suppress, a reviewing court defers to the trial court's factual findings which are supported by substantial evidence, but in all other respects the lower court's ruling is subject to independent review. (*People v. Ayala* (2000) 24 Cal.4th 243.) Here, the trial court's factual findings are supported by substantial evidence, and its ruling was proper which can withstand review.

Circumstances short of probable cause for arrest may justify a police officer stopping and briefly detaining a person for questioning or other limited investigation. (*In re Tony C.* (1978) 21 Cal.3d 888, 892, citing *People v. Mickelson* (1963) 59 Cal.2d 448, 450, and *Terry v. Ohio* (1968) 392 U.S. 1, 22 [88 S.Ct. 1868, 20 L.Ed.2d 889]. An officer may stop and question persons on public streets, including those in vehicles, when the circumstances indicate to a reasonable person in a like position that such a course of action is called for in the proper discharge of the officer's duties. (*People v. Flores* (1974) 12 Cal.3d 85, 91.)

In formulating reasonable suspicion, "[l]aw enforcement officers may rely on the 'characteristics of the area,' and the behavior of a suspect who appears to be evading police contact. [Citation.] 'In all situations the officer is entitled to assess the facts in light of his experience.' [Citation.]" (*United States v. Mendenhall* (1980) 446 U.S. 544, 563-564 [100 S.Ct. 1870, 64 L.Ed.2d 497], quoting *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 884-885 [95 S.Ct. 2574, 45 L.Ed.2d 607].)

A temporary detention is not unreasonable if the police officer can point to specific and articulable facts which, coupled with rational inferences from those facts, would warrant the intrusion. (*People v. Sousa* (1994) 9 Cal.4th 224, 229, quoting *Terry v. Ohio, supra*, 392 U.S. at pp. 17, 20-21.) The propriety of a detention is determined by the totality of the circumstances. (*People v. Sousa, supra*, 9 Cal.4th at p. 230.) Reasonable suspicion can arise from information

less reliable than that required to show probable cause. (*Id.* at p. 231, quoting *Alabama v. White* (1990) 496 U.S. 325, 330 [110 S.Ct. 2412, 110 L.Ed.2d 301].)

The possibility of an innocent explanation for a suspect's activity "does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . ." (*People v. Sousa, supra*, 9 Cal.4th at p. 233, quoting *In re Tony C., supra*, 21 Cal.3d at p. 894.)

A. Officer Orta Had Reasonable Suspicion To Stop And Detain Suff Based Upon The Activity He Witnessed In The Parking Lot, In Light Of His Experience, Knowledge Of The Area, And Information About The Suspected Killer

Here, substantial evidence supports the trial court's ruling. Officer Orta knew from his approximately five years of patrolling the University Avenue area during the same, 2:00 p.m. to midnight shift, that the "characteristics of the area" were that it was very busy with a lot of gang activity, narcotics dealing, DUI arrests, and as relevant here, prostitution. (4 RT 487-488; *United States v. Brignoni-Ponce, supra*, 422 U.S. at p. 884; *United States v. Mendenhall, supra*, 446 U.S. at pp. 563-564.) Also during his five years of patrolling the area, he had observed prostitutes or prostitution activity "[l]iterally in the hundreds, probably close to the thousands." (4 RT 488; see *United States v. Brignoni-Ponce, supra*, 422 U.S. at p. 885 ("officer is entitled to assess the facts in light of his experience").)

On this evening, Officer Orta's attention was drawn to Suff's van because of its similarity in color and appearance to the description of the suspected prostitute serial killer's van in the police bulletin, and the likelihood that the woman -- based on the officer's experience -- was a prostitute attempting to make contact with the driver to engage in prostitution. (4 RT 498-500, 503-504.) Although Officer Orta intended to merely ride to a better

vantage point and observe their activity, the female saw Officer Orta, turned, and walked away. (4 RT 503-505; see also 4 RT 499-500.) As the female walked away, the van drove out of the lot and turned westbound onto University Avenue. (4 RT 505-506.) To any reasonable officer, who like Officer Orta had to make a U-turn to catch up to Suff's van (4 RT 506-508), this could be viewed as evasive behavior on the part of both the woman and Suff, further supporting Officer Orta's suspicions that Suff was soliciting prostitution. (*See United States v. Mendenhall, supra*, 446 U.S. at p. 564.)

Under the totality of the circumstances, Officer Orta had reasonable suspicion to stop Suff and to briefly detain him for the purpose of a limited investigation, at the very least to determine, as argued below, whether Suff had engaged in solicitation for prostitution, in violation of Penal Code section 647, subdivision (b). (See 4 RT 652-653.) The trial court's ruling on this point is supported by substantial evidence.

B. Officer Orta's Stop Of Suff Was Also A Valid Traffic Stop For Suff's Failure To Signal

Suff claims for the first time on appeal that his failure to signal "was specifically authorized by the Vehicle Code," specifically Vehicle Code section 21453, therefore Officer Orta's traffic stop of Suff was unlawful. (AOB 207-208.) Suff did not argue this point in the trial court and cannot raise it for the first time on appeal. (*Damiani v. Albert, supra*, 48 Cal.2d at p. 18.) While Suff did argue below that "[i]t is clear in the language of Vehicle Code Section 22107 that not signalling in and of itself is not a violation as long as no other vehicle may be affected by the movement," Officer Orta was behind Suff's van and could have been affected by its movement, and there was no definitive proof that no other vehicles or persons were present in the area of Suff's vehicle. To the extent Suff claimed below that the officer used the illegal turn as a pretextual stop, his argument has been addressed and "foreclose[d]" by the United States

Supreme Court in *Whren v. United States* (1996) 517 U.S. 806, 813 [116 S.Ct. 1769, 135 L.Ed.2d 89], which held, “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” Substantial evidence supports the trial court’s finding that a reasonable officer could have stopped Suff due to Suff’s failure to signal prior to turning off a major street onto another major street.

The validity of a traffic stop turns on whether it was objectively reasonable, regardless of the officer’s subjective motivation. (*People v. Uribe* (1993) 12 Cal.App.4th 1432, 1438, citing *Maryland v. Macon* (1985) 472 U.S. 463, 470 [105 S.Ct. 2778, 86 L.Ed.2d 370].) For the purpose of issuing a citation, a police officer may legally stop a motorist he or she suspects of violating the Vehicle Code based on at least a reasonable suspicion supported by the facts and circumstances known to the officer. (*People v. Brown* (1998) 62 Cal.App.4th 493, 496.) The officer may detain the motorist for the period of time necessary to discharge the duties related to the stop. (*Id.* at pp. 496-497.)

Here, as Officer Orta caught up behind Suff at University Avenue and Park Avenue, the van suddenly made a right turn without either signaling or moving toward the curb. (4 RT 509, 555.) Although Officer Orta could not recall any other cars behind him or in the intersection, his attention was on the van; there may have been other cars present. (4 RT 540-541.)

Vehicle Code section 22107 provides:

No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.

“Under Vehicle Code section 22107, the failure to properly signal where another ‘may be affected by the movement’ is prima facie unsafe, for it creates the possible danger the statute was designed to prevent.” (*People v. Miranda* (1993) 17 Cal.App.4th 917, 930.) In *Miranda*, the court held the officer

following the defendant qualified as traffic which may be affected by his movement, as “the primary benefit of the signal requirement is for the vehicles to the rear of the signalling vehicle.” (*Ibid.*, citing *Stephens v. Hatfield* (1963) 214 Cal.App.2d 140, 144.) The trial court in this case was made aware of the *Miranda* case in the suppression motion briefing. (See 3 CT 815.)

While Suff claims there is no way Officer Orta -- or presumably any other traffic -- could have been affected by Suff’s turn (AOB 212), Officer Orta testified Suff stopped in a straight position in a wide lane and turned right suddenly, without moving toward the curb or signaling. (4 RT 509.) Because his attention was on the van, Officer Orta could not recall whether any other cars were behind him or in the intersection, but there may have been other cars present. (4 RT 540-541.) Moreover, Suff acknowledged to Officer Orta his failure to signal, and said either that he had changed his mind or that he knew he had not signaled. (4 RT 555.)

Considering the potential danger such a sudden, unannounced move can pose to approaching traffic, Officer Orta had an objectively valid reason to stop Suff; the traffic stop was reasonable. (*People v. Uribe, supra*, 12 Cal.App.4th at p. 1438.)

C. Officer Orta Reasonably Detained Suff To Investigate The Validity Of His Driver’s License And Registration, Which Gave Rise To Probable Cause To Arrest

An officer may detain a motorist for the period of time necessary to discharge the duties related to the stop. (*People v. Brown, supra*, 62 Cal.App.4th at pp. 496-497.) A motor vehicle operator must present evidence of a valid driver’s license and registration upon proper demand by a peace officer. (Veh. Code, §§ 4462, subd. (a), 12951; *In re Arturo D.* (2002) 27 Cal.4th 60, 66.) “If the driver is unable to produce a driver’s license, registration, or satisfactory proof of identity, then the officer may, depending on

the circumstances, reasonably expand the scope of the stop, making it incrementally more intrusive.” (*People v. Miranda, supra*, 17 Cal.App.4th at p. 927.) As this Court has held, “[T]he law contemplates that the officer may temporarily detain the offender at the scene for the period of time necessary to discharge the duties that he incurs by virtue of the traffic stop.” (*People v. McGaughran* (1979) 25 Cal.3d 577, 584.)

In *People v. Dasilva* (1989) 207 Cal.App.3d 43, the defendant was stopped for a defective taillight and could not produce a driver’s license or vehicle registration. Dasilva gave the police officer a false name and claimed to have borrowed the car from a friend. (*Id.* at p. 46.) After a records check on the name and on the car, the officer told Dasilva he suspected Dasilva had provided false information, and asked for consent to search the interior of the car. (*Ibid.*) Finding no registration or other information, the officer then asked to search Dasilva’s wallet. (*Ibid.*) Dasilva refused and instead went through the wallet himself, but attempted to conceal one piece of paper from the officer. (*Ibid.*) Dasilva eventually admitted to his real name, and the officer discovered Dasilva had two outstanding warrants. (*Ibid.*) The officer then asked for and obtained consent from Dasilva to search the trunk, where he found two guns, methamphetamines, and narcotics paraphernalia. (*Ibid.*) The Court of Appeal noted, “The question is whether the police diligently pursued a means of investigation likely to confirm or dispel their suspicions quickly while the suspect was detained,” and held the detention was not unduly prolonged. (*Id.* at p. 50.)

When an officer has probable cause to believe a person has committed even a very minor, “fine-only” criminal offense in his or her presence, the officer may arrest the offender, without violating the Fourth Amendment. (*People v. McKay* (2002) 27 Cal.4th 601, 607; *Atwater v. Lago Vista* (2001) 532 U.S. 318 [121 S.Ct. 1536, 149 L.Ed.2d 549].) The Ninth Circuit Court of

Appeals affirmed a finding of probable cause to support a defendant's arrest for placing a stolen registration sticker on a license plate, despite the defendant's claim that he was buying the car and did not realize the sticker was on the plate. (*United States v. Mayo* (9th Cir. 2005) 394 F.3d 1271, 1276.) Although this Court is not bound by lower federal court decisions, "they are persuasive and entitled to great weight." (*People v. Camacho* (2000) 23 Cal.4th 824, 843, quoting *People v. Bradley* (1969) 1 Cal.3d 80, 86.)

Here, when Officer Orta asked Suff for his license and registration, Suff provided the officer with an expired license and said he did not have his vehicle registration with him. (4 RT 515-516.) Officer Orta then contacted the police dispatcher, who notified the officer that Suff's driver's license was actually suspended, and that his vehicle registration had expired, though the registration sticker on his license plate was current. (4 RT 520, 523-524.)

Based on Suff's lack of a valid driver's license (Veh. Code, § 12500), and display of a false registration sticker (Veh. Code, § 4462.5), Officer Orta had probable cause to arrest Suff, as well as to seize and impound the van under Vehicle Code section 22651, subdivisions (o)(1) and (p). (4 RT 527-528.) Suff was not unreasonably detained during this time.

D. Suff's Continued Detention Was Reasonable; Moreover, The Evidence In The Van Would Inevitably Have Been Discovered During A Routine Inventory Search

The Supreme Court has held that even if certain evidence was erroneously admitted due to constitutional violation, "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received." (*Nix v. Williams* (1984) 467 U.S. 431, 444 [104 S.Ct. 2501, 81 L.Ed.2d 377].) No constitutional error occurred here. In light of Suff's suspended and expired

driver's license, expired vehicle registration, and fraudulent vehicle registration sticker, Officer Orta had probable cause to seize and impound Suff's van, as was his practice under such circumstances. (4 RT 520, 523-524, 527-528, 548-548, 549-550.) The Riverside Police Department required, as standard procedure and policy, that a vehicle impound form be completed prior to any vehicle being impounded and stored. (4 RT 527-529.) The impound form required an inventory search prior to impound and storage. (4 RT 529.)

While Officer Orta continued to complete other paperwork, he asked Officers Taulli and Beckman to conduct an inventory search of the van, during which the bloody knife, various lengths of nylon cord, black notebook resembling a Bible, real-looking pellet gun, and second pair of wire-framed eyeglasses were found (4 RT 573, 575-579, 582-583, 597-603, 612, 617-618, 620-621) and the red spray was observed (4 RT 604-606). Regardless of whether Suff's continued detention was reasonable while Detective Keers was summoned to verify the make of the tires on Suff's van and to compare Suff and the van to the bulletin and the police sketch, the evidence inside the van would inevitably have been discovered – and indeed, was discovered during the inventory search incident to lawful impounding. Substantial evidence supports the trial court's denial of Suff's suppression motion.

IV.

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING SUFF'S MOTIONS FOR DISCOVERY OF SIX UNSOLVED MURDERS OF PROSTITUTES AND ONE MURDER FOR WHICH A JURY HAD ALREADY CONVICTED ANOTHER DEFENDANT; SERIAL KILLER "PROFILE" DISCOVERY WAS ALSO PROPERLY DENIED

Suff claims his rights to a fair trial and an intelligent defense were violated by the prosecutor's refusal to provide any serial killer profile discovery and the trial court's denial of Suff's request for an order for any discovery

regarding the open investigations of seven other prostitute murders in the area. (AOB 234-266.) The trial court's discovery rulings were a proper exercise of discretion. As to the evidence of other murders, the trial court properly balanced Suff's general claims against the legitimate governmental interest of protecting the integrity of the ongoing investigations and the risk of undue delay and confusion. As to the profile evidence, the trial court's ruling was proper because Suff failed to demonstrate the relevance of the discovery to the defense. The prosecutor was not obligated to provide any profile evidence discovery to the defense, and any alleged misrepresentation made by the prosecutor to the defense was not preserved as a claim of prosecutorial misconduct. Finally, Suff has failed to demonstrate that any prejudice resulted from the court's denial of either discovery request.

A. Factual Background Of Uncharged Murders Investigation And Profile Evidence

On May 24, 1993, Suff filed a motion to compel discovery of twenty-five numbered items including "investigations, reports, and any and all products of that investigation" of five uncharged, unsolved killings of alleged prostitutes and/or suspected drug users with names and approximate dates of death as follows: Michelle Yvette Gutierrez, killed October 30, 1986; Linda Ann Ortega, killed April 29, 1988; Martha Bess Young, killed May 2, 1988; Linda Mae Ruiz, killed January 17, 1989; and Judy "Julie" Lynn Angel, killed November 11, 1989. (3 CT 661-663.) The motion additionally requested discovery regarding another defendant who had been charged with the murder of a known prostitute, Cheryl Clark. (3 CT 662-663.) In that murder, which occurred after Suff's arrest, Clark reportedly was strangled and stabbed before being "dumped" in a trash receptacle. (3 CT 662.)

The prosecutor filed a responsive brief in which he asserted a privilege for official information under both Evidence Code section 1040, subdivision

(b)(2), and *People v. Littleton* (1992) 7 Cal.App.4th 906, and argued the privacy rights of the victims' families weighed against the speculative nature of the defense claim. (3 CT 770, 772-773.) Regarding the Clark murder, the prosecutor represented that after examining the prosecution file, he had found no statements linking that defendant to any of the charged crimes in this case. (3 CT 770.)

At the June 25, 1993 hearing on Suff's discovery motion, the defense acknowledged the ongoing nature of the investigations but argued the information was relevant for the defense because, "there is a potential relevancy of it being used if they are extremely similar in some ways to some of the homicides in our indictment." (3 RT 433-434.) On rebuttal, the prosecutor sought to "clarify any possible or potential misconception" that the five women had been "characterized as victims of the serial killer." (3 RT 434.) He explained that despite similar characteristics initially identified by police in a number of Riverside County prostitute killings during a five- or six-year period, not every prostitute killed during that time period was considered to be a victim of the same killer. (3 RT 434.) Suff was indicted on fourteen of the nineteen counts after further investigation.^{26/} (3 RT 434.) The prosecutor again asserted that the ongoing investigations would be compromised if the reports were divulged to the defense, that such reports were privileged under Evidence Code section 1040, and in either case the investigation reports were not relevant to the offenses charged against Suff. (3 RT 434-435.)

Finding that there was a right-to-privacy issue concerning the open investigations of the five uncharged murders, the trial court ruled that the

26. In the original indictment, Suff was charged with an additional murder. (1 CT 1-14.) While maintaining that "many compelling facts" short of substantial evidence linked Suff to the crime, the prosecutor moved for dismissal of the charge on February 16, 1995, in the interest of justice. (8 RT 1573; 5 CT 1326-1327, 1347.)

defense required a greater showing of specificity “than a question simply because they were prostitutes killed during the same time frame,” as it did not see the relevance of the information sought. (3 RT 435-456.) After further defense argument that specificity was not possible due to lack of knowledge about the details of the investigations, the trial court pointed out that the prosecution had a “sworn duty under the Constitution” to provide any exculpatory evidence. (3 RT 435-438.) Thus, the trial court ordered that if any “known exculpatory information” relating to crimes charged against Suff was contained in the notes, memoranda, or documentation possessed by law enforcement, such information was to be divulged to the defense. (3 RT 440.) However, the trial court again allowed the defense to “come up with some other specifics and/or authority,” at which time the court would presumably reconsider. (3 RT 440.) Neither party discussed the Clark case discovery at the hearing, though it was initially raised by the trial court as a summary of issues presented. (See 3 RT 432.)

On August 4, 1994, however, the defense renewed its motion to compel discovery of the murder investigation of alleged prostitute Clark, who was purportedly strangled, stabbed, and dumped in the La Sierra area of Riverside, where she was found on March 17, 1992. (4 CT 1043.) The defense additionally moved for the discovery of police and forensic analysis reports on a second victim, Stephanie Janine Sheppard, another alleged prostitute whose body was allegedly dumped in a dirt alley in Lake Elsinore and found on May 3, 1994. (4 CT 1044.) Because both murders appeared to have occurred after Suff’s arrest, Suff cited *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, as “on point” and claimed the Clark and Sheppard murders, when compared to Suff’s charged crimes, had a higher number of similarities than did those at issue in the *City of Alhambra* case “when one considers cause of death, location of the bodies, that the bodies were dumped, and that they

were prostitutes,” therefore, “there is even more ‘plausible justification’ for turning over discovery to the defense.” (4 CT 1044-1045.)

In response, the prosecutor acknowledged and represented he continued to comply with his duty to provide relevant exculpatory evidence, including that of third-party liability for the charged crimes. (4 CT 1062.) He further noted that defendant Mark Spencer was convicted of murdering Cheryl Clark on June 15, 1994, despite his defense that Suff killed her. (4 CT 1062.) According to the prosecutor, “[b]ody fluid analyses ultimately excluded [Suff] as a semen donor” in the Clark murder. (4 CT 1062.) As for the Sheppard homicide, the prosecutor stated the body had been recovered only three months earlier – on May 3, 1994 – and asserted the information was privileged under Evidence Code section 1040 and expressly excepted from defense disclosure under Penal Code section 1054.7 because the crime remained unsolved and the ongoing investigation could be compromised as a result of such disclosure. (4 CT 1063-1069.)

During the August 26, 1994 discovery motion hearing, the prosecutor argued that the defense had not met the specificity requirements of *City of Alhambra v. Superior Court, supra*, 205 Cal.App.3d 1118. (5 RT 1033.) The defense countered that its level of specificity had been limited by the facts made available to it, but “the manner of death, cause of death, the areas where the bodies were dumped, [and] the fact the bodies were dumped” remained similarities between the crimes which warranted the discovery claim. (5 RT 1033-1034.)

On the Sheppard discovery claim, the trial court denied the defense motion for two reasons related to it being an unsolved, ongoing investigation: first, for the evidence to be truly relevant, the defense would have to find the perpetrator [of which there had been no evidence presented]; second, the government had both an obligation to keep secret its investigation and a right,

under Penal Code section 1054, to withhold such evidence to avoid jeopardizing its investigation. (5 RT 1034.) Therefore, the trial court concluded, “the Miss Shepard matter is easily something that is not discoverable by the defense, at least at this time.” (5 RT 1034.) As to the Clark matter, the trial court observed it had been litigated in open court, resulting in the conviction beyond a reasonable doubt of someone else for that crime. (5 RT 1034-1035.) Remarking on the basis of the completed trial that the defense already had available to it “a great deal of information,” the trial court stated that from the information presented so far, the defense had not established it was entitled to the reports made during the police investigation. (5 RT 1034-1036.)

Also among the twenty-five numbered items in Suff’s May 24, 1993 motion to compel discovery was a demand for any profile information developed by law enforcement in relation to the serial killer(s). (3 CT 660.) The prosecutor’s written response stated that profile evidence “need only be provided if the prosecution intends to introduce the profile at trial. The prosecution would agree to provide the profile of the defendant as described by Kelly Whitecloud as well as the artist’s sketch prepared in conjunction with the profile.” (3 CT 768-769.)

At the June 25, 1993 hearing on Suff’s discovery motion, the prosecutor stated he was unclear what the defense was requesting as “profile evidence.” (3 RT 423.) To the extent the request was for a psychological profile, the prosecutor’s position was that if such a profile existed at all it was not relevant, as it was prior to Suff becoming a suspect, as well as being speculative and a mere investigative tool. (3 RT 424-425.) The prosecutor would not acknowledge whether such a profile was developed in this case “unless the Court orders me to,” because he did not believe it to be relevant. (3 RT 425.)

The trial court agreed that relevancy of the profile evidence had not been demonstrated but denied the request without prejudice. (3 RT 425-426.)

On May 27, 1994, while reviewing various items in a defense motion for supplemental discovery, the defense requested the production of serial killer profiles, if any had been generated, by California Department of Justice (“DOJ”) employee Mike Prodan.^{27/} (5 RT 925; see 4 CT 943.) The prosecutor immediately reminded the trial court of its previous denial of the defense’s earlier discovery motion. (5 RT 925.) During his discussion with the trial court that followed, the prosecutor reminded the court of the prior defense requests for profile evidence and the prosecutor’s position that such evidence was not relevant to Suff specifically because “a profile is an educated and informed guess” as to the possible aspects of a potential suspect. (5 RT 926.) The trial court interrupted, stating, “I can short-circuit this,” and ruled, “I would deny the request if all the information contained in the profile came from other reports you already have in existence. There is no independent investigation that occurred to develop a profile.” (5 RT 927.)

Defense counsel then clarified that by “profile,” he meant “psychological or character description” (5 RT 927), and that the discovery sought by the defense was any written description provided to law enforcement to assist in the

27. Although Suff accuses the prosecutor of previously claiming that the California Department of Justice (DOJ) had not prepared a profile (see AOB 239), the prosecutor in fact represented to the defense that although no profile was set up by the FBI (5 RT 798, 905, 926, 928), an individual with the DOJ who had trained with the FBI may have developed a profile (5 RT 799, 905, 928), though no report or memo was generated of a serial killer profile during the investigation (4 CT 941, 943). Notably, the reason the profile evidence issue resurfaced during the May 27, 1994, hearing was because the prosecutor asserted the court’s prior denial of Suff’s discovery request, rather than denying the existence of such evidence. (5 RT 925.) Finally, when the court recalled from its notes that there were no profiles, the prosecutor clarified that, “None were prepared by the FBI.” (5 RT 926.)

investigation (5 RT 928). The prosecutor responded first that such a profile was based upon reports which the defense already had and second, “if a profile was created, it was created long before [Suff] was ever arrested or identified as the suspect in these homicides.” (5 RT 928-929.)

Again denying the defense request for profile evidence, the trial court stated it could find no basis for which such evidence would be either helpful to the defense or admissible in either phase of trial. (5 RT 929-930.) The trial court added that the defense had all necessary information available to it for its own expert to develop in either phase of trial. (5 RT 931.)

On May 23, 1995, the prosecutor filed a motion to introduce expert testimony by a member of the FBI’s National Center for Analysis of Violent Crime (the “Center”), which focused upon serial murder cases. (8 CT 2090.) The main purpose of the testimony was to show “linkage” and “signature” between the charged murders, i.e. “whether the characteristics of the murders are such that they may be said to be the work of a single individual.” (8 CT 2088, 2090, 2095.) In describing the background and work of the Center’s members, the prosecutor stated in part as follows:

Prior to apprehension of a suspect, the unit helps to develop a “profile” of the perpetrator based upon the evidence that has been gathered. . . . The unit . . . maintains a computer database analysis unit called V.I.C.A.P., the Violent Criminal Apprehension Program. The program was employed before the arrest of the defendant in this case. After the apprehension of a suspect, the unit provides assistance in prosecution of the subject, such as in the type of testimony being offered in this case.

[. . .]

In this case, the expert witness will testify primarily concerning “linkage” between the charged murders. The term “linkage” refers to whether the characteristics of the murders are such that they may be said to be the work of a single individual. . . .

(8 CT 2091.)

During the motion hearing on May 26, 1995, the defense raised its objections including that it never received a report concerning “exactly what” the Center expert would say. (35 RT 7201.) In addition, the defense “requested the profile [the FBI] worked up. We don’t have that. I don’t even challenge [the prosecutor] on that. And I think there’s some real due process problems for [Suff].” (35 RT 7201-7202.) The trial court denied the prosecutor’s motion, finding an insufficient showing to establish linkage, which was further diminished by the prejudicial effect of the testimony under an Evidence Code section 352 analysis. (35 RT 7205; see 8 CT 2128.)

On August 9, 1995, the prosecutor moved to introduce penalty phase rebuttal expert witness testimony from DOJ employee Prodan, who could explain to the jury “how serial killers operate and what makes them so successful,” in response to all the positive testimony presented by the defense about Suff’s character. (45 RT 10007-10009.) Again raising relevancy and due process objections, defense counsel argued he had never been given a report and was not given adequate notice of the prosecutor’s intention to call the witness. (45 RT 10009-10012.) He further represented that when the defense expert on profile evidence was to testify, the prosecutor complained about the lack of a report and the court compelled the defense to generate one; yet the defense never received a similar report from the prosecutor. (45 RT 10010.) The trial court found the proposed testimony was not proper rebuttal evidence and denied the prosecutor’s motion. (45 RT 10016.)

A trial court’s denial of a motion for discovery is reviewed for abuse of discretion. (*People v. Prince, supra*, 40 Cal.4th at p. 1232, quoting *People v. Jenkins, supra*, 22 Cal.4th at p. 953.) The court’s exercise of discretion cannot be overturned unless it is arbitrary, capricious, or patently absurd. (*People v. Broome* (1988) 201 Cal.App.3d 1479, 1498, citing *People v. Jordan* (1986) 42 Cal.3d 308, 316.) Even if the denial was in error, the defendant must

demonstrate that prejudice resulted. (*People v. Memro* (1985) 38 Cal.3d 658, 684.)

“Although the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded, but cf. *Brady v. Maryland*, 373 U.S. 83 (1963) [83 S.Ct. 1194, 10 L.Ed.2d 215], it does speak to the balance of forces between the accused and his accuser.” (*Wardius v. Oregon* (1973) 412 U.S. 470, 474 [93 S.Ct. 2208, 37 L.Ed.2d 82].) “[A] criminal defendant ‘may compel discovery by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial.’ [Citation.]” (*People v. Kaurish* (1990) 52 Cal.3d 648, 686, quoting *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 537.)

“Even upon a showing of good cause, however the right of an accused to obtain discovery is not absolute.” (*Pitchess v. Superior Court, supra*, 11 Cal.3d at p. 538.) The trial court retains broad discretion “‘to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest,’ or when there is an ‘absence of a showing which specifies the material sought and furnishes a ‘plausible justification’ for inspection [Citations].” (*People v. Kaurish, supra*, 52 Cal.3d at p. 686; *People v. Jackson* (2003) 110 Cal.App.4th 280, 286; *People v. Littleton, supra*, 7 Cal.App.4th at p. 910.) A defendant need not, and in fact may be unable to show that the discovery sought would be admissible at trial, but he must demonstrate “better cause for inspection than a mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime.” (*Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148, 162, quoting *People v. Cooper* (1960) 53 Cal.2d 755, 770.)

When evaluating a claim of plausible justification in a case where the defendant seeks evidence of third-party culpability, a court should consider the applicable evidentiary rule stated by this Court in *People v. Hall* (1986) 41

Cal.3d 826, 829. Although a criminal defendant is entitled to present evidence of third-party culpability sufficient to merely raise a reasonable doubt of the defendant's guilt, "[t]he rule does 'not require that any evidence, however remote, must be admitted to show a third party's possible culpability.'" (*People v. Sandoval* (1992) 4 Cal.4th 155, 176, quoting *People v. Hall, supra*, 41 Cal.3d at p. 833.) "[E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Hall* at p. 833; see also *People v. Geier* (2007) 41 Cal.4th 555, 581; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1017.) Even relevant evidence, however, is subject to balance analysis against of the risks of undue delay, prejudice, or confusion if admitted. (*Edelbacher*, at p. 1017; *People v. Hall, supra*, 41 Cal.3d at p. 834; Evid. Code, § 352; Fed. Rules Evid., rule 403, 28 U.S.C.)

Penal Code section 1054 et seq. was enacted to restore the balance of reciprocal discovery in criminal cases and to the criminal justice system. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 363, 372.) Penal Code section 1054.7 provides in part as follows (emphasis added):

The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, *or possible compromise of other investigations by law enforcement.*

All records and reports generated by law enforcement as a part of ongoing criminal investigations are by their nature privileged and confidential. (See *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 764; see also *Jessup v. Superior Court* (1957) 151 Cal.App.2d 102, 108; *People v. Otte*

(1989) 214 Cal.App.3d 1522, 1532; *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1058-1059 [compelled disclosure of closed criminal investigation files obstructs the investigatory function of the district attorney's office].)

Ongoing investigations fall within the official information privilege under Evidence Code section 1040. (*People v. Jackson, supra*, 110 Cal.App.4th at p. 287.) The relevant portion of that section provides:

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(Evid. Code, § 1040, subd. (b)(2).)

A trial court must uphold governmental privilege under Evidence Code section 1040 “where the necessity for confidentiality ‘outweighs the necessity for disclosure in the interests of justice,’” (*People v. Walker* (1991) 230 Cal.App.3d 230, 236, quoting *People v. Superior Court* (1971) 19 Cal.App.3d 522, 530.)

B. Suff Failed To Specify Justification For Inspection Sufficient To Outweigh The Government’s Interest In Protecting The Integrity Of The Open Murder Investigations And The Privacy Rights Of The Victims, Their Families, And The Witnesses Identified In The Reports

The materials sought by Suff in this case with respect to the five older murder investigations and the more recent Sheppard murder investigation all

involved open, unsolved murders for which no suspect(s) had been identified. (See 3 CT 772-773.) The courts of appeal in *People v. Littleton*, *supra*, 7 Cal.App.4th at page 911, and *People v. Jackson*, *supra*, 110 Cal.App.4th at page 288, found the lack of identified suspects to be an important distinction from the facts of *City of Alhambra v. Superior Court*, *supra*, 205 Cal.App.3d 1118,^{28/} which Suff argued below (3 CT 675; 4 CT 1044-1045; 5 RT 1030) and again discusses on appeal (AOB 254). Respondent additionally observes that in *City of Alhambra*, the district attorney did *not* assert any privilege or governmental interest under Evidence Code section 1040^{29/}, and that because the trial court *granted* the defense request for discovery, the reviewing court could overturn such an order only for abuse of discretion. (See *City of Alhambra*, *supra*, 205 Cal.App.3d at pp. 1127-1128, 1129-1130, 1135-1136, 1144, fn. 1; *People v. Ashmus* (1991) 54 Cal.3d 932, 979 [“A ruling on a motion to compel discovery . . . is subject to review for abuse of discretion”]; *People v. Superior Court (Baez)* (2000) 79 Cal.App.4th 1177, 1185 [abuse of discretion standard applies equally to review of an order *granting* discovery].) As the *Littleton* Court observed, the fact the *Alhambra* Court found no abuse of discretion in granting discovery “does not mean a court would abuse its discretion in denying discovery under similar facts. Discretion by its very

28. In his concurring opinion in *City of Alhambra*, Justice Danielson noted that the 12 reports at issue concerned “a series of notorious, highly publicized crimes” charged against defendant Richard Ramirez. (*City of Alhambra*, *supra*, 205 Cal.App.3d at pp. 1139-1140; see also *Id.* at pp. 1144-1145.)

29. The City of Alhambra, however, did assert a governmental interest under Evidence Code section 1040. (*City of Alhambra*, *supra*, 205 Cal.App.3d at pp. 1127-1128.) The City’s petition for writ of mandate was granted on other grounds, but the court stated in a footnote that it did “consider the issues raised” by the City in deciding the People’s petition. (*Id.* at pp. 1128-1129, fn. 11.) The *Alhambra* court did not discuss section 1040 in the opinion, however.

nature suggests courts reasonably can come to different conclusions.” (*People v. Littleton, supra*, 7 Cal.App.4th at p. 911, fn. 7.) For these reasons, the specific facts of *City of Alhambra* are of little value in this analysis.

As the *Jackson* Court explained,

[T]he government’s interest in maintaining confidentiality in a case of ongoing investigation is far greater than in a case where a suspect has been charged and the matter has entered the public view through the court system. *City of Alhambra* never considered the issue before *Littleton* and this court—i.e., whether a defendant’s entitlement to potentially exculpatory material outweighs the official information privilege and a victim’s privacy rights—and is not probative on this matter.

(*People v. Jackson, supra*, 110 Cal.App.4th at p. 288.)

For the first time on appeal, Suff argues the requested discovery could have been used to establish “that the mere fact of murders which could not be excluded from the alleged serial pattern and which he could not have committed disproved the prosecutor’s theory of guilt.” (AOB 256-257.) For this reason, Suff argues, the cases involving third-party culpability are inapplicable to this case. (AOB 257.) At the time of his motions, however, Suff never contested the propriety of the trial court’s analysis for the purpose of third-party culpability evidence, and indeed, suggested such analysis in his briefing. (See 3 CT 675-676; 4 CT 1044-1046.) “[P]oints not urged in the trial court may not be urged for the first time on appeal.” (*In re Joseph E.* (1981) 124 Cal.App.3d 653, 657; *People v. Harris* (1977) 73 Cal.App.3d 76, 83; *Damiani v. Albert, supra*, 48 Cal.2d at p. 18.)

During Suff’s first discovery motion, the trial court was satisfied that aside from the privilege of official information involved with ongoing police investigations, there were privacy rights issues surrounding the reports of the five uncharged murders of alleged prostitutes. (3 RT 435.) As the *Littleton* Court observed, such reports would identify not only the victims but also witnesses. (*People v. Littleton, supra*, 7 Cal.App.4th at p. 911.) Balanced

against those privacy rights, the trial court considered Suff's claim that the privileged information had "a *potential* relevancy" to the defense "if they are extremely similar in some ways to some of the homicides in our indictment" (3 RT 433-434, emphasis added); the defense later admitted as to the relevancy of the information, "We are in the dark about it. We can't make a crystal-ball judgment about how its relevancy would be argued until we have some analysis of the type of investigation that occurred" (3 RT 436). Given this offer of justification, the trial court did not abuse its discretion in denying the motion.

Suff argues the trial court abused its discretion by requiring him to show the relevancy of information he had not seen. (AOB 258.) Evidence Code section 1040 "does not *explicitly* require the litigant to establish the information's materiality, relevance or even admissibility. On the other hand, it does not license fishing trips." (*People v. Superior Court*, *supra*, 19 Cal.App.3d at p. 530, emphasis added; see also *People v. Walker*, *supra*, 230 Cal.App.3d at p. 236.) Suff was required to provide a "plausible justification" for inspection of the discovery. (*People v. Kaurish*, *supra*, 52 Cal.3d at p. 686.) The trial court, unsatisfied by Suff's initial reason, stated that a "greater need, more specificity" was required than simply "because they were prostitutes killed during the same time frame." (3 RT 435.) It was not unreasonable for the trial court to inquire as to the relevancy of the information sought, to determine whether Suff had sufficient cause for inspection to override the privacy and governmental interests. (See *People v. Cooper*, *supra*, 53 Cal.2d at p. 770.) That Suff had no idea how such information would be relevant was simply an indication of the speculative nature of his discovery request.

As an alternative to ordering the discovery sought, the trial court reasonably ordered that if any "known exculpatory information" relating to crimes charged against Suff was contained in the notes, memoranda, or documentation possessed by law enforcement, it should be divulged to the

defense, and made a reasonable request of the district attorney, who was in charge of the Homicide Prosecution Unit, to re-examine his files to ensure that he had turned over all relevant exculpatory information. (3 RT 440; see also 5 RT 1036-1037.)

As this Court has explained with respect to Evidence Code section 1054,

The prosecutor's duties of disclosure under the due process clause are *wholly independent* of any statutory scheme of reciprocal discovery. The due process requirements are self-executing and need no statutory support to be effective. Such obligations exist whether or not the state has adopted a reciprocal discovery statute. Furthermore, if a statutory discovery scheme exists, these due process requirements operate outside such a scheme. The prosecutor is obligated to disclose such evidence *voluntarily*, whether or not the defendant makes a request for discovery.

(*Izazaga v. Superior Court, supra*, 54 Cal.3d at p. 378, original italics.) A prosecutor is also required to learn of evidence favorable to the defense which is known to other prosecutorial and investigative agencies, including police agencies, acting on the prosecutor's behalf. (*Kyles v. Whitley* (1995) 514 U.S. 419, 437-438 [115 S.Ct. 1555, 131 L.Ed.2d 490].) The prosecutorial duty to disclose includes exculpatory evidence possessed both by the prosecutor and by investigative agencies to which the prosecutor has reasonable access. (*People v. Robinson* (1995) 31 Cal.App.4th 494, 499.)

The prosecutor in this case repeatedly acknowledged his duty to produce relevant exculpatory information to the defense, including evidence of third party liability for the charged crimes, and represented that he had complied with that requirement "from the outset of the pre-trial proceedings." (4 CT 1062; see also 3 CT 756-758; 4 CT 1062-1067; 5 RT 1031-1032.)

Upon Suff's renewed motion for discovery regarding the Clark murder, for which another defendant was convicted, the trial court was not unreasonable to suggest that the defense first examine the considerable amount of information which was already available by virtue of the matter having been litigated in open court. (5 RT 1034-1036.) There was no indication, based on the lack of

detail or specificity with which the defense had compared the facts of the Clark murder and the charged murders in this case, that much of the information from the Clark trial had been reviewed. (See 4 CT 1043-1045; 5 RT 1033-1034.) The court's discretion under Evidence Code section 1040 "requires consideration of alternative evidence offered by the state. An alternative which fulfills the demanding litigant's actual needs minimizes or eliminates necessity for fulfilling the original demand and avoids a showdown on the claim of privilege." (*People v. Superior Court, supra*, 19 Cal.App.3d at p. 534, citing *United States v. Reynolds* (1953) 345 U.S. 1, 11 [73 S.Ct. 528, 97 L.Ed. 727].)

As for Suff's motion for discovery regarding the Sheppard murder, which had occurred only three months earlier, the trial court reasonably determined that due to the recency of the crime, law enforcement had "an obligation" to keep secret their investigation and was entitled, under Penal Code section 1054, to withhold the information for the protection of the investigation. (5 RT 1034.) Against this compelling governmental interest, the defense claimed it needed the information because Sheppard was a prostitute whose body was found after Suff's arrest, dumped in a dirt alley in Lake Elsinore, and that if any trace evidence, shoe or tire tracks from the crime scene were similar to any of the crime scenes in Suff's case, it could raise a reasonable doubt as to his guilt. (4 CT 1044.) The prosecutor, however, remained under an ongoing ethical, professional, and constitutional obligations to provide such potentially exculpatory information. (5 RT 1031-1032.) Recognizing this, the trial court was reasonable in denying Suff's discovery motion and renewing its order that the prosecutor provide any exculpatory or potentially exculpatory information, and specifically requesting the prosecutor to "review the status" of both the Clark and Sheppard murders. (5 RT 1036-1037.)

C. Suff Failed To Make A Prima Facie Showing That An In Camera Hearing Was Appropriate In This Case

While acknowledging that ongoing police investigations fall within the privilege for official information (AOB 248-249), Suff argues he was nevertheless entitled to an in camera hearing under Evidence Code section 915 to determine whether the police reports and other documents related to the open investigations of the unsolved murders were privileged in this case. (AOB 248-254.) The trial court, however, was satisfied with the government's assertions, and Suff failed to make a prima facie showing that an in camera review of the documents was necessary in this case; the trial court did not abuse its discretion in refusing an in camera hearing.

Although Suff insists the trial court abused its discretion by sustaining the privilege of official information without holding an in camera hearing, a court of appeal has explained,

There should be no assumption that an in camera hearing under section 915, subdivision (b), is the only method of inquiring into the claim of privilege. Section 915, subdivision (b), is permissive. A wider inquiry is offered by other Evidence Code provisions, which authorize hearings outside the jury's presence for the purpose of determining preliminary or foundational facts, including the existence or nonexistence of a privilege. (Evid. Code, §§ 400, 402, 405; see comment of Assembly Committee on Judiciary accompanying § 405.)

(People v. Superior Court, supra, 19 Cal.App.3d at pp. 531-532.)

The permissive terms of Evidence Code section 915, subdivision (b), are evident on its face:

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) . . . *and is unable to do so without requiring disclosure of the information* claimed to be privileged, the court *may require* the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the

person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. . . .

(Emphasis added.)

In a case involving discovery of police files on a confidential informant whose information provided the factual basis for a challenged search warrant, this Court stated, “[t]he decision whether to convene an in camera examination or to order discovery will remain a matter within the trial court’s discretion.” (*People v. Luttenberger* (1990) 50 Cal.3d 1, 21, citing *Hill v. Superior Court* (1974) 10 Cal.3d 812, 820 [involving discovery of felony “rap sheets”], and *People v. Broome, supra*, 201 Cal.App.3d at pp. 1488-1489 [concerning discovery of powdery substance purchased from defendant].)

The United States Supreme Court has recognized that trial courts should not automatically allow in camera review of information alleged to be privileged without some preliminary showing by the party seeking discovery of the information. (*United States v. Reynolds, supra*, 345 U.S. at pp. 9-10; *United States v. Zolin* (1989) 491 U.S. 554, 571 [109 S.Ct. 2619, 105 L.Ed.2d 469].) In a civil case before the Supreme Court involving privileged military information, the Court discussed the delicate balance between privilege and justice: “Too much judicial inquiry into the claim of privilege would force disclosure of the thing the privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses.” (*United States v. Reynolds, supra*, 345 U.S. at p. 8.) While cautioning that “[j]udicial control over the evidence in a case cannot be abdicated to the caprice of executive officers,” the court refused to create a rule of automatic disclosure to the judge before a claim of privilege may be accepted. (*Id.* at pp. 9-10.) The high court held that if a court is satisfied that compulsion of the evidence poses a reasonable danger of exposing military matters “which, in the interest of national security, should not be divulged,” the privilege should be upheld “and the court should not jeopardize the security which the privilege is meant to

protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.” (*Id.* at p. 10.)

Consistent with this earlier rationale, the Supreme Court later held that a party seeking to discover privileged communications under the crime-fraud exception to the attorney-client privilege must make some threshold showing that in-camera review of the material is appropriate before such review is granted. (*United States v. Zolin, supra*, 491 U.S. at p. 571.) The high court explained, “There is no reason to permit opponents of the privilege to engage in groundless fishing expeditions, with the []courts as their unwitting (and perhaps unwilling) agents.” (*Ibid.*)

Even *Torres v. Superior Court* (2000) 80 Cal.App.4th 867, quoted in detail by Suff (AOB 250-251), held that a trial court retains the discretion to hold an in camera hearing “on a proper showing that the hearing is necessary to determine the claim of privilege.” (*Id.* at p. 873.) The *Torres* Court recognized that in some circumstances, a determination of whether the information is privileged “is self-evident, or nearly so.” (*Ibid.*) If a trial court can *not* readily make such a determination, the *Torres* Court outlined the following procedure:

[T]he party claiming the privilege must either show in open court why the matter is privileged, or declare that doing so would compromise the privilege. If it appears to the trial court, based on this representation, that the claim cannot be determined in open court without “disclosure of the information claimed to be privileged,” the court may call for that disclosure in camera, pursuant to [Evidence Code] section 915, subdivision (b).

Here, the trial court was reasonably satisfied by the prosecutor’s representations, as well as the court’s own logic, that investigative materials concerning the five uncharged murders were privileged for official information to protect the legitimate privacy interests of the victims and witnesses identified therein, aside from protecting the integrity of the ongoing investigations. (3 RT

435-456.) On the Clark murder investigation reports, the trial court offered a reasonable alternative to the disclosure of disputed material, as the Supreme Court has encouraged, thus obviating the need for an in camera hearing. (*United States v. Reynolds, supra*, 345 U.S. at p. 11; *People v. Superior Court, supra*, 19 Cal.App.3d at p. 534.) Finally, as to the investigation reports of the Sheppard murder, which occurred only three months earlier, the court found self-evident that the information was privileged, stating the matter “is easily something that is not discoverable by the defense, at least at this time.” (5 RT 1034.)

Finally, although Suff asserts that judicial estoppel precludes Respondent from arguing that an in camera review of police files relating to uncharged “similar crimes” is not appropriate in this case, Suff incorrectly represents Respondent’s position in the unpublished opinion which preceded *People v. Jackson, supra*, 110 Cal.App.4th 280. (See AOB 254.) Respondent made the concession in *People v. Jackson* (Feb. 6, 2002, F037364) [nonpub. opn.], based on the specific facts of that case, which are not appropriate for discussion here. (See Cal. Rules of Court, rule 8.1115.) In this case, however, based on these facts, the trial court properly exercised its discretion in declining to proceed with an in camera review of the investigative documents.

D. Suff Was Not Deprived Of Due Process Of Law By The Prosecutor’s Alleged Withholding Of “profile” Information; The Discovery Had Twice Been Properly Denied By The Trial Court

Suff accuses the prosecutor of untruthfully representing that no “profile” was created by the FBI in this case (AOB 261), and asserts that the prosecutor’s alleged concealment of such evidence amounted to misconduct which deprived him of his rights to a fair trial and an intelligent defense, requiring reversal. (AOB 260-263.) Preliminarily, Suff has forfeited his claim of prosecutorial

misconduct by failing to raise it and timely seek appropriate sanctions in the trial court. (*People v. Arias, supra*, 13 Cal.4th at p. 151.)

“The defendant generally is entitled to discovery of information that will assist in his defense or be useful for impeachment or cross-examination of adverse witnesses. [Citation.] A motion for discovery must describe the information sought with some specificity and provide a plausible justification for disclosure.” (*People v. Prince, supra*, 40 Cal.4th at p. 1232, quoting *People v. Jenkins, supra*, 22 Cal.4th at p. 953.)

On June 25, 1993, even before the prosecutor addressed the question of whether a profile had been done in this case, the court interrupted, “I don’t see the relevancy, even if it was done,” noting that it may have been completely wrong or may not have been used at all. (3 RT 424.) The defense responded that the profile “might lead to some introducible evidence. And I’m not saying the profile would be introduced, but it could be valuable to the defense. We have to look -- or leave no stone unturned.” (3 RT 425.) At that point, the prosecutor would not indicate to the court whether any profile had been developed. (3 RT 425.) The trial court denied the defense request for “profile evidence” explaining, “I don’t see how you have focused or demonstrated any possible relevancy, and I'm trying to look for it through your eyes.” (3 RT 425-426.)

On May 27, 1994, the prosecutor reminded the defense and the court of the prior order denying discovery of “profile evidence,” when the defense requested the production of serial killer profiles, if any existed, from DOJ employee Prodan. (5 RT 925-926; see 4 CT 943.) The trial court again stated, I would deny the request if all the information contained in the profile came from other reports you already have in existence.” (5 RT 927.) After defense counsel clarified that he meant a “psychological or character description” (5 RT 927) and that the discovery sought by the defense was any written description

provided to law enforcement to assist the investigation (5 RT 928), the prosecutor reiterated that such a profile was based upon reports already in the possession of the defense and that “if a profile was created, it was long before [Suff] was ever arrested” (5 RT 928-929.) Upon the trial court’s comment prior to ruling that, “I can’t envision how that would be helpful to the defense” defense counsel responded simply, “Submit it.” (5 RT 929.) After further discussion, defense counsel explained,

I've been in this business a long time, and I assume they sat down and said: Tell us the type of person who does this. Who would you be looking for? Who is our potential type of suspect? Is it the guy next door? Is it this or that? It may have been a brainstorming session. I don't know. What we're saying is, if they did generate a physical report and gave it to law enforcement, that -- and went into the investigative file, we be allowed access to it.

(5 RT 930-931.)

This Court has made clear, however, that a defendant must offer “better cause for inspection than a mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime.” (*People v. Cooper, supra*, 53 Cal.2d at p. 770; *Lemelle v. Superior Court, supra*, 77 Cal.App.3d at p. 162.) In the end, the only reason the defense could give for wanting the profile evidence was that if it was used as part of the investigation, the defense wanted to see it. (See 5 RT 930-931.) The trial court did not abuse its discretion in denying defense discovery of “profile evidence.”

Nearly a year later, the prosecutor sought to introduce “linkage” testimony by a member of the FBI, and noted in his brief that the Center’s computer database analysis unit, VICAP, had been employed before Suff’s arrest. (8 CT 2091.) Significantly, the VICAP database is the only thing the

prosecutor states the FBI employed prior to Suff's arrest – there was no mention of any psychological profile, character description, or “profile” being created.^{30/}

The prosecutor's brief further explained, “*After* the apprehension of a suspect, the unit *provides assistance in prosecution* of the subject, *such as the type of testimony being offered in this case.*” (8 CT 2091, emphasis added.) As examples of “[a] few of the more interesting points” the FBI witness would make if permitted to testify, the prosecutor mentioned “the killings are ‘organized’ activity outside of a ‘comfort zone’”; and that “evidence of particular victim selection . . . paired with the evidence of binding and asphyxiation exemplifies the individual who has engaged in long-term planning,” in contrast to “disorganized killing in which the perpetrator has acted carelessly,” leaving evidence behind. (8 CT 2091-2092.) The prosecutor explained various other points to which the expert would testify, all of which can reasonably be understood to have been developed well after Suff's arrest and for the purpose of Suff's prosecution. (See 8 CT 2092.)

The trial court denied the prosecutor's request, finding there was “insufficient showing as to linkage” and that any probative value was diminished by its prejudicial effect under Evidence Code section 352. (35 RT 7205.)

Upon the prosecutor's subsequent motion to permit rebuttal expert testimony on serial killers from DOJ employee Prodan, the trial court found the proffered testimony was not proper rebuttal evidence and denied the motion. (45 RT 10016.)

30. In *People v. Prince*, *supra*, 40 Cal.4th at page 1230, VICAP was described as “a database of the various violent crimes that had been reported to [FBI agents at the Center] . . . [which] was designed to track serial killers.” At the time of the *Prince* crimes, which occurred between January 1990 and February 1991, there were 5,000 homicides in the database. (*Ibid.*)

Both times the prosecutor attempted to introduce serial killer-related expert testimony, first by the FBI agent and then by DOJ employee Prodan, the defense objected on due process grounds, stating that it had not received any report regarding the expected testimony of the witnesses, aside from the written motion it had received only a few days prior to the hearing. (35 RT 7201-7202; 45 RT 10009-100012.) The trial court's denial of the prosecutor's request to present the witnesses, and no due process violation occurred.

As noted earlier, in the trial court, the defense did not allege prosecutorial misconduct for any misrepresentation it now alleges the prosecutor made, and did not request sanctions; Suff is therefore precluded from raising such a claim now. (*People v. Arias, supra*, 13 Cal.4th at p. 151.) Moreover, the prosecutor was under no obligation to provide profile evidence – FBI, DOJ, or otherwise – to the defense at any time, as the trial court properly exercised its discretion and twice denied the defense motion for discovery of such evidence. (3 RT 425-426; 5 RT 929-930.) There was no violation of Suff's due process rights on the basis the prosecutor's refusal to provide any profile evidence to the defense.

Moreover, Suff suffered no prejudice as a result of the trial court's discovery rulings. While the prosecutor was under no obligation to provide discovery of any "profile evidence," as the issue had been twice resolved against Suff's favor, the prosecution was required under Penal Code section 1054.1, subdivision (f), to provide the defense with:

Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

(Pen. Code, § 1054.1, subd. (f).)

Penal Code section 1054.1, subdivision (f), includes the requirement the prosecutor provide the defense with written reports of any oral statements falling within the described areas. (*Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 163-166; *People v. Lamb* (2006) 136 Cal.App.4th 575, 580.) The rationale for this reading of the statute is that “counsel is not entitled to withhold any relevant witness statements from [opposing counsel] by the simple expedient of not writing them down. ‘[S]uch gamesmanship is inconsistent with the quest for truth, which is the objective of modern discovery.’” (*Roland v. Superior Court, supra*, 124 Cal.App.4th at p. 165, quoting *In re Littlefield* (1993) 5 Cal.4th 122, 133.)

Under the provisions of Penal Code section 1054.7, the prosecutor should have provided a report of his “linkage” expert’s statements and results of comparisons to the defense 30 days before the guilt phase of the trial for purpose of his case in chief, or as soon as they came within his possession, if within 30 days of trial. (Pen. Code, § 1054.7; *People v. DePriest* (2007) 42 Cal.4th 1, 38; *People v. Superior Court (Mitchell)* (1993) 5 Cal.4th 1229, 1238.) The trial court has discretion to defer the prosecution’s penalty phase discovery until the conclusion of the guilt phase. (*People v. Superior Court (Mitchell), supra*, 5 Cal.4th at p. 1239.)

Because the trial court denied the prosecutor’s motions to present the proffered expert witnesses testimony, however, Suff suffered no prejudice from the belated receipt of the FBI expert’s intended testimony (see 8 CT 2091-2092) or from receiving no report of Prodan’s expected testimony.

Suff additionally cannot show any prejudice resulted from the trial court’s denial of his discovery motion for the investigations reports of other prostitute murders. (See *People v. Memro, supra*, 38 Cal.3d at p. 684.) Given the speculative nature of the defense inquiry with regard to the uncharged murders, Suff has not demonstrated that denial of the discovery deprived him

of due process of law, as he cannot show it was material to the issues of guilt or punishment, or otherwise favorable to him. (*People v. Jenkins, supra*, 22 Cal.4th at p. 955, citing *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 57 [107 S.Ct. 989, 94 L.Ed.2d 40].) Under the totality of the DNA, shoe print, tire track, trace evidence, and victims' personal items linking Suff to the crimes in this case, there is no reasonable probability Suff would have achieved a different result if the evidence had been disclosed to the defense. (*Jenkins*, at p. 955, citing *Richie*, at p. 57.) Stated simply, "the evidence was not such as "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."'" (*Jenkins*, at 955, quoting *Strickler v. Greene* (1999) 527 U.S. 263, 290 [119 S.Ct. 1936, 144 L.Ed.2d 28].) The trial court's judgment should be upheld.

V.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING EVIDENCE REGARDING MURDERS OF THREE PROSTITUTES WHICH OCCURRED AFTER SUFF'S ARREST, AND PENDING CRIMINAL CHARGES FILED AGAINST FORMER DETECTIVE CHRISTINE KEERS

Suff claims the trial court violated his state and federal constitutional rights to present defense evidence, a fair trial, and a reliable guilt and penalty determination when it excluded evidence of three prostitute murders subsequent to his arrest and of pending criminal charges against former Detective Christine Keers involving a crime of moral turpitude. (AOB 267-289.) Because the evidence of other murders was offered by Suff only for the purpose of showing that contrary to the impression of some jurors, prostitutes continued to be murdered after Suff's arrest, the trial court reasonably found that no sufficient link between the subsequent and charged murders existed to render such evidence relevant. Further, the trial court reasonably found that although

evidence of Keers's pending criminal matter was relevant and admissible to impeach her credibility, under Evidence Code section 352 analysis the benefit to the defense did not outweigh the amount of time such a mini-trial would consume. Finally, even if the trial court erred in excluding the evidence, such error was harmless beyond a reasonable doubt.

On March 23, 1995, the day after the jury had been seated (see 7 CT 1872-1873), Suff sought to introduce evidence of three murders of alleged prostitutes which had occurred in Riverside County after Suff's arrest. (7 CT 1874-1878.) Suff's motion for discovery concerning two of the murders had been denied, and a third murder had "just occurred." (19 RT 3636.) The basis of the request was to show the jury that, contrary to the remarks of several jurors, the killing of prostitutes had not stopped after Suff's arrest. (7 CT 1876; 19 RT 3624-3626.) According to defense counsel, who had learned of the murders from the newspapers and "through the grapevine," the victims were prostitutes and drug users whose bodies had been dumped. (19 RT 3634-3635.) The prosecutor objected that it amounted to evidence of third-party culpability that did not meet the admissibility requirements of *People v. Hall, supra*, 41 Cal.3d 826, and additionally that under Evidence Code section 352 such evidence would be unduly time-consuming and would confuse the jury. (19 RT 3627-3633.) Further, the prosecutor noted that by the very nature of their profession, prostitutes were often victimized and were killed for various reasons. (19 RT 3637.)

After taking the matter under submission, the trial court denied Suff's motion the following afternoon, finding no link between the three subsequent murders and this case or that such evidence had any particular relevance to this case. (7 CT 1959; 19 RT 3661.)

Suff additionally sought to introduce evidence^{31/} of former Detective Keers's arrest and indictment for attempting to receive stolen property (Pen. Code, § 496, subd. (a)), a misdemeanor, and for solicitation to commit burglary (Pen. Code, § 653f, subd. (a)), a felony, alleged to have occurred on August 16 and 17, 1994. (7 CT 1880-1885.) According to defense counsel's declaration, Detective Keers was placed on administrative leave after her arrest on or about August 17, 1994. (7 CT 1884.) A Riverside County grand jury indicted Detective Keers on October 13, 1994, and the Riverside Police Department fired her on or about December 16, 1994.^{32/} (7 CT 1884.)

While acknowledging the applicability of Evidence Code section 352, defense counsel said he was unsure what the extent of Keers's testimony would be. (8 CT 1983; 25 RT 4824.) Arguing that the credibility of every witness who takes the stand was at issue, the defense argued it should be permitted to

31. The original motion, filed March 23, 1995, was for discovery, which the prosecutor provided to the defense on April 4, 1995. (8 CT 1965; 23 RT 4383-4385.)

32. Several newspaper articles covering Keers's prosecution dated from August 18 to December 22, 1994, had been filed with the trial court as an exhibit with other news articles during Suff's motion for change of venue on January 24, 1995. (5 CT 1282-1289.) According to the articles, Keers was arrested during a sting operation in which police paid an informant, "a longtime homeless junkie," a \$20 daily stipend and supplied him with a \$29.85 per night motel room. (5 CT 1287, 1289.) The Press-Enterprise reported the informant, Ed Fink, had been paid at least \$3,600. (5 CT 1289.) Fink went to The Antique Peddler, where Keers rented a stall, and sold Keers cigarettes, perfume, and videocassettes he allegedly claimed to be stolen. (5 CT 1282, 1284-1285, 1287-1289.) The antique dealer and another woman who was in the store at the time of the sale disputed the informant's claim and said Keers had no way to know the items were stolen. (CT 1282, 1285-1287.) The merchant maintained Keers was innocent and opined that office politics had prompted her arrest to rid the department of a "union activist" and frequent challenger of Police Chief Ken Fortier. (5 CT 1282, 1285.) Months later, police caught Fink at a gas station with a syringe full of heroin. (5 CT 1289.) Fink was arrested on December 13 and charged on December 15, 1994. (5 CT 1289.)

impeach Keers with her pending misdemeanor, which constituted dishonest conduct involving moral turpitude, and with her resulting termination by the Riverside Police Department. (7 CT 1884-1885; 8 CT 1982-1984; 25 RT 4824-4825, 4827.) The defense claimed it would not require a mini-trial, but merely the questions, “Have you been indicted by a grand jury?” “Was it for receiving stolen property?” and “Were you terminated by the Riverside Police Department?” (25 RT 4826.) To deny such evidence and allow her to remain “Detective Keers,” the defense argued, which would allow Keers to falsely maintain an “aura of veracity, when she’s not a detective. She has been fired . . . because of dishonest acts.” (25 RT 4826.)

The prosecutor argued to exclude such evidence because although “important to maintain the flow and continuity of the presentation of evidence,” another percipient witness was available to testify to “virtually every fact she will relate.” (8 CT 1977; 25 RT 4822-4823.) In addition, he argued that because Keers was still awaiting trial and the offenses charged against her had occurred while she was off-duty and more than two and a half years after Suff’s arrest, the evidence should be excluded under Evidence Code section 352 as lacking substantial probative value, consuming an undue amount of time, and risking confusion of the jury. (8 CT 1975-1979; 25 RT 4817-4824.)

In particular, the primary witness against Keers had since died and portions of recorded statements between Keers and the unavailable witness were inaudible, causing further complications in what would turn into a mini-trial of Keers’s credibility and consume undue time and confuse the jury. (25 RT 4821-4822.) Further, the prosecutor anticipated that Keers would assert an entrapment defense to the pending charges, which again would add to the length and complexity of the “mini-trial.” (25 RT 4828.) The prosecutor additionally argued that different criteria, standards, and factors were involved in Keers’s termination from the police department, rendering it “distinct from a criminal

prosecution” and therefore irrelevant. (25 RT 4829.) Finally, the prosecutor stated he would address the witness as “Ms. Keers” and had no objection to the jury being made aware that she was no longer working for the police department, but objected to the jury knowing she had been terminated. (25 RT 4829.)

Keers’s defense attorney and the prosecutor of her case estimated to the trial court that Keers’s trial would last approximately eight court days, excluding jury selection. (25 RT 4815.)

At the conclusion of argument on April 7, 1995, the trial court found that although Keers could be impeached with her charged conduct, the benefit to the defense of such evidence “pales in the time consumption” it would require, considering that Keers was not the sole witness. (25 RT 483-4832.) The court stated,

To think that it would not be a mini-trial is preposterous, in my opinion. That is a matter where, since the most percipient witness is deceased, that there would have to be, the Court believes, multiple witnesses to prove up that this event occurred.

I don’t know all the facts of that case, and I’m not saying I do. My point is that that would have to be attacked in that vein. And to bolster credibility, the opposite would also occur.

I am not of the opinion that we should be trying lawsuits within lawsuits. I don’t think that’s what the Evidence Code is about. . . .

(25 RT 4831.)

A. Suff Failed To Establish The Evidence Of Subsequent Murders Was Relevant And Material To The Extent Of Outweighing The Risks Of Delay And Confusion

“Any relevant evidence that raises a reasonable doubt as to a defendant’s guilt, ‘including evidence tending to show that a party other than the defendant committed the offence charged,’ is admissible.” (*People v. Avila* (2006) 38 Cal.4th 491, 577, quoting *People v. Hall*, *supra*, 41 Cal.3d at p. 829; see also

People v. Harris (2005) 37 Cal.4th 310, 336; Evid. Code, §§ 210, 350, 351.) As this Court has noted, “it is always proper to defend against criminal charges by showing that a third person, and not the defendant, committed the crime charged.” (*People v. Hall, supra*, 41 Cal.3d at p. 832.) However, “exculpatory evidence pointing to that person should not be admitted if it ‘simply affords a possible ground of possible suspicion. . . .’” (*Ibid*, quoting *People v. Mendez* (1924) 193 Cal. 39, 51.) “[The] evidence must be both relevant and material.” (*People v. Hall, supra*, 41 Cal.3d at p. 833, citing *People v. Mendez, supra*, 193 Cal. at p. 52.)

The proper inquiry is whether the evidence could raise a reasonable doubt as to the defendant’s guilt and if so, whether it survives application of Evidence Code section 352. (*People v. Hall, supra*, 41 Cal.3d at 833.) Third-party culpability evidence should be treated by courts “like any other evidence: if relevant it is admissible ([Evid. Code,] § 350) unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion ([Evid. Code,] § 352).” (*Id.* at p. 834; *People v. Harris, supra*, 37 Cal.4th at p. 340.) Whether third-party culpability evidence will be admissible or meet the required balancing under Evidence Code section 352 will turn on the specific facts of each case. (*Ibid.*)

In *People v. Prince, supra*, 40 Cal.4th at p. 1239, the prosecutor succeeded in excluding police reports which included the statements of six witnesses who reported that the victim said her boyfriend, Christopher Burns, had struck her and threatened her with a knife, that the two argued furiously over the victim working as an exotic dancer, and that Burns “enjoyed pornography.” (*Id.* at p. 1239.) One witness reported that the victim said she believed Burns would kill her unless she quit her job. (*Id.* at p. 1240, fn. 12.) Three witnesses stated that Burns and the victim engaged in bondage sex, and two of the witnesses said the victim complained the sex would get too “rough.”

(*Ibid.*) Burns was originally handled as a suspect and arrested for the murder, but police released him three days later. (*Id.* at pp. 1239-1240, fn. 12.)

The *Prince* defendant sought to introduce the victim's out-of-court statements to attack Burns's credibility and as evidence of third-party culpability. (*Id.* at p. 1240.) However, the trial court found the defense required an offer of proof sufficient to support use of the statements to show third-party culpability. (*Id.* at p. 1241.) This Court agreed and held that even if evidence of the statements was not excludable as hearsay, the defense had failed to make an adequate offer of proof under *People v. Hall, supra*, 41 Cal.3d 826, of defense evidence demonstrating that Burns killed the victim. (*People v. Prince, supra*, 40 Cal.4th at p. 1242.) As this Court previously noted in *Hall*, "there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Prince, supra*, at p. 1242, quoting *Hall, supra*, 41 Cal.3d at p. 1242.) Mere evidence of anger, motive, or opportunity alone is inadmissible unless paired with other evidence linking the third person with the actual commission of the crime. (*Prince, supra*, at pp. 1242-1243; *People v. Avila, supra*, 38 Cal.4th at p. 578; *People v. Hall, supra*, 41 Cal.3d at p. 832.)

This Court upheld the lower court's ruling and held, "[t]he statements demonstrated no more than motive." (*People v. Prince, supra*, 40 Cal.4th at p. 1242, citing *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1137; accord *People v. Avila, supra*, 38 Cal.4th at p. 578; *People v. Hall, supra*, 41 Cal.3d at p. 833.) In addition, this Court upheld the trial court's determination that the slight probative value of the evidence was outweighed by its great potential for delay and confusion of the issues, because Burns's trial testimony only concerned the victim's whereabouts on the morning of her death and the discovery of her body, which Burns's apartment-mate and the physical evidence would have confirmed. (*People v. Prince, supra*, 40 Cal.4th at p. 1243, fn. 14.)

In the instant case, the defense provided no significant link between the three subsequent murders and any of the crimes charged against Suff, aside from the victims being prostitutes and likely drug users whose bodies were dumped in Riverside County after they were murdered. (See 19 RT 3634-3635.) Indeed, despite someone having been convicted in one of the three murders, there were no specific facts offered by Suff to link that defendant to any of the charged crimes in this case. For example, there were no allegations that the convicted defendant, Mark Spencer (4 CT 1062), wore wire-framed glasses or drove a gray van with mismatched tires – facts which could have been easily determined from court records, because the matter was tried in open court. (See 5 RT 1034-1035.)

Rather than raising a reasonable doubt as to Suff's guilt, as required by *Hall*, the evidence advanced by Suff merely afforded "a possible ground of possible suspicion." (*People v. Mendez, supra*, 193 Cal. at p. 51; see also *People v. Arline* (1970) 14 Cal.App.3d 200, 204.) Evidence that Spencer had killed a prostitute—and therefore had the ability to commit a crime similar to those charged against Suff—is comparable in probative value to evidence proffered in *Prince* that Burns possibly had incidents of prior violence against, and a motive to kill the victim (see *People v. Prince, supra*, 40 Cal.4th at pp. 1240-1243), or to evidence proffered in *Arline* that another robbery had occurred after the defendant's arrest (see *People v. Arline, supra*, 14 Cal.App.3d at pp. 203-205): Any other person accused of any other murder would have been equally open to suspicion. (*Id.* at p. 204.) Thus, the proffered evidence would not survive the balancing test under Evidence Code section 352, as the potential for delay and confusion of the issues was great, and the probative value was, at best, slight. (See *People v. Prince, supra*, 40 Cal.4th at p. 1243.)

The remaining two uncharged murders, for which no suspect had been identified, offered even less probative value, and certainly the offer of proof

given by the defense was not sufficient to show that anyone other than Suff was responsible for the crimes charged against him. (See *People v. Prince, supra*, 40 Cal.4th at pp. 1241-1242.)

As to Suff's claim that such evidence was required to dispel jurors of an incorrect impression that the killings of prostitutes had stopped after Suff's arrest (AOB 280-282), there were other, permissible means, to accomplish this goal, i.e., through direct and cross-examination of various officers. (19 RT 3661-3662.) Prostitutes are especially vulnerable to crime (*People v. Jennings, supra*, 53 Cal.3d at p. 363); as the prosecutor argued below, prostitutes are killed for various reasons. (19 RT 3637.) Because Suff failed to establish that the evidence of the three uncharged murders was material evidence of sufficient probative value to outweigh the considerable potential for delay and confusion of the issues, the trial court reasonably excluded it from jury consideration. (*People v. Hall, supra*, 41 Cal.3d at pp. 829, 833-834.) The trial court did not abuse its discretion.

B. The Trial Court Properly Exercised Its Discretion In Determining That, Though Relevant, Evidence Of The Charges Pending Against Former Detective Keers Would Cause A Risk Of Undue Time Consumption And Confusion Of The Issues That Exceeded Its Probative Value

“A trial court's ruling to admit or exclude evidence offered for impeachment is reviewed for abuse of discretion and will be upheld unless the trial court ‘exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’” (*People v. Ledesma* (2006) 39 Cal.4th 641, 705, quoting *People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) “[E]vidence of charges pending against a prosecution witness *at the time of trial* is relevant for impeachment purposes.” (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 379, original italics, citing *People v. Coyer* (1983)

142 Cal.App.3d 839, 842–843 [pending charges are relevant to show witness may be testifying to gain leniency, regardless if any promises were made].)

In addition, the Confrontation Clause permits a trial court to retain “wide latitude” to reasonably limit such cross-examination “based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679 [106 S.Ct. 1431, 89 L.Ed.2d 674].) Likewise, Article I, section 28 of the California Constitution, which speaks to the admission of relevant evidence (Cal. Const., art. I, § 28, subd. (d)),^{33/} and to the use of prior convictions for purpose of impeachment (Cal. Const., art. I, § 28, subd. (f)), preserves “the traditional and inherent power of the trial court to control the admission of evidence by the exercise of discretion to exclude marginally relevant but prejudicial matter” as provided by Evidence Code section 352. (*People v. Castro* (1985) 38 Cal.3d 301, 306, 312-313.)

“Past criminal conduct involving moral turpitude that has some logical bearing on the veracity of a witness in a criminal proceeding is admissible to impeach, subject to the court’s discretion under Evidence Code 352.” (*People*

33. Subdivision (d) of Article I, section 28, also called “Right to Truth-in-Evidence,” provides as follows:

Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(Cal. Const., art. I § 28.)

v. Harris, supra, 37 Cal.4th at p. 337, citing *People v. Wheeler* (1992) 4 Cal.4th 284, 295-296.) No violation of the confrontation clause will result from a trial court's limitation of cross-examination related to witness credibility unless admission of the excluded cross-examination would have resulted in a reasonable jury reaching a significantly different impression of the witness's credibility. (*People v. Quartermain* (1997) 16 Cal.4th 600, 623-624; accord, *Delaware v. Van Arsdall, supra*, 475 U.S. at p. 680; *People v. Belmontes supra*, 45 Cal.3d at p. 781.)

The rule is well-established, however, that "the Constitution entitles a criminal defendant to a fair trial, not a perfect one." (*Delaware v. Van Arsdall, supra*, 475 U.S. at p. 681, citing *United States v. Hasting* (1983) 461 U.S. 499, 508-509 [103 S.Ct. 1974, 76 L.Ed.2d 96], and *Bruton v. United States* (1968) 391 U.S. 123, 135 [88 S.Ct. 1620, 20 L.Ed.2d 476].) In *People v. Ledesma, supra*, 39 Cal.4th 641, the defendant sought to introduce that burglary charges were pending against a prosecution witness at the time she placed an anonymous call to the police and reported statements defendant had made regarding the murder in that case. (*Id.* at p. 705.) The *Ledesma* Court held the trial court reasonably concluded that the information was not relevant to establish the witness had a motive to lie because her call was anonymous, therefore she could not have been motivated by any hope of favorable treatment for the pending offense. (*Ibid.*)

In this case, Detective Keers was but one player—albeit a high-ranking one—in a huge cast of characters that was the Homicide Task Force. Like in the *Prince* case where the defense sought to introduce the evidence to challenge Burns's credibility (see *People v. Prince, supra*, 41 Cal.4th at p. 1243, fn.14), the matters to which Keers would testify were such that at least one other percipient witness, and sometimes physical evidence such as a tape, would be able to corroborate it. (8 CT 1977; 25 RT 4822-4823.)

Further, the evidence of the offenses did not tend to establish that she had a motive to lie in this case. (See *People v. Ledesma, supra*, 39 Cal.4th at p. 705.) She was given no offer of leniency, as she had already been terminated from employment, the matter was set for trial and after voir dire was expected to last eight court days. (25 RT 4815.) Her charge of attempted receiving stolen property was charged as a misdemeanor (7 CT 1884), which is generally “a less forceful indicator of immoral character or dishonesty than is a felony.” (*People v. Wheeler, supra*, 4 Cal.4th at p. 296.) The alleged offenses occurred more than two and a half years after Suff’s arrest, while Keers was off duty and merely a private citizen. (8 CT 1975-1979; 25 RT 4817-4824.) When considered in conjunction with the fact she was but one of scores of prosecution witnesses and that various other witnesses would be able to corroborate her testimony, the impeachment evidence has less logical bearing on her veracity and veers more toward invoking a “nitpicking war[] of attrition over collateral credibility issues.” (*People v. Smith* (2007) 40 Cal.4th 483, 512-513, quoting *People v. Wheeler, supra*, 4 Cal.4th at p. 296.)

Regardless, the relevance and probative value of such evidence was far outweighed by the consumption of time and confusion of the issues that would have resulted if the matter were litigated within Suff’s trial. “[T]he latitude section 352 allows for exclusion of impeachment evidence in individual cases is broad.” (*People v. Smith, supra*, 40 Cal.4th at p. 512, quoting *People v. Wheeler, supra*, 4 Cal.4th at p. 296.) Keers’s attorney and the prosecutor in that case estimated a two-week trial; Suff’s attorneys and the prosecutor in this case had estimated a six-month trial in this matter, which had already commenced. (See 19 RT 3657-3659.) Even before the jury was seated, Suff lost one juror and nearly lost another due to the anticipated length of the trial. (7 CT 1939, 1943; 19 RT 3660.) Considering that (1) Keers had been a police officer with the Riverside Police Department for 13 1/2 years, seven of which she spent in

the rank of Detective (4 RT 622-623), and she would likely have several witnesses testify to help defend her character and credibility; (2) the main witness against Keers had died and the portions of conversations which were recorded were of questionable quality (25 RT 4821-4822); (3) Keers was expected to assert an entrapment defense (25 RT 4828); and (4) the charge of attempted receiving stolen property was a misdemeanor (7 CT 1884), the trial court reasonably determined that the substantial length of time required to fairly litigate the matter was not justified by the small impact it would have on Keers's credibility—after all, other witnesses could and would be called to bolster and corroborate her testimony, potentially drawing the trial out even longer. (See *People v. Wheeler, supra*, 4 Cal.4th at pp. 295-296.) The court did not abuse its discretion.

C. If There Was Error, It Was Harmless

Even if the trial court erred in excluding evidence of the three post-arrest murders, Suff has failed to establish a reasonable probability that a more favorable outcome would have resulted in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 837; see *People v. Harris, supra*, 37 Cal.4th at p. 341; *People v. Hall, supra*, 41 Cal.3d at p. 836.) As the trial court articulated during Suff's motion for a new trial on the day of his sentencing, the entirety of the circumstances and evidence in this trial was "overwhelming." (47 RT 10382.) Regardless of whether any other prostitutes were murdered after Suff's arrest, the fact remains that the uniquely mismatched tires on Suff's van were traced to six of the twelve murder scenes (Miller, Leal, Ferguson, Puckett, McDonald, and Casares). (32 RT 6606-6653, 6663; 33 RT 6680-6694, 6697-6715, 6717-6727, 6732-6753, 6754.16-6754.19, 6754.29(1)-6754.29(2), 6793-6794, 6809-6810, 6813-6815, 6820-6827.) Personal items belonging to the final three murder victims, McDonald, Zamora, and Casares, were traced either directly to Suff or to the work area where he sat, or in the case of the

victims' jewelry found by Suff's ex-wife in her jewelry box, were circumstantially linked to Suff. (22 RT 6069-6070; 29 RT 5830-5832, 5844, 5861-5862, 5869-5871, 5879-5885, 5887-5889, 5893, 5911-5913, 5925-5926, 5940-5941, 5943, 5989-5995, 5999; 30 RT 6002-6005, 6007-6009, 6011, 6014-6015, 6021-6024, 6026-6028, 6034, 6065-6072, 6083-6085, 6129; 31 RT 6346-6347, 6369-6373, 6379-6381; see also 37 RT 7864.) Hair, fiber, paint chip, and DNA or other blood evidence linked Suff and his van to the murder victims, and the murder victims to each other, completing a solid web of evidence from which Suff was thoroughly ensnared and entangled; there is absolutely no reasonable probability Suff could have enjoyed a more favorable outcome if he had been permitted to introduce evidence of the subsequent murders.

When excluded impeachment is determined to have been constitutionally improper, it is subject to harmless error analysis under *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705]. (*Delaware v. Van Arsdall, supra*, 475 U.S. at p. 684.)

The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

(*Ibid.*)

As stated earlier, Keers's credibility was a minor collateral issue considering the number of other law enforcement personnel and officers who contributed to the case. Keers's testimony was not in any way pivotal to the case. Considering the overwhelming amount of evidence against Suff, much of

it uncontradicted, any error the trial court may have committed in precluding the defense from impeaching Keers with her then pending criminal case was harmless beyond a reasonable doubt. There was no violation of Suff's federal or state constitutional rights.

VI.

SUFF DID NOT UNEQUIVOCALLY REQUEST A LAWYER UNTIL NEAR THE END OF THE THIRD INTERVIEW; NO *MIRANDA* VIOLATION OCCURRED

Suff argues the trial court erred in finding Suff invoked his right to counsel during the third interview, rather than at the beginning of the second interview, and that the admission of Suff's statements after his alleged invocation was prejudicial. (AOB 290, 297-307.) The record, however, supports the trial court's finding that Suff's first two statements mentioning a lawyer were equivocal. No error occurred.

On April 20, 1995, Suff filed a motion to exclude his statements to Detective Keers, alleging his *Miranda* rights had been violated. (8 CT 2010-2020.) The defense presented testimony from Detective Keers on May 1, 1995, and the parties presented argument on May 2, 1995. (8 CT 2065, 2067-2069.) On May 4, 1995, the court rendered its decision finding all of Suff's statements were voluntary and that during the third interview, Suff invoked his right to an attorney. (32 RT 6458-6459; 8 CT 2074-2076.)

Riverside Police Officer Orta originally saw Suff driving his van at approximately 9:30 p.m. on January 9, 1992. (27 RT 5503-5504; 28 5507-5513, 5539-5540.) Office Orta followed Suff and stopped his van. (28 RT 5524-5525.) Later, Detective Keers went where Suff's van was stopped and determined that three of the tires on Suff's van matched the brands criminalist Secofsky identified on the perpetrator's van. (31 RT 6179.) Around 10 or

10:30 p.m., Officer Orta arrested Suff for a parole violation. (31 RT 6180-6181.) Suff had an active arrest warrant from Texas. (31 RT 6180.)

Suff was taken directly to the Riverside Police Department and placed in a “holding tank.” (31 RT 6181-6182.) Detective Keers met Suff in the booking room and took him to a second-floor interview room for questioning. (31 RT 6182-6183.)

The interview room measured about 10 by 10 feet, was fully carpeted including on the walls, and contained a table and three chairs but no window. (31 RT 6183.) Suff was free of handcuffs and the door was shut. (31 RT 6184.) Detective Keers introduced herself to Suff as a homicide investigator and gave him her business card. (31 RT 6202-6203.) Starting around 12:30 a.m., Detective Keers interviewed Suff by herself, without interruption, concluding about 1:10 a.m. (31 RT 6183-6184, 6186-6188, 6202, 6204.) She commenced with some initial information, then read a *Miranda* warning to Suff from a card. (31 RT 6185, 6202; see 8 CT 2057.) Suff indicated he understood the warning, and signed the *Miranda* “Statement of Rights” form. (31 RT 6185, 6203; 8 CT 2056-2057.)

Suff then asked Detective Keers, “Do I need a lawyer?” (31 RT 6185, 6203; 8 CT 2057.) Detective Keers replied, “Well, I don’t know. Do you need a lawyer?” to which Suff responded, “I don’t know. For what I’ve done, I don’t see why I need a lawyer.” (31 RT 6185, 6203-6204; see also 31 RT 6198; 8 CT 2057-2058.) Detective Keers then said, “[A]ll I’m doing is asking you to talk to me. Do you want to do that?” (31 RT 6186, 6204; 8 CT 2058.) After Suff answered, “Okay,” Detective Keers commenced the interview. (31 RT 6186, 6204; 8 CT 2058.)

Aware that impressions from Converse tennis shoes had been left at the Casares crime scene, Detective Keers asked Suff about the Converse tennis shoes he was wearing. (31 RT 6180, 6200, 6218-6219.) Suff said he got the

shoes for Christmas. (31 RT 6218-6219.) When the interview ended around 1:10 a.m., Suff got a drink, went to the bathroom, and was placed in a holding cell until the rest of the homicide task force arrived. (31 RT 6186-6188, 6204.)

Twenty minutes later, at 1:30 a.m. (31 RT 6204), Detective Keers began a second interview, which ended around 2:45 a.m. (31 RT 6189-6190, 6192, 6204-6205.) At the start of the interview, Detective Hearn and a technician took hair, saliva, and other samples from Suff. (31 RT 6188-6189, 6204.) During the interview, Suff complained of back pain several times and once requested pain medication, which Detective Keers was unable to provide. (31 RT 6190, 6192.) Detective Keers inquired whether he was in too much pain to continue the interview, but Suff indicated he still wanted to talk to her. (31 RT 6206.)

After Suff said he was “scared” of being accused of the crime, he asked whether he was being charged with the murders. (31 RT 6190-6191.) Detective Keers said, “You’re not under arrest,” but she did not clarify that he was under arrest for a parole violation though not for murder. (31 RT 6191, 6201.) At some point, Detective Keers provided Suff with a Pepsi. (31 RT 6206.) Detective Keers asked Suff for permission to search his house, at which time the following exchange occurred:

[Suff]: I need to know, am I being charged with this, because if I’m being charged with this I think I need a lawyer.

Keers: Well, at this point, no, you’re not being charged with this.

[Suff]: You can search my apartment as long as I’m there with you, with who ever’s searching.

(31 RT 6207-6208, 6218-6219; 8 CT 2059.)

Suff signed a form granting permission to search his Meadow Lane apartment. (31 RT 6207.) At the end of the interview, Suff was returned to his holding cell. (31 RT 6192.)

During the first two interviews, Suff told Detective Keers he was employed in the Texas prison system and that he had been convicted of a crime

but was placed on probation after serving only a few days in custody. (31 RT 6208.)

For the next 12 hours, Detective Keers checked on Suff every 15 minutes and saw him sleeping. (31 RT 6193, 6205-6206.) Suff was not hungry for breakfast, but was given lunch around 12:30 or 1:00 p.m. (31 RT 6193-6194, 6205.) Meanwhile, Detective Keers and other law enforcement officers were contacting witnesses and attempting to obtain more information. (31 RT 6208-6209.) At some point that day, the Riverside Police Department received a fax of Suff's parole violation warrant. (31 RT 6209.)

About 2:50 p.m., Detective Keers again interviewed Suff, with Detective Davis of the Riverside County Sheriff's Department.^{34/} (31 RT 6193, 6210.) In another room, the prosecutor was monitoring the interview. (31 RT 6209-6210.) The third interview lasted two and a half hours, until 5:40 p.m., with breaks for Suff to get a drink of water, to stretch, or to use the bathroom. (31 RT 6194-6195, 6201, 6210.) Several times during the interview, Suff raised his voice, prompting Detective Davis on one occasion to tell him, "Don't raise your voice at us Mr." (31 RT 6195-6196.) On numerous occasions, Suff asked what information the police had to link him to the crimes. (31 RT 6209.)

Further into the interview, around 5:00 p.m., Suff said, "I better get a lawyer now. I better get a lawyer, because you think I did it and I didn't." (31 RT 6196-6197, 6211, 6219; see also 31 RT 6198; 8 CT 2061.) Detective Keers asked, "Who did it?" (31 RT 6197; 8 CT 2061.) Suff answered, "I don't know, but I didn't do it. I swear to God I didn't do it. (31 RT 6197-6198; 8 CT 2062.) Then, Detective Keers asked, "Are you telling me that you don't want to talk to me right now?" to which Suff answered, "I'm telling you the truth."

34. An audio tape of the afternoon interview and a transcript of the tape were introduced into evidence as Defendant's A and B. (31 RT 6220, 6222, 6289; 8 CT 2069.)

(31 RT 6198, 6211; 8 CT 2062.) Shortly thereafter, the following exchange occurred:

Keers: Okay, I'm giving you the opportunity to talk to me.

[Suff]: I know.

Keers: Do you want to do that?

[Suff]: Yes I do because

Keers: If you want to okay

[Suff]: I do.

(31 RT 6211; 8 CT 2062.)

A short time later, someone knocked on the door, and Detective Keers left the room for a moment to consult with the prosecutor. (31 RT 6212.) Detective Davis, who remained in the room, asked Suff, "Bill, you want to talk to us?" to which Suff responded, "Yes, I do." (31 RT 6212-6213.) Then Detective Davis said, "A couple of minutes ago you said you wanted a lawyer. Now, you want to talk to us about this." (31 RT 6212-6213.) Suff said, "I think I need a lawyer over here." (31 RT 6199, 6212-6213, 6219.) Detective Davis then asked, "Did you want to talk to us?" and Suff replied, "I want to try to clear this up. I want to make sure you end up knowing I didn't kill her. I took the clothes, because they were lying nearby her and that's it." (31 CT 6199, 6212-6213, 6219.)

At that point, Detective Keers returned to the room. (31 RT 6212-6213.) She asked Suff, "Do you want to talk to me, Bill? I want to make this perfectly clear to you, okay?" (31 RT 6213.) Suff said, "I know." (31 RT 6213.) A bit later, Detective Keers asked again, "Do you want to talk to us and tell us the truth?" to which Suff answered, "Yes." (31 RT 6213.) When Detective Keers confirmed, "So you want to talk to us?" Suff said, "Yes," and explained he wanted "[t]o clear up this stuff." (31 RT 6213.)

Detective Keers's questioning of Suff eventually became more pointed, and she asked Suff about the Casares murder. (31 RT 6213-6214.) As Detective Davis questioned Suff about the McDonald homicide, Suff said he did not want to talk anymore and then said, "I want a lawyer." (31 RT 6215-6216; see 8 CT 2045-2046.) Detective Keers determined "he was definitely asking for an attorney," and stopped the interview. (31 RT 6199-6200, 6216.) When the third interview ended, Suff was booked for the parole violation and given dinner. (31 RT 6195; see also 31 RT 6217; but see 31 RT 6182 [Suff was booked in the morning].) Four days later, Suff was booked on two counts of murder on January 14, 1992. (31 RT 6217-6218.)

After hearing argument and taking the matter under submission, the trial court held Suff invoked his right to an attorney with his third statement, when he stated around 5:00 p.m. during the third interview, "I better get a lawyer now. I better get a lawyer, because you think I did it, and I didn't." (32 RT 6458-6459; see 31 RT 6196-6197, 6211, 6219; see also 31 RT 6198; 8 CT 2061.) The court found, however, that all of Suff's statements were voluntary, and that his independent free will was never overcome by "overbearing peace officers or deprivation of any food, sleep or anything of that nature." (32 RT 6458.)

A criminal defendant has no Sixth Amendment right to counsel during police questioning until he or she is formally charged or indicted. (*People v. DePriest, supra*, 42 Cal.4th at p. 33, citing *Davis v. United States* (1994) 512 U.S. 452, 456-457 [114 S.Ct. 2350, 129 L.Ed.2d 362], and *People v. Frye, supra*, 18 Cal.4th at p. 987.) "Moreover, the Sixth Amendment right to counsel is 'offense specific'; it arises and may be asserted only as to those offenses for which criminal proceedings have formally begun." (*People v. DePriest, supra*, 42 Cal.4th at p. 33, citing *McNeil v. Wisconsin* (1991) 501 U.S. 171, 175 [111 S.Ct. 2204, 115 L.Ed.2d 158]; see *People v. Webb* (1993) 6 Cal.4th 494, 527.) The incriminating statements of a defendant about uncharged offenses are

admissible under the Sixth Amendment “notwithstanding its attachment on other charged offenses at the time.” (*People v. DePriest, supra*, 42 Cal.4th at p. 33, citing *McNeil v. Wisconsin, supra*, 501 U.S. at p. 176; *People v. Webb, supra*, 6 Cal.4th at p. 527.)

Under *Miranda*, however, a defendant must be afforded access to counsel even prior to charging to protect his or her Fifth Amendment right against self-incrimination. (*People v. Houston* (1986) 42 Cal.3d 595, 602-603; see also *Edwards v. Arizona* (1981) 451 U.S. 477, 484-485 [101 S.Ct. 1880, 68 L.Ed.2d 378].)

In determining whether a statement or confession is inadmissible because it was obtained in violation of the Fifth and Fourteenth Amendments under *Miranda*, the reviewing court “must accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] [But it] must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained.” (*People v. Box* (2000) 23 Cal.4th 1153, 1194.)

As the United States Supreme Court explained in *Davis v. United States, supra*, 512 U.S. 452 [114 S.Ct. 2350, 129 L.Ed.2d 362], the right to counsel established in *Miranda v. Arizona, supra*, 384 U.S. 436, and refined in *Edwards v. Arizona, supra*, 451 U.S. 477 [101 S.Ct. 1880, 68 L.Ed.2d 378], “is sufficiently important to suspects in criminal investigations . . . that it ‘requir[es] the special protection of the knowing and intelligent waiver standard.’” (*Davis v. United States, supra*, 512 U.S. at p. 458.) The Court further explained:

If the suspect effectively waives his right to counsel after receiving the *Miranda* warnings, law enforcement officers are free to question him. [Citation.] But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation. [Citation.]

(*Ibid.*)

To properly invoke *Miranda* protections, the suspect must *unambiguously* request counsel. “[A] statement either is such an assertion of the right to counsel or it is not.” (*Davis v. United States, supra*, 512 U.S. at p. 459.) The inquiry into whether the suspect has unambiguously requested counsel is an objective one: whether “a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” (*Id.* at pp. 458-459.) If the statement fails to meet the requisite level of clarity the officers are not required to stop questioning the suspect. (*Id.* at p. 459, citing *Edwards v. Arizona, supra*, 451 U.S. 477.) “[A] reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel . . . do[es] not require the cessation of questioning.” (*Ibid.* italics in original.)

In *People v. Webb, supra*, 6 Cal.4th 494, this Court held the defendant’s Sixth Amendment right to counsel had not yet attached when incriminating statements were elicited from the defendant regarding a capital crime because he was in custody for narcotics and parole revocation charges. (*Id.* at pp. 526-528.) Similarly, in *People v. DePriest, supra*, 42 Cal.4th 1, the defendant failed to cite any authority contrary to the “bright-line precharging rule against attachment of a Sixth Amendment right” to counsel during questioning about uncharged crimes. (*Id.* at p. 34.)

Here, the record is clear that when Detective Keers questioned Suff on January 10, 1992, Suff was being held on only his parole violation. (31 RT 6180-6181, 6195, 6217.) Suff was not booked for any of the murders until four days later, on January 14, 1992. (31 RT 6217-6218.) Because his Sixth Amendment right to counsel had not yet attached, the admission of his statements did not violate the Sixth Amendment. (*People v. DePriest, supra*, 42 Cal.4th at p. 33, citing *McNeil v. Wisconsin, supra*, 501 U.S. at p. 176; *People v. Webb, supra*, 6 Cal.4th at p. 527.)

Even if a defendant has no Sixth Amendment right to counsel, the United States Supreme Court has held that a defendant should be afforded the opportunity to consult with counsel and to have an attorney present during questioning as one of the “procedural safeguards” given in *Miranda v. Arizona*, *supra*, 384 U.S. at pp. 469-473, to protect the Fifth Amendment right against self-incrimination. (*Davis v. United States*, *supra*, 512 U.S. at pp. 456-457; *People v. Houston*, *supra*, 42 Cal.3d at pp. 602-603.) The request for counsel, however, “must articulate [the defendant’s] desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” (*Davis v. United States*, *supra*, 512 U.S. at p. 459.)

During argument, the defense acknowledged Suff’s first statement, “Do I need a lawyer?” followed by, “I don’t know. For what I’ve done, I don’t see why I need a lawyer,” was equivocal, but argued it set the tone for Suff’s next request. (31 RT 6290; see 8 CT 2057-2058.) As to Suff’s second statement, “if I’m being charged with this I think I need a lawyer,” the defense argued Detective Keers was being “disingenuous” by telling Suff he was not being charged “at this time.” (31 RT 6290-6291; see 8 CT 2059.) Suff now argues the trial court prejudicially erred when it found Suff did not invoke his right to counsel until after this statement. (AOB 290, 297-307.)

In *Davis v. United States*, *supra*, 512 U.S. 452, the Supreme Court held the defendant’s statement, “Maybe I should talk to a lawyer,” was equivocal and that continued questioning did not violate *Miranda*. “[W]e are unwilling to create a third layer of prophylaxis to prevent police questioning when the suspect *might* want a lawyer. Unless the suspect actually requests an attorney, questioning may continue.” (*Id.* at p. 462, original italics.) Similar cases from other jurisdictions and from the Ninth Circuit reached the same conclusion. (See *Burket v. Angelone* (4th Cir. 2000) 208 F.3d 172, 196-198 [“I think I need

a lawyer” found equivocal]; *State v. Eastlack* (1994) 180 Ariz. 243, 250-252 [883 P.2d 999, 1005-1007] [“I think I better talk to a lawyer first” found equivocal]; *Robtoy v. Kincheloe* (9th Cir. 1989) 871 F.2d 1478, 1482 [“maybe I should call my attorney” found equivocal]; *United States v. Cherry* (5th Cir. 1984) 733 F.2d 1124, 1130 [defendant found equivocal in stating, “maybe I should talk to an attorney before making a further statement,” followed by, “why should I not get an attorney?”].)

Further, as Suff acknowledges (AOB 297-299), this Court held in *People v. Gonzalez* (2005) 34 Cal.4th 1111:

On its face, defendant’s statement was conditional; he wanted a lawyer *if* he was going to be *charged*. The conditional nature of the statement rendered it, at best, ambiguous and equivocal because a reasonable police officer in these circumstances would not necessarily have known whether the condition would be fulfilled since, as these officers explained, the decision to charge is not made by police. Confronted with this statement, a reasonable officer would have understood only that “the suspect *might* be invoking the right to counsel,” which is insufficient under *Davis* to require cessation of questioning.

(*Id.* at p. 1126.) However, Suff attempts to distinguish the case by arguing without citing authority, “[t]he fact that the detectives in *Gonzales* truthfully explained the defendant’s predicament to him tends to show that they truly did not know if he had invoked his rights.” (AOB 299.) This Court recently rejected a similar argument which accused an officer of misleading a defendant. (*People v. Smith, supra*, 40 Cal.4th at pp. 503-504.) “Indeed, several federal circuit courts have held that a suspect’s *Miranda* waiver remains valid even if interrogating officers mislead the suspect about how long it will take to appoint counsel.” (*Ibid.*)

Here, when Suff stated, “I need to know, am I being charged with this, because if I’m being charged with this I think I need a lawyer,” Detective Keers simply answered his question (“am I being charged with this”) – truthfully – by stating, “Well at this point, no you’re not being charged with this.” (31 RT

6207-6208, 6219; 8 CT 2059.) Immediately after Detective Keers's response, Suff volunteered, "You can search my apartment as long as I'm there with you, with who ever's searching." (31 RT 6207-6208; 8 CT 2059.) Detective Keers properly answered Suff's question because under these circumstances, where Suff had not yet been either booked on or charged with the murders about which he was being questioned, his statement, "if I'm being charged with this I think I need a lawyer," was the equivalent of expressing that Suff *might* need a lawyer. (*People v. Gonzalez, supra*, 34 Cal.4th at p. 1126.) Because Suff did not unequivocally request an attorney, Detective Keers properly continued questioning him. (*Davis v. United States, supra*, 512 U.S. at p. 462.) The trial court did not err in so finding.

Even if the statements following Suff's second statement should have been suppressed, there is no reasonable likelihood he would have enjoyed a different result if the statements admitted during trial had not been admitted. At trial, Detective Keers testified that during an interview, Suff initially denied that his van was on Victoria Avenue on December 23, 1991. (37 RT 7972.) When Detective Keers told Suff that tire tracks from his van's tires were located in an orange grove area off of Victoria Avenue, Suff admitted his van was on Victoria Avenue on December 23. (37 RT 7972.) Although Suff also denied anything was in the orange grove, he later said there was a body in the orange grove, but denied putting it there. (37 RT 7972-7974.) Detective Keers asked Suff whether his shoe prints were in the orange grove, and Suff admitted he had left shoe prints there. (37 RT 7973.) Suff repeatedly denied killing any of the victims. (37 RT 7976, 7980.)

Even without Suff's admission that his van was on Victoria Avenue on December 23, the uniquely mismatched tires on Suff's van were traced to the Casares crime scene and five other of the 12 crime scenes (Miller, Leal, Ferguson, Puckett, and McDonald). (32 RT 6606-6653, 6663; 33 RT

6680-6694, 6697-6715, 6717-6727, 6732-6753, 6754.16-6754.19, 6754.29(1)-6754.29(2), 6793-6794, 6809-6810, 6813-6815, 6820-6827.) Moreover, considerable hair, fiber, DNA, and shoe imprint evidence linked Suff and his van to both the orange grove and Casares's body. (26 RT 5028, 5083, 5086-5091, 5113-5121; 32 RT 6561-6566, 6568-6581, 6583-6592, 6597-6600, 6603-6606; 35 RT 7334-7337, 7339-7345, 7347-7348, 7350-7355, 7360-7363, 7365-7369; 37 RT 7898-7906, 7922-7925, 7939-7940; see 35 RT 7354-7355, 7390-7393.) Finally, DNA polymarker analysis showed the blood on the knife found in Suff's van matched the DNA of Casares and could not have come from Suff. (37 RT 7805-7807; see also 37 RT 7900-7902.) On this record, any error under *Miranda* was harmless beyond a reasonable doubt. (*Chapman v. California, supra*, 386 U.S. at p. 18.)

VII.

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING INTO EVIDENCE PHOTOGRAPHS OF THE VICTIMS WHILE THEY WERE ALIVE

During the guilt phase of trial, the prosecutor introduced and the court accepted into evidence Exhibit 448, a photoboard bearing pictures and names of the 13 victims of the charged murders while they were still alive, along with the dates and approximate locations where their bodies were found. (37 RT 7860-7861, 7981-7984.) Suff argues the trial court abused its discretion in admitting the exhibit into evidence, claiming the photos were “an inappropriate emotional appeal to the jury by a prosecutor who had depicted the victims throughout the trial as ‘street and drug using prostitutes’ . . . and now sought to portray them in a different light.” (AOB 309-310.) The exhibit, however, was a relevant visual aid to assist the jury in sorting through and organizing the overwhelming amount of information – testimony from approximately 200 witnesses and about 1,000 exhibits or items of evidence – presented over the

course of the three and one-half month trial. (See 41 RT 8842.) Moreover, the prosecutor's use of photos of the victims while alive was not prejudicial or "an inappropriate emotional appeal to the jury." There was no error.

The trial court has broad discretion in determining the relevance of evidence, and in weighing the prejudicial effect of the proffered evidence against its probative value.^{35/} (*People v. Sanders* (1995) 11 Cal.4th 475, 512, *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) Relevant evidence is that evidence which has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.) The test of relevance is whether the evidence tends logically, naturally, and by reasonable inference to establish material facts, including identity, intent, or motive. (*People v. Garceau* (1993) 6 Cal.4th 140, 177.) The term "prejudice" in Evidence Code section 352 refers to evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. (*People v. Scheid* (1997) 16 Cal.4th 1, 19.) Where a discretionary power is statutorily vested in the trial court, its exercise of that discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodrigues, supra*, 8 Cal.4th at p. 1124.) In addition, the California Constitution provides:

No judgment shall be set aside, or new trial granted, in any cause, on the ground . . . of the improper admission or rejection of evidence, . . .

35. Evidence Code section 352 states:

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

(Cal. Const., art. VI, § 13; Evid. Code, § 353; *People v. Breverman* (1998) 19 Cal.4th 142, 173-176 [errors of state law subject to *Watson* standard]; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that the photos are unduly gruesome or inflammatory. (*People v. Scheid*, *supra*, 16 Cal.4th at p. 18.) The trial court's exercise of discretion to admit such photographic evidence will not be disturbed on appeal "unless the probative value of such photographs is clearly outweighed by their prejudicial effect." (*People v. Thompson* (1988) 45 Cal.3d 86, 114-115, *revd.* on other grounds *sub nom. Calderon v. Thompson* (1998) 523 U.S. 538 [118 S.Ct. 1489, 140 L.Ed.2d 728]; *People v. Hart* (1999) 20 Cal.4th 546; *People v. Phillips* (1985) 41 Cal.3d 29, 54.)

In *Hart*, the trial court allowed introduction of photographic evidence showing the victim's partly clothed body in a remote location, certain grievous wounds she sustained, and an autopsy photograph of the victim's mouth, trachea, and larynx, showing debris. (*People v. Hart*, *supra*, 20 Cal.4th at pp. 616-617.) This Court noted that although some of the challenged images were unpleasant, none were unduly gory or inflammatory; the photos portrayed factual reality and thus had probative value. (*Ibid.*)

Here, the photographs as part of a demonstrative exhibit which allowed the jury to pair a face with each of the thirteen names associated with each charged murder, view the chronology of the crimes and connect each charged murder with the crime scene location. (See 37 RT 7860-7861, 7983.) The prosecutor presented the exhibit near the end of the State's case-in-chief, during the relatively brief testimony of his investigator, George Hudson, in which Hudson utilized the photoboard and another exhibit to summarize and categorize

the facts established by the substantial forensic and testimonial evidence presented over the course of the lengthy trial. (37 RT 7860-7865; see 37 RT 7861 [“there was so much evidence, we wanted a way that we could all kind of summarize it in a graphic chart”].) Hudson attempted to obtain the most recent photograph of each victim through her relatives or friends, but in some cases the photos were a year to at least five years old. (37 RT 7865.) None of the photos, however, appear to have been other than simply pictures of the victims while alive. (See *People v. Thompson, supra*, 45 Cal.3d at p. 115 [photo did not show victim “with little children,” at church, or otherwise attempting to elicit jurors’ sympathy].)

The trial court admitted the photoboard exhibit into evidence not because the photos associated the victims’ names with their faces, since the court felt the prosecutor “can do that with other things as well,” but because the jurors could see the the similarity between the photographs on the photoboard and those photographs of these women which depicted them at “their worst.” (37 RT 7984.) The photos were relevant to show the true visual appearance – and therefore identity – of the various bloodied and in some cases decaying bodies they saw in crime scene and autopsy photos.

Contrary to Suff’s claim, the photographs were relevant to show the victims’ identities, as Suff offered no stipulation to that issue. (Compare *People v. Ramos* (1982) 30 Cal.3d 553, 577-578, revd. on other grounds sub nom. *California v. Ramos* (1983) 463 U.S. 992 [103 S.Ct. 3446, 77 L.Ed.2d 1171]; *People v. Kimble* (1988) 44 Cal.3d 480, 499; *People v. Hendricks* (1987) 43 Cal.3d 584, 594.) Suff also did not offer to stipulate that any of the 13 victims were live human beings prior to their encounters with him. (Compare *People v. Kimble, supra*, 44 Cal.3d at p. 499; *People v. Thompson, supra*, 45 Cal.3d at p. 115.) Victim photographs are not rendered irrelevant by the mere lack of a defense challenge to a particular aspect of the prosecutor’s case. (*People v.*

Lewis (2001) 25 Cal.4th 610, 641.) Suff's plea of not guilty put at issue every element of the offense, and the identities of each of the thirteen victims was certainly vital to the prosecutor's case. (*People v. Steele* (2002) 27 Cal.4th 1230 1243-1244.) Accordingly, the trial court properly exercised its discretion when it admitted the photographs.

Even if the trial court erred in admitting the photoboard, no prejudice resulted. Despite Suff's claim that the photos were improperly admitted because they showed the victims "under the best of all possible circumstances" (AOB 308), none of the photos was "particularly calculated to elicit sympathy." (See *People v. Thompson, supra*, 45 Cal.3d at p. 115.) In *People v. Hovey* (1988) 44 Cal.3d 543, 571, a victim's photo "though perhaps 'charming,' was nonetheless an 'ordinary' one not likely to produce a prejudicial impact." Further, the guilt phase evidence did not present a "close" case in which the verdict may have been susceptible to the jury's sympathy for the victims. (See *ibid.*; *People v. Ramos, supra*, 30 Cal.3d at p. 578.) The evidence connecting the victims to each other and linking Suff to each of the murder victims and to the crime scenes was overwhelming. It is not reasonably probable that Suff would have obtained a more favorable result had the photos on the photoboard exhibit been excluded. (*People v. Heard* (2003) 31 Cal.4th 946, 978.) Suff suffered no prejudice as a result of the trial court admitting the photoboard.

VIII.

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION REGARDING VICTIM IMPACT EVIDENCE

Suff argues the trial court abused its discretion by permitting up to three victim impact witnesses per charged murder and failing to curtail "cumulative and excessively emotional testimony" thereby violating Suff's constitutional rights to due process, fair trial, and a reliable penalty determination. (AOB 339-

350.) The victim impact testimony admitted in this case was well within the statutory and constitutional guidelines for such evidence. Moreover, there was overwhelming other evidence in aggravation, such as (1) the sheer number and brutality of the killings prosecuted in this case; (2) that Suff shook and beat to death his two-month-old daughter Dijanet for which he served a 10 year prison sentence; (3) that serving that 10 years in a Texas prison with the threat of a 60-year remainder on his murder sentence had not deterred Suff from abusing and nearly killing his other daughter, three-month-old Bridgette; (4) the callous manner in which Suff mutilated the bodies of some of his victims, including inserting a lightbulb inside one victim's uterus and slicing off the breasts of other victims; and (5) the additional loss of Catherine McDonald's four-month fetus. Suff was not prejudiced by the proportionately reasonable victim impact evidence, given the weight of the other evidence in aggravation, the weakness of mitigating evidence, the instructions to the jury, and the overall scope of the penalty proceedings.

Before even jury selection began, the defense filed a motion on August 4, 1994, to exclude victim impact evidence, or in the alternative, hold an Evidence Code section 402 hearing to limit victim impact evidence such that the jury's verdict would be "based on the character of the defendant and the circumstances of the crime" (4 CT 1050-1058.) The prosecutor submitted responsive briefing on August 18, 1994, in which he listed the names of 85 potential witnesses, with between two and as many as 18 witnesses listed per charged victim. (4 CT 1071-1081.)

On August 26, 1994, the trial court heard and denied Suff's motion to exclude victim impact evidence. (4 CT 1084; 5 RT 1016-1030.) The court found that to impose a "blanket exclusion" of evidence at such an early stage was "premature" and "inappropriate," but did state flatly, "We will not hear from 85 people." (5 RT 1028.) Rather, the trial court stated it would make sure

the witness list was “pared down” to what is “appropriate to the time.” (5 RT 1029.)

At the time of the penalty phase, due to the potential number of witnesses arising from the number of Suff’s murder victims, the trial court imposed a limitation of three witnesses per victim with the caveat that three witnesses would not be permitted for each victim. (42 RT 9130.) The prosecutor assured the court that if he decided to present as many as two or three witnesses for one victim, he would ensure the testimony was not repetitive. (42 RT 9130.)

Later, the defense inquired whether the trial court would place limitations on the type of testimony – namely, if family members would be permitted to testify as to the victims’ good characters – and noted, “I anticipate objecting a lot if people are trying to say how wonderful their daughter was or whatnot.” (42 RT 9267.) After hearing argument from both parties, the court responded,

I intend to keep the proceedings under control. I don’t mean to be facetious about that, but [the prosecutor] brings up a good point. You put someone on the stand, the mother, “I’m going to miss her notes to me,” or she might be somewhat poetic. What’s wrong with saying she’s going to miss her writing those poems? [¶] . . . [¶] . . . that’s a quality about the individual. We’re talking about good things. It’s a quality with the individual.

(42 RT 9268.)

Ultimately, the prosecution presented testimony from 16 witnesses, all immediate family members of 10 of the 13 victims in the crimes for which Suff was convicted, with one family member testifying per murder count except for victims Susan Sternfeld (two witnesses), Catherine McDonald (three witnesses), Delliah Zamora (three witnesses), and Eleanor Casares (two witnesses). No witnesses testified as to Cheryl Coker, Sherry Latham, attempted murder victim Rhonda Jetmore, or Cherie Payseur, the victim in Count 8, on which the jury deadlocked (10 CT 2552).

Of the 10 murder victims for whom family members testified, the testimony established that Lyttle, Leal, Miller, Sternfeld, Pucket, Hammond, McDonald, Zamora, and Casares each came from families of three to eight siblings. (43 RT 9364, 9388, 9399, 9415, 9427, 9435, 9465, 9483, 9495, 9501, 9520; 44 RT 9566.) All 10 of the women had at least one child; Zamora had the most with six children, while Lyttle, Ferguson, and Miller each had one child; and one of Sternfeld's two boys was the youngest at about a year old when she died. (43 RT 9365-9366, 9378-9379, 9391, 9401, 9412-9413, 9415, 9427, 9466, 9475, 9502, 9514; 44 RT 9567.) Eleven witnesses described the drug history the individual victims and/or their efforts to help the victim get off of drugs. (43 RT 9365, 9367-9368, 9380-9381, 9389-9390, 9400-9401, 9411-9412, 9415-9417, 9426-9427, 9465-9467, 9472, 9489-9490, 9507-9510, 9522; 44 RT 9568-9570, 9575.) Twelve witnesses testified to some trait of a victim's character or personality. (43 RT 9365, 9372-9373, 9390, 9393, 9401-9402, 9407, 9415, 9417-9419, 9425-9426, 9428-9429, 9442-9443, 9465-9468, 9486, 9497, 9504-9506, 9516-9518, 9521-9522.) Nine family members described their last contact with a victim. (43 RT 9367-9368, 9379, 9404, 9418, 9445-9447, 9476-9477, 9488-9489, 9522; 44 RT 9568.) Nine explained how they learned of and/or reacted to news of the family member's murder, and two others described their experiences seeing the victim's body. (43 RT 9369, 9382, 9391-9393, 9404-9407, 9444-9445, 9469, 9478-9481, 9485-9487, 9496-9497, 9510-9511, 9522-9523.) Three witnesses had to break the news of a victim's death to another family member. (43 RT 9381-9382, 9393-9394, 9469-9470.)

All but one of the witnesses explained how the victim's death had affected the witness and/or other family members of the victim: for example, Lyttle's father could not keep the memory of the crime scene photos from his mind (43 RT 9369-9370), and her daughter was having a difficult time trying to cope (43 RT 9376-9377). Leal's brother started drinking (44 RT 9571, 9573-

9574), and Leal's death had also been difficult on his mother, siblings, and on his own child (44 RT 9570-9573). Ferguson's daughter was angry, scared, and sad over her mother's murder. (43 RT 9382, 9386.) Other witnesses similarly described how the victim's death had made them and other family members feel, including how holiday celebrations had changed since the victim's death. (43 RT 9402-9407, 9419, 9470, 9479, 9487-9488, 9502-9505, 9508.) Puckett's sister was unable to complete her testimony after becoming overcome with emotion while recalling how the family told Puckett's children about her death. (43 RT 9393-9394; 46 RT 10297.)

A. Suff Has Partially Forfeited His Claim By Failing To Raise Timely And Specific Objections

Suff has forfeited any specific challenges to the "lengthy, narrative responses" by witness Dina Zamora, as well as what Suff deems the "many extraneous matters" addressed by Jose Leal, David Hammond, Ida Simmons, and Maria Harrison,^{36/} for he failed to raise timely and specific objections to

36. Further, Harrison specifically testified that her respiratory infections and depression were the result of Miller's death. (43 RT 9470.) "Indeed, it is only logical that the effects, both psychological and physical, of a violent and murderous assault such as defendant's would be enduring." (*People v. Brown* (2004) 33 Cal.4th 382, 397.) Certainly, when a loved one is likely raped (34 RT 7129-7132; 37 RT 7788-7789) as well as bound, repeatedly stabbed, and smothered to death (22 RT 4199-4200; 23 RT 4274-4277, 4289; 27 RT 5438, 5440-5442, 5445-5448, 5454-5455), before her naked body is dumped in a grapefruit grove (22 RT 4160-4167, 4186, 4198; 23 RT 4274), the extreme depression and resulting decline in physical health of a surviving family member is a "foreseeable effect" of Suff's murderous acts, and was thus admissible as a circumstance of the crime bearing on his culpability. (See *People v. Mickle* (1991) 54 Cal.3d 140, 187 [ongoing pain, depression, and fear were foreseeable effects of defendant's prior violent sexual assaults upon the victims and thus admissible as circumstances of the prior crimes bearing on his culpability]; *People v. Boyette* (2002) 29 Cal.4th 381, 441, 445 [victim's sister "had difficulty sleeping, was depressed all the time . . . had lost a lot of weight and had had trouble caring for her son"].)

such testimony. (See AOB 344-346.) Suff in fact acknowledges the trial court admonished the defense, when it belatedly objected to Dina Zamora's testimony as narrative. (43 RT 9454; AOB 345.)

Before the first victim impact witness even testified, defense counsel stated his intention to "object a lot" if witnesses began to testify to matters he considered outside the scope of permissible testimony. (42 RT 9267.) Yet, in explaining at trial why he did not make a timely objection to Dina Zamora's "narrative responses," counsel stated that it was "really hard to object in the middle" of Zamora's testimony and interrupt her. (43 RT 9454-9455; see AOB 345.) This Court has noted that the failure to make a timely objection (Evid. Code, § 353) "may not be excused on the ground that [it] would be inconvenient or because of concerns about how jurors might perceive the objection." (*People v. Pollock* (2004) 32 Cal.4th 1153, 1181; see also *People v. Benavides* (2005) 35 Cal.4th 69, 106 [belated objection without motion to strike is insufficient to preserve issue for appeal].) The rule is well-established that "points not urged in the trial court may not be urged for the first time on appeal." (*Damiani v. Albert, supra*, 48 Cal.2d at p. 18; see also *People v. Sanders, supra*, 11 Cal.4th at pp. 512, fn. 4, 526, fn. 17; *People v. Mickle, supra*, 54 Cal.3d at p. 187.) Suff has forfeited his claims concerning the allegedly "extraneous matters" to which victims' family members testified.

Similarly, Suff has forfeited his claims regarding testimony about drawings Sternfeld's son Mikey had drawn after her death (see AOB 348; 43 RT 9405-9406), a picture of Dennis the Menace Sternfeld sent to her sister from prison (see AOB 348; 43 RT 9413), and the class assignment Zamora's niece wrote about "The beginning to the end" of Zamora's life (see AOB 343; 43 RT 9457-9458), as he failed to object during trial and the record reflects the defense was noticed before their mention or exposure to the jury (see 43 RT 9453). The majority of this documentary evidence was nevertheless proper, as will be

discussed below. As to the remainder and to the testimony Suff now claims was “extraneous,” the admission of such testimony was harmless beyond a reasonable doubt, as will also be discussed below.

B. The Trial Court Did Not Abuse Its Discretion As To The Number Of Witnesses Or The Scope Of Their Testimony Regarding Victim Impact

Evidence of a murder’s impact on a victim and the victim’s family and friends is admissible in the penalty phase of a capital trial. (*Payne v. Tennessee* (1991) 501 U.S. 808, 825 [111 S.Ct. 2597, 115 L.Ed.2d 720]; *People v. Navarette* (2003) 30 Cal.4th 458, 515; *People v. Edwards* (1991) 54 Cal.3d 787, 835.) The admission of victim impact evidence, however, is not without limits. “Irrelevant information or inflammatory rhetoric that diverts the jury’s attention from its proper role or invites an irrational, purely subjective response should be curtailed.” (*Payne, supra*, 501 U.S. at p. 836.) Moreover, victim impact evidence cannot be “so unduly prejudicial that it renders the trial fundamentally unfair” in contravention of a defendant’s right to due process under the Fourteenth Amendment. (*Id.* at p. 825; *People v. Brown, supra*, 33 Cal.4th at p. 396; *People v. Edwards, supra*, 54 Cal.3d at p. 835.)

Suff argued below that only one witness per victim should have been permitted, if any (42 RT 9130), and now complains, “[n]early half of [the prosecutor’s] penalty phase case-in-chief was devoted to victim impact testimony” (AOB 344). The sheer number of women Suff murdered caused the majority of the prosecution’s penalty phase to be devoted to victim impact testimony.

Moreover, in arguing that the trial court overstepped its bounds in admitting victim impact testimony in this case, Suff relies heavily upon *Salazar v. State* (Tex.Crim.App. 2002) 90 S.W.3d 330, the facts of which this Court characterized as “extreme.” (*People v. Robinson* (2005) 37 Cal.4th 592, 652;

see also *People v. Prince*, *supra*, 40 Cal.4th at p. 1289.) This Court has consistently expressed its approval of *Payne* and rejected any bright-line limitations on victim impact testimony. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1056-1057; *People v. Pollock*, *supra*, 32 Cal.4th at p. 1183; *People v. Raley* (1992) 2 Cal.4th 870, 915 [rejecting defendant's request to declare victim impact evidence and argument improper under the federal Constitution].)

As this Court has held:

Unless it invites a purely irrational response from the jury, the devastating effect of a capital crime on loved ones and the community is relevant and admissible as a circumstance of the crime under section 190.3, factor (a).

(*People v. Lewis and Oliver*, *supra*, 39 Cal.4th at pp. 1056-1057.) In so holding, this Court recognized:

[T]he prosecution has a legitimate interest in rebutting the mitigating evidence that the defendant is entitled to introduce by introducing aggravating evidence of the harm caused by the crime, “reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.”

(*People v. Prince*, *supra*, 40 Cal.4th at p. 1286, quoting *Payne v. Tennessee*, *supra*, 501 U.S. at p. 825.) Suff offers no persuasive reasons for this Court to revisit or deviate from its sound, well-established precedent, and this Court should thus reject Suff's limit to the number of witnesses who may present victim impact evidence, which is itself “arbitrary.” (See AOB 340, 344, 349.)

Finally, this Court has approved of multiple witnesses testifying to victim impact. (*People v. Pollock*, *supra*, 32 Cal.4th at p. 1183; see, e.g., *People v. Huggins* (2006) 38 Cal.4th 175, 236-238 [no due process violation where seven to eight witnesses testify as to victim impact]; *People v. Panah*, *supra*, 35 Cal.4th at pp. 416, 494-495 [no due process violation where five members of victim's family testified regarding the victim and their loss]; *People v. Boyette*, *supra*, 29 Cal.4th at pp. 440-441, 443-444; *People v. Taylor* (2001) 26 Cal.4th

1155, 1171-1172; see John H. Blume, Ten Years of *Payne*: Victim Impact Evidence in Capital Cases, (2003) 88 Cornell L.Rev. 257, 270 [most states allowing victim impact evidence place no limit on the number of witnesses].) So long as victim impact evidence is not unduly prejudicial pursuant to Evidence Code Section 352, the trial court should have discretion to admit any number of witnesses. (See *People v. Box*, *supra*, 23 Cal.4th at pp. 1200-1201.)

In this case, where more than one witness testified as to a particular victim, each witness offered a different perspective and was uniquely affected by the victim's death. For victim Susan Sternfeld, her sister and her mother testified. (43 RT 9399-9422.) As the eldest of seven sisters, victim Catherine McDonald's sister, Ida Simmons, had a more motherly relationship with McDonald than did her sister Dorothy McDonald, who was like a twin to McDonald. (43 RT 9485, 9496-9497.) Moreover, as the prosecutor noted during closing argument, Simmons had encouraged McDonald to move to Riverside and even found an apartment for her sister, which caused Simmons to feel guilt and responsibility over McDonald's death. (43 RT 9484-9485, 9488-9490; 46 RT 10297.) Still different was the effect of McDonald's death on her 16-year-old daughter Charlia Howard, who was alone with her little brother when police showed up at the door, brought her outside by herself, and said her mother had been killed. (43 RT 9480-9481.) Delia Zamora's sister, mother, and brother were each uniquely affected by her murder by virtue of their different types of relationships with her, including Zamora's closeness to her brother's children. (See 43 RT 9425-9426, 9428-9430, 9435, 9445, 9450, 9456-9459.) And Eleanor Casares's 19-year-old daughter's testimony offered a distinctive point of view from that of Casares's sister, Adela Soliz, who was only a year younger than Casares. (43 RT 9514-9527.) The testimony by more than one witness for these victims was not cumulative or redundant; the trial court's limitation of the number of witnesses per victim was a reasonable

guideline under the circumstances, and a proper exercise of judicial discretion. (See *People v. Pollock*, *supra*, 32 Cal.4th at p. 1183; *People v. Huggins*, *supra*, 38 Cal.4th at p. 237.)

Suff also complains the victim impact evidence admitted in this case violated the limitations set forth in *Payne* and California precedent. Specifically, Suff claims: (1) the victim impact witnesses offered irrelevant, prejudicial testimony concerning their loved ones' personalities and the reasons other family members were unable to testify; (2) documentary evidence and related testimony regarding a poem Miller had written, pictures Sternfeld's son had drawn, photos of Zamora's sons at her gravesite, notes to Zamora from her sons, the class assignment Zamora's niece wrote about "The beginning to the end" of Zamora's life, and the picture of Dennis the Menace sent by Sternfeld to her mother were irrelevant, emotional, and "served primarily to elicit sympathy." (AOB 342-343, 347-349.) As to the drawings by Sternfeld's son, composition by Zamora's niece, and picture of Dennis the Menace, Suff failed to enter a timely objection at trial and has forfeited his claim. Regardless, none of the testimony or documentary evidence in question abridged Suff's constitutional rights.

It is well established that evidence of a victim's character is admissible during the penalty phase of a capital trial as a circumstance of a defendant's offense. (Pen. Code, § 190.3, subd. (a); see *People v. Huggins*, *supra*, 38 Cal.4th at pp. 238-239; *People v. Robinson*, *supra*, 37 Cal.4th at p. 650; *People v. Roldan* (2005) 35 Cal.4th 646, 730-732; *People v. Panah*, *supra*, 35 Cal.4th at pp. 494-495; *People v. Boyette*, *supra*, 29 Cal.4th at p. 445; *People v. Hardy* (1992) 2 Cal.4th 86, 200.) Despite this well-established precedent, Suff argues that the victim impact witnesses in this case offered irrelevant, excessive, and emotional accounts of their loved ones' personalities, as well as objectionable testimony explaining why other family members were unable to testify, which

“made it likely that emotion improperly overcame reason in the jury’s death judgment.” (AOB 349.)

This Court has explained that evidence concerning a victim’s unique personality, including his or her “zest for life,” “compassion, loyalty, and extroversion,” and the effect of his or her death on family and friends is “well within the boundaries” of permissible victim impact evidence under *Payne* and *Edwards*. (*People v. Huggins, supra*, 38 Cal.4th at pp. 236-238; *People v. Montiel* (1993) 5 Cal.4th 877, 935.) Among other personal qualities, this Court has approved of evidence concerning a victim’s stage and musical talent, charitable contributions, community service, and religious activities. (*People v. Prince, supra*, 40 Cal.4th at pp. 1287-1291; *People v. Lewis and Oliver, supra*, 39 Cal.4th at p. 1057; *People v. Huggins, supra*, 38 Cal.4th at pp. 236-238; *People v. Roldan, supra*, 35 Cal.4th at pp. 722, 730-732; *People v. Pollock, supra*, 32 Cal.4th at pp. 1180-1181.) A defendant’s “rights are not infringed by evidence or argument showing that the victim was a unique and valuable human being.” (*People v. Clark, supra*, 5 Cal.4th at pp. 1033-1034.)

The law does not require that a witness restrict their testimony to the impact upon themselves, omitting any mention of the impact upon other family members. (*People v. Panah, supra*, 35 Cal.4th at p. 495.) In *Panah*, this Court held that family members’ brief testimony as to the effect of a victim’s death on another family member was “neither irrelevant nor prejudicial but, in context, depicted the ‘residual and lasting impact’” that family member continued to experience as a result of the murder. (*Ibid.*)

Evaluating victim impact testimony under *Payne* and *Edwards*, this Court has permitted descriptions of what the victim’s family saw when they viewed the victim at the mortuary, visits to gravesites, changes in holiday celebrations, resulting drug abuse or mental disease, and other physical or mental manifestations of psychological impact from the victims’ murders. (*People v.*

Jurado (2006) 38 Cal.4th 72, 133 [trauma from death of a child, gravesite visits, holidays changed, and impact on children of victim, including nightmares]; *People v. Harris, supra*, 37 Cal.4th at pp. 351-352 [descriptions of victim at mortuary and photos of gravesite]; *People v. Panah, supra*, 35 Cal.4th at pp. 494-495 [testimony that family member used drugs and became suicidal as a result of offense proper]; *People v. Brown, supra*, 33 Cal.4th at pp. 397-398 [“manifestations of psychological impact” and “understandable human reactions” experienced by family and friends are admissible]; *People v. Pollock, supra*, 32 Cal.4th at p. 1183 [family member decided to sell home where murder occurred because he could not stand the memory of the crime]; *People v. Benavides, supra*, 35 Cal.4th at p. 107 [written statement by read witness]; *People v. Brown* (2003) 31 Cal.4th 518, 573 [victim’s loved ones still afraid to go outside of the house three years after offense]; *People v. Marks* (2003) 31 Cal.4th 197, 236-237 [deterioration of physical condition and loss of job as a result of victim’s death]; *People v. Boyette, supra*, 29 Cal.4th at pp. 440, 444 [severe impact on victim’s children, siblings].)

Testimony in this case as to reasons other family members could not testify was akin to relating the effects of the victims’ deaths on other family members. (See *People v. Marks, supra*, 31 Cal.4th at p. 235; *People v. Huggins, supra*, 38 Cal.4th at pp. 236-238; *People v. Panah, supra*, 35 Cal.4th at p. 495.) Ida Simmons said her mother was present in court but due to her mother’s heart condition, Simmons was testifying in her place; “I can take it more than her. It hurts me, too, but I think I’m a little bit stronger than her.” (43 RT 9485.) David Hammond explained that his father “couldn’t bear” testifying; “he just wants to remember Kelly as she was.” (43 RT 9503.) After stating that the manner in which Leal was killed particularly affected his mother, Jose Leal responded to the prosecutor’s queries that his mother was present in court but unable to testify. (44 RT 9570-9571.) Maria Harrison testified that Miller’s

only son, Ray, was “still very upset” from his mother’s death, which “really affected him”; thus he was unable to even come to court. (43 RT 9470.) Hester Sternfeld explained that her son,^{37/} Susan Sternfeld’s older brother, was so devastated from Sternfeld’s death that he “can’t even come down here to see this man in this courtroom.” (43 RT 9419; see 43 RT 9402-9404.) This Court found similar testimony permissible in *Boyette*. (*People v. Boyette, supra*, 29 Cal4th at pp. 441, 445 [victim’s oldest brother moved from the area due to his distress; victim’s son was too upset to testify in court].)

The pictures drawn by Sternfeld’s son Mikey after her murder were relevant and proper to show the psychological effect Sternfeld’s death had on her child, and Carol Carrillo, as Mikey’s aunt, was qualified to testify on this point. (See *People v. Huggins, supra*, 38 Cal.4th at pp. 236-238; *People v. Panah, supra*, 35 Cal.4th 395, 495.) Carrillo said Mikey described the first drawing as Jesus, who was sad “because [Mikey] didn’t have his mommy” (43 RT 9405-9406.) The second drawing was of Sternfeld as an angel in heaven. (43 RT 9406.) Although the drawings were religious in nature, Carrillo had earlier testified that Sternfeld shared her faith with others (43 RT 9402), and while describing the first drawing, Carrillo explained to the jury that Sternfeld used to read Bible stories to Mikey, as Carrillo had to Sternfeld (43 RT 9402). Neither Carrillo nor the drawings suggested that religious doctrines should influence the penalty determination process. (See *People v. Pollock, supra*, 32 Cal.4th at p. 1181.) Further, Carrillo’s testimony describing the drawings was not as emotional as that found permissible by the Supreme Court in *Payne*. (*Payne v. Tennessee, supra*, 501 U.S. at pp. 814-815, 826.)

Moreover, it is well-established that testimony by family members about the various ways their lives were adversely affected by a victim’s death is

37. Suff’s Opening Brief mistakenly identifies Chris Sternfeld as Hester’s grandson. (AOB 348.)

proper. (*People v. Huggins, supra*, 38 Cal.4th at pp. 236-238; *People v. Panah, supra*, 35 Cal.4th at pp. 494-495; *People v. Benavides, supra*, 35 Cal.4th at p. 107; *People v. Stitely* (2005) 35 Cal.4th 514, 564; *People v. Pollack, supra*, 32 Cal.4th at pp. 1182-1183; *People v. Boyette, supra*, 29 Cal.4th at p. 444; *People v. Taylor, supra*, 26 Cal.4th at p. 1171; *People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1017.) That families are aggrieved is an “obvious truism” and an “obvious and predictable” consequence of murder. (*People v. Sanders, supra*, 11 Cal.4th at p. 550.) While victim-impact evidence is obviously emotional, it is not surprising or shocking. (*Id.*)

The brief testimony by Carrillo, which transpired over a total of twelve to fifteen lines of Reporter’s Transcript including the prosecutor’s questions, simply explained the two drawings and thereby communicated the impact Sternfeld’s death still had on Mikey even after three years. (43 RT 9410-9411.) Additionally, Carrillo’s simple testimony about the drawings was less emotionally-charged than the boy’s live testimony would have been; therefore the trial court did not abuse its discretion in allowing it. (See *People v. Edwards, supra*, 54 Cal.3d at p. 836 [when admitting victim impact evidence, “the trial court must strike a careful balance between the probative and the prejudicial”]; *People v. Lewis and Oliver, supra*, 39 Cal.4th at p. 1057 [children of murder victims need not be adults to testify about their loss].)

Likewise, the photos of Zamora’s sons placing flowers and notes at her gravesite were relevant to show their emotional reactions to her death and, as the trial court noted, took the place of any of the young boys testifying in person, which could have had an even greater emotional impact upon the jury. (43 RT 9437-9438.) “[B]ut for this tragic occurrence,” the trial court explained, the children would not be going to their mother’s gravesite; “[t]his is how it’s impacting these children.” (43 RT 9439.) Indeed, this Court has held that photographs of a victim’s gravesite constituted evidence of the victim’s death

and the effect upon her family, and were properly admitted as a circumstance of the murders. (*People v. Harris, supra*, 37 Cal.4th at p. 352.)

For the same reasons that Mikey's drawings and the gravesite photos were admissible, Zamora's son Jacob's gravesite note reading, "I love you. I miss you, Mom, very much" was proper victim impact evidence. (See 43 RT 9441.) Additionally, as the trial court observed, the children could have testified and read their own letters in lieu of their grandmother's testimony. (43 RT 9437-9439; see *People v. Benavides, supra*, 35 Cal.4th at p. 107.) The excerpt from 11-year-old Yvonne Zamora's composition about her "Aunt Del," called, "The beginning to the end," was for these same reasons admissible as evidence of the effect of Delliah Zamora's death upon her niece. (43 RT 9458.) The trial court's admission of testimony about the documentary evidence in place of live testimony from Jacob and Yvonne, as with Jacob's graveside note, was a proper exercise of discretion. (See *People v. Edwards, supra*, 54 Cal.3d at p. 836.)

As to the "letter to Mom" from Jacob to Zamora, dated June 8, 1991, which described Zamora as "caring and sweet and beautiful to me," and the undated "letter to Mom" from Zamora's son Carl, which was described only as "talk[ing] about how much he loves his mother" (43 RT 9441-9442), the substance of the letters was evidence of Zamora's character and unique personality, permissible under *Payne* and *Edwards* (see *People v. Huggins, supra*, 38 Cal.4th at pp. 236-238). Such testimony was relevant to show how the killings affected Jacob and Carl, not whether they were *justified* in their feelings due to Zamora's actual character. (*People v. Boyette, supra*, 29 Cal.4th at p. 445.) Like in *Boyette*, the jury in this case was already acutely aware none of the victims were "upstanding citizens." (*Ibid.*) None of the proffered evidence concerning the victims' characters, considered individually or cumulatively, could have "diverted[ed] the jury's attention from its proper role" in penalty determination or "invite[d] an irrational, purely subjective response."

(*People v. Edwards, supra*, 54 Cal.3d at p. 836; *People v. Pollock, supra*, 32 Cal.4th at p. 1180.)

Harrison's testimony that Carol Miller loved to write poems or songs, followed by Harrison's recitation of a poem Miller wrote just a few months before her murder,^{38/} also did not constitute "irrelevant information or inflammatory rhetoric that divert[ed] the jury's attention from its proper role" (See *People v. Prince, supra*, 40 Cal.4th at p. 1290, quoting *People v. Edwards, supra*, 54 Cal.3d at p. 836.) The recitation, which comprised about twelve lines of Reporter's Transcript, was merely a "quick glimpse" of Miller's life (see *People v. Prince, supra*, 40 Cal.4th at p. 1288), and of one aspect of her "uniqueness as an individual human being" (*People v. Brown, supra*, 33 Cal.4th at p. 398; *Payne v. Tennessee, supra*, 501 U.S. at p. 823). Although religious in nature, the poem spoke of optimism and love, consistent with Harrison's earlier testimony that Miller had a "gentle spirit" and "only wanted to see the good." (43 RT 9465.) Harrison had also testified before the poem that Miller had been attending Narcotics Anonymous and "going to church an awful lot" shortly before her death, "to get her life straight for her son and for herself," which the poem also reflects. (43 RT 9467.) Neither Harrison nor the poem's

38. The poem, written by Miller toward the end of 1989, read:

I was moving right a long singing my song, had it all, it was mine, just about to align, looking for my friend, his heart I'm going to win. I was happy and carefree until I looked up and who did I see? Oh, no, it's you. So I stumble, stumbled and fell, went through nine kinds of hell, but Satan my soul's just not for sale, because you see he shined on me. Had this tiger by the tail while you were pushing me to fail, Satan, Satan, we all know you fell, but ha, I got a different story to tell. When things were looking pretty down. He was always around. Even when I was sinning and a grinning, doing whatever I could scrounge until I just figured out Jesus is the only true love around.

(43 RT 9469.)

wording suggested that the jury should consider religious doctrines in determining the penalty verdict. (See *People v. Pollock, supra*, 32 Cal.4th at p. 1181.) Thus, the substance of the poem, rather than the simple statement that Miller enjoyed writing poetry, was more illustrative of Miller’s “uniqueness” and was properly read to the jury. (See *People v. Prince, supra*, 40 Cal.4th at p. 1288.)

Very recently, this Court decided *People v. Kelly* (2007) 42 Cal.4th 763, in which the victim’s mother narrated a 20-minute videotape of still photographs and video clips, including a segment of the victim singing with a school group. (*Id.* at pp. 796-797.) In evaluating whether the trial court properly admitted the video, this Court specifically addressed the clip of the victim’s musical performance and observed,

The portion of the videotape showing Sara’s singing performance seems relevant to the purpose of demonstrating what she was like. It reflects her demeanor in the difficult situation her mother described—a shy girl performing solo before her classmates. Her choice of song to sing at that age and in those circumstances also seems relevant to forming an impression of the victim. Her musical performance was not excessively emotional.

(*People v. Kelly, supra*, 42 Cal.4th at p. 798.)

In *Prince, supra*, another case involving a videotape of the victim, this Court noted a Maryland capital case opinion in which the court upheld the admission of a 90-second videotape of the murder victim playing the piano. (*People v. Prince, supra*, 40 Cal.4th at p. 1288, citing *Whittlesey v. State* (1995) 340 Md. 30 [665 A.2d 223].) The *Whittlesey* Court remarked that the trial court found, “the videotape illustrated [the victim’s] piano skill better than any still photograph could portray this talent.” (*Whittlesey, supra*, 665 A.2d at p. 251; *People v. Prince, supra*, 40 Cal.4th at p. 1288.)

Here, Miller’s poem did not constitute an emotional memorial tribute or eulogy, as it was written by Miller herself while alive, and was not set to music

or read in a particularly emotional or dramatic fashion. (See *People v. Prince, supra*, 40 Cal.4th at p. 1290.) Immediately after reaching the end of the poem, there was no dramatic pause or apparent emotional breakdown, just Harrison's statement, "This was written by her in late '89." (43 RT 9469.) The poem supplemented, but did not duplicate, Harrison's testimony; it presented insight into Miller's personal qualities that were relevant to the penalty determination and humanized Miller, "as victim impact evidence is designed to do." (*People v. Kelly, supra*, 42 Cal.4th at p. 797.)

Finally, the picture of Dennis the Menace that Sternfeld had sent to her sister from prison, which Carrillo had brought with her to court and described to the jury, served to demonstrate to the jury an example of Sternfeld's character, which Carrillo had earlier described as giving, sweet, thoughtful, full of love, and having a deep love for her son and strong religious faith that she shared with others. (43 RT 9401-9402, 9405-9407, 9411-9413.) The prosecutor asked Carrillo about the picture only after the defense had cross-examined her about Sternfeld knowing "that she wasn't doing her son any good going in and out of jail, but she just couldn't stop the use of drugs" (43 RT 9408), and spending the year to two years before her death in and out of custody, requiring the family to "kind of cope with that problem" Sternfeld had caused. (43 RT 9407-9409.)

To balance against such seemingly self-centered conduct, the trial court properly permitted Carrillo to testify about the picture, which she described as "a picture of Dennis the Menace in his mother's arms, and he's pointing to heaven and it says, 'And I love you all the way up to heaven and way past God.'" (43 RT 9413.) The cartoon was a gift from Sternfeld to her eldest sibling as Sternfeld was 27 years old when she was murdered in December 1990 (26 RT 5176) and Carrillo was 47 years old when she testified in July 1995 (43 RT 9399). The picture embodied all of Sternfeld's personal characteristics

to which Carrillo had earlier testified, from the way Carrillo received it (as a gift, despite that Sternfeld was in prison), to its depiction (a mother embracing her son, showing maternal love) and its caption (with the boy, not the mother, expressing his love and faith). (See 43 RT 9413.)

In sum, the proffered testimony and documentary evidence offered to show the psychological effects of the victims' deaths on other family members, as well as testimony about the victims' characters – including their compassion, charity, selflessness, relationships with other people, hobbies or talents, and each victim's "uniqueness as an individual human being" – was standard victim impact testimony and did not violate Suff's right to due process. (43 RT 9390, 9393, 9401-9402, 9405-9407, 9411-9413, 9415, 9417-9419, 9425-9426, 9428-9429, 9442-9443, 9465, 9468, 9486, 9497, 9504-9506, 9516-9518, 9521-9522; see *People v. Prince*, *supra*, 40 Cal.4th at pp. 1287-1291; *People v. Lewis and Oliver*, *supra*, 39 Cal.4th at p. 1057; *People v. Huggins*, *supra*, 38 Cal.4th at pp. 236-238; *People v. Robinson*, *supra*, 37 Cal.4th at p. 650; *People v. Clark*, *supra*, 5 Cal.4th at p. 1034; *People v. Panah*, *supra*, 35 Cal.4th at pp. 494-495; *People v. Pollock*, *supra*, 32 Cal.4th at pp. 1180-1181; *People v. Boyette*, *supra*, 29 Cal.4th at p. 445; *People v. Brown*, *supra*, 33 Cal.4th at p. 398; *Payne v. Tennessee*, *supra*, 501 U.S. at p. 823.)

Likewise, the prosecutor did nothing improper when he reminded the jury that Suff had already served 10 years in prison for murdering his baby daughter and now stood convicted of 12 murders (46 RT 10268-10269, 10287); then told the jury it could consider Payseur's murder if it had since reached a unanimous finding of guilt (46 RT 10273-10274); argued Suff had murdered Lacik (46 RT 10274) and attempted to murder his other baby daughter, Bridgette (46 RT 10288); highlighted the manner in which the 12 victims' bodies were re-dressed, posed, or disfigured and left where they would be found, "to send a message" (46 RT 10292, 10294); asked jurors to consider the

victims' pain and suffering (46 RT 10293), as well as how the victims' deaths affected their families (46 RT 10294-10295); and summarized victim impact testimony for the jury (46 RT 10295-10299). Suff conveniently ignores this bulk of the prosecutor's argument and instead claims the prosecutor "took full advantage of the jury's emotional state" and argued to the jury "that Suff is 'no longer a member of the human race' and the jury 'must kill it.'" (AOB 350.) It was not until nearing the end of his argument, however, that the prosecutor reminded the jury that Suff's acts had severely affected three generations of 13 families and argued,

It is a rare occasion in our lives when we come face-to-face with evilness. And when we are confronted with something in our society that is truly evil, we must kill it. We must destroy it. Mr. Suff is truly evil. The death penalty is for human beings. But I submit to you that Mr. Suff is no longer a member of the human race. By the nature and type of crimes he has committed over the past 22 years, he has no heart. He has no soul. And, by God, he has no conscience.

(46 RT 10300.)

A defendant's "rights are not infringed by evidence or argument showing that the victim was a unique and valuable human being." (*People v. Clark, supra*, 5 Cal.4th at pp. 1033-1034.) It is also proper for a prosecutor to urge jurors to remember the victim and the life that the victim lived, and to argue that death is the only appropriate means for redressing the loss of that individual. (*People v. Montiel, supra*, 5 Cal.4th at p. 935; *People v. Clark, supra*, 5 Cal.4th at pp. 1033-1034.) A prosecutor may also ask a jury to consider the degree of suffering the defendant inflicted upon his victims. (*People v. Cole* (2004) 33 Cal.4th 1158, 1233-1234; *People v. Benson* (1990) 52 Cal.3d 754, 796-797.)

The prosecutor in this case appropriately emphasized the unique lives led by the victims, Suff's numerous and callous crimes, the pain and suffering caused by victims' murders, and Suff's direct culpability for this resulting harm. (46 RT 10266-10302.) In sum, the prosecutor's argument was nothing out of

29 Cal.4th 1229, 1264, fn.11.) Moreover, any federal constitutional error would also be harmless beyond a reasonable doubt. (*Chapman v. California, supra*, 386 U.S. at p. 24.)

Primarily, the victim impact evidence in this case clearly “paled in comparison to other evidence in aggravation.” (*People v. Lewis and Oliver, supra*, 39 Cal.4th at p. 970.) The evidence and argument presented during the penalty phase asserted that at age 22, Suff violently shook and beat to death his own two-month-old daughter (44 RT 9629-9634; see 46 RT 10286); less than five years after serving only ten years of his resulting 70-year murder sentence, Suff viciously stabbed and strangled 21-year-old Lisa Lacik before sawing off her entire right breast, down to the bare rib cage, with a serrated blade (see 42 RT 9255; 43 RT 9288, 9293, 9295-9297, 9303, 9293-9295, 9301, 9304-9305, 9309-9310; 44 RT 9297); and despite his prior murder conviction, Suff violently shook another infant daughter of his, nearly resulting in her death (44 RT 9664-9665, 9673-9677, 9679, 9683, 9686-9688, 9698). And as evidenced during the guilt phase, the number of killings in this case was large – Suff was responsible for at least six murders in 1991, four in 1990, and two in 1989. Moreover, the manner in which Suff killed the victims was violent and brutal.

For example, while the 86-pound, four-foot, eleven-inch-tall, 23-year-old Tina Leal was still alive, Suff bound her wrists and ankles, gave her a black eye, cut her around the areola of one breast, stabbed her in her pubic area, caused possible blunt force lacerations to her vagina, strangled her with a ligature, and stabbed her four times in the chest; and at some point Suff inserted a 95-watt lightbulb into her uterus, dressed her in a Kings Canyon t-shirt, and pulled socks on inside-out over her feet before ridiculously tucking her pants into the socks and discarding her body in an area used for illegal dumping (21 RT 4016, 4026-4028, 4053-4054, 4056-4057, 4082, 4085; 22 RT 4081-4082, 4085, 4088; 27 RT 5392-5396, 5395-5397, 5399-5407, 5411, 5414-5415; 30 RT 6039-6042,

6044; 34 RT 6990). In another example, Suff posed 30-year-old Catherine McDonald's naked body as a final humiliating insult after he caused one stab wound and two cut wounds on her external genitalia while she was still alive, strangled her with such force as to cause a gaping laceration at her neck, and stabbed her three times in the chest. (25 RT 4880-4881; 27 RT 5311-5316, 5321-5324, 5329-5332.) Mercifully, McDonald was dead when Suff caused two more cut wounds to her external genitalia and sliced off her right breast, which required numerous circumferential cuts. (27 RT 5318-5319, 5323-5324, 5332.) Along with McDonald's life, however, Suff also took that of her four-month developing fetus. (44 RT 9699.)

Suff similarly disfigured the bodies of Cheryl Coker and Eleanor Casares by excising their right breast, but unlike with McDonald, the removed flesh was found discarded nearby. (23 RT 4341-4342, 4350-4352, 4355; 26 RT 5024, 5029-5030, 5125.) Puckett suffocated to death after Suff stuffed a sock into the back of her throat, behind her tongue. (26 RT 5216, 5229; see also 23 RT 4478.) Zamora was strangled with such great force that her larynx was crushed and broken down the middle. (27 RT 5338-5340, 5342.) As the prosecutor stated during closing argument, "the decision in this case is so clear-cut, so obvious, that the jury shouldn't have any problems with it." (46 RT 10269.)

Further, Suff's case in mitigation presented little actual mitigating evidence – his mother stated he had a "normal childhood," and his father did not leave the family until Suff was 16 years old. (45 RT 9952-9954, 9974.) Suff joined the Air Force and left home at age 18. (45 RT 9958-9959, 9975.) Though Diane Anderson testified that Suff's mother and the family environment had become cold and uncaring as a result of Earl moving in, Mead and Earl did not marry until March 1969, after Suff had already left for Air Force training (45 RT 9957-9958, 9975). According to Anderson's testimony that she arrived

in early 1968 and Earl moved in at a later date, Suff at most lived with Earl in a “cold” environment for less than a year. (45 RT 10075-10076, 10082.)

Even Suff’s mitigation witnesses acknowledge fundamental character flaws. Suff repeatedly took money from the Merrifields’ cash register, amounting to a total of \$323, which Suff did not repay, despite gaining a large settlement from his motorcycle accident. (44 RT 9803-9804, 9808, 9815.) Similarly, Suff took \$900 in small withdrawals from his girlfriend’s nonagenarian grandmother, using the grandmother’s driver’s license and a withdrawal slip, and in the end agreed only to repay half the pilfered amount. (45 RT 10037-10038, 10045, 10050; see 45 RT 10044-10045.) In consideration of the totality, “[t]he challenged evidence could not have tipped the balance in favor of death.” (*People v. Lewis and Oliver, supra*, 39 Cal.4th at p. 1058.)

Finally, the trial court instructed the jury not to be swayed by bias or prejudice against Suff. (10 CT 2752; 46 RT 10320 [CALJIC No. 8.84.1, modified as requested by defense.]) The trial court also instructed the jury they were “free to assign whatever moral or sympathetic value you deem appropriate to each and all the various factors you are permitted to consider.” (10 CT 2782; 46 RT 10335 [CALJIC No. 8.88].) The jury is presumed to have followed these instructions. (*People v. Rich* (1988) 45 Cal.3d 1036.)

Given the considerable evidence in aggravation, the jury instructions, and all the circumstances in this case, it is clear the admission of the victim impact testimony did not undermine the fundamental fairness of the penalty determination. Even if the victim impact evidence had been excluded, the outcome would have remained the same, based on Suff’s prior murder of his infant daughter, subsequent attempted murder of another infant daughter in a similar fashion, and the vicious and egregious nature of his crimes. Suff’s death sentences do not rest with unduly prejudicial victim impact evidence; rather, the

sentences rest squarely on Suff's conduct, including the circumstances of his senseless and brutal crimes against a large number of helpless victims.

IX.

THIS COURT HAS CONSIDERED AND REJECTED SUFF'S VARIOUS CHALLENGES TO THE CONSTITUTIONALITY OF CALIFORNIA'S DEATH PENALTY LAW AND IMPLEMENTING INSTRUCTIONS

Suff challenges the constitutionality of California's death penalty law and implementing instructions on a variety of grounds. (AOB 351-407.) These same claims have been presented to, and rejected by, this Court. Because Suff fails to raise anything new or significant which would cause this Court to depart from its earlier holdings, his claims should all be rejected without additional legal analysis. (*People v. Schmeck* (2005) 37 Cal.4th 240, 303-304; *People v. Welch, supra*, 20 Cal.4th at pp. 771-772; *People v. Fairbank* (1997) 16 Cal.4th 1223, 1255-1256.)

Suff argues California's death penalty statute and its implementing jury instructions are constitutionally deficient for failing to require: (1) aggravating factors be proven beyond a reasonable doubt; (2) aggravation be proven to outweigh mitigation beyond a reasonable doubt; (3) death be found to be the appropriate penalty beyond a reasonable doubt; (4) that the People must bear some burden of persuasion during the penalty phase; and (5) that the jury make findings of aggravating factors unanimously. (AOB 351-380.) However, neither jury unanimity nor proof beyond a reasonable doubt apply to penalty phase determinations. (*People v. Dunkle* (2005) 36 Cal.4th 861, 939; *People v. Stitely, supra*, 35 Cal.4th at p. 573; *People v. Panah, supra*, 35 Cal.4th at p. 499; *People v. Monterroso* (2004) 34 Cal.4th 743, 796; *People v. Morrison* (2004) 34 Cal.4th 698, 730; *People v. Welch, supra*, 20 Cal.4th 701, 767-768.) Moreover, the decisions in *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120

S.Ct. 2348, 147 L.Ed.2d 435] and its progeny, do not change that conclusion. (*People v. Stitely*, *supra*, 35 Cal.4th at p. 573 [*Blakely*,^{39/} *Ring*,^{40/} and *Apprendi* “do not require reconsideration or modification of our long-standing conclusions in this regard”]; *People v. Gray* (2005) 37 Cal.4th 168, 237; *People v. Morrison*, *supra*, 34 Cal.4th at pp. 730-731; *People v. Prieto* (2003) 30 Cal.4th 226, 262-263, 271-272; *People v. Snow* (2003) 30 Cal.4th 43, 126, fn. 32; see *People v. Smith* (2003) 30 Cal.4th 581, 642.) Likewise, because of the individual and normative nature of the jury’s sentencing determination, the trial court need not instruct that the prosecution has the burden of persuasion on the issue of penalty. (*People v. Combs* (2004) 34 Cal. 4th 821, 868; *People v. Lenart* (2004) 32 Cal.4th 1107, 1135-1136; *People v. Steele*, *supra*, 27 Cal.4th at p. 1259; *People v. Bemore* (2000) 22 Cal.4th 809, 859.)

Further, this Court has also repeatedly rejected Suff’s contentions (AOB 382-384) that the trial court was constitutionally required to instruct the jury that there is a presumption favoring a sentence of life in prison. (See, e.g., *People v. Young* (2005) 34 Cal.4th 1149, 1233; *People v. Combs*, *supra*, 34 Cal.4th at p. 868; *People v. Pollock*, *supra*, 32 Cal.4th at p. 1196; *People v. Lenart*, *supra*, 32 Cal.4th at p.1137; *People v. Kipp* (2001) 26 Cal.4th 1100, 1137; *People v. Carpenter* (1999) 21 Cal.4th 1016, 1064; *People v. Arias*, *supra*, 13 Cal.4th at p. 190.) Because Suff provides no compelling reason for reconsideration, his claims should be rejected.

Suff also asserts that the trial court’s instructions defining the scope of the jury’s sentencing discretion and the nature of its deliberative process, as set forth in CALJIC No. 8.88, violated his constitutional rights in several respects.

39. *Blakely v. Washington* (2004) 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403].

40. *Ring v. Arizona* (2002) 536 U.S. 584 [122 S.Ct. 2428, 153 L.Ed.2d 556].

(AOB 385-396.) Specifically, he claims: (1) the instruction used an impermissibly vague term, “so substantial,” that did not provide adequate guidance and discretion (AOB 385-389); (2) the instruction failed to inform the jurors that the central determination is whether the death penalty is the appropriate punishment, not simply an authorized one (AOB 389-391); (3) the instruction failed to inform the jurors that they were required to impose life without the possibility of parole if they determined that mitigation outweighed aggravation (AOB 391-395); and (4) the instruction failed to inform the jurors that Suff did not bear the burden to persuade them that the death penalty was inappropriate (AOB 395-396). Suff’s claims should be rejected as this Court has previously rejected identical claims concerning this jury instruction. This Court has found CALJIC No. 8.88 gives the jury adequate instruction on how to return a life sentence (*People v. Taylor, supra*, 26 Cal.4th at p. 1181; *People v. Kipp, supra*, 26 Cal.4th at p. 1138; *People v. Frye, supra*, 18 Cal.4th at pp. 1023-1024) and the standard instruction has been consistently upheld. (*People v. Smith* (2005) 35 Cal.4th 334, 370; *People v. Medina* (1995) 11 Cal.4th 694, 781-782; *People v. Duncan* (1991) 53 Cal.3d 955, 978.) CALJIC No. 8.88 is not unconstitutionally vague for using the phrase “so substantial,” and adequately guides the jury’s sentencing discretion. (*People v. Moon* (2005) 37 Cal.4th 1, 43; *People v. Smith, supra*, 35 Cal.4th at p. 369; *People v. Young, supra*, 34 Cal.4th at p. 1227; *People v. Carter* (2003) 30 Cal.4th 1166, 1226.) CALJIC No. 8.88 is also not unconstitutional in using the term “warrants,” as “the instruction clearly admonishes the jury to determine whether the balance of aggravation and mitigation makes death the appropriate penalty.” (*People v. Smith, supra*, 35 Cal. 4th at p. 370 citing *People v. Arias, supra*, 13 Cal.4th at p. 171; see also *People v. Moon, supra*, 37 Cal.4th at p. 43; *People v. Boyette, supra*, 29 Cal.4th at p. 465.) Likewise, the trial court need not expressly instruct the jury that a sentence of life imprisonment without parole is mandatory if the

aggravating circumstances do not outweigh those in mitigation. (*People v. Moon, supra*, 37 Cal.4th at p. 43; *People v. Kipp* (1998) 18 Cal.4th 349, 381; *People v. Duncan, supra*, 53 Cal.3d at p. 978.) The instruction in the instant case was proper.

Suff contends the lack of intercase proportionality review violates the right to a fair trial, due process, equal protection, and protection from the arbitrary and capricious imposition of capital punishment guaranteed by the Fifth, Eighth, and Fourteenth Amendments. (AOB 397-400.) To the contrary, intercase proportionality review is not constitutionally required and this Court has consistently declined to undertake it. (*Pulley v. Harris* (1984) 465 U.S. 37, 50-54 [104 S.Ct. 871, 79 L.Ed.2d 29] [California's death penalty statute not rendered unconstitutional by the absence of a provision for comparative proportionality review]; *People v. Dunkle, supra*, 36 Cal.4th at p. 940, citing *People v. Horning* (2004) 34 Cal.4th 871, 913, and *People v. Morrison, supra*, 34 Cal.4th at p. 731.) Nor does equal protection require that capital defendants be afforded the same sentence review afforded other felons under the determinate sentencing law. (*People v. Dunkle, supra*, 36 Cal.4th at p. 940; *People v. Cox* (1991) 53 Cal.3d 618, 691; *People v. Allen* (1986) 42 Cal.3d 1222, 1286-1288.)

Suff contends the use of the death penalty violates international law, evolving international norms, and the Eighth Amendment. (AOB 401-405.) As Suff recognizes, this Court has repeatedly rejected this claim. (AOB 405.) It should continue to do so. (*People v. Perry* (2006) 38 Cal.4th 302, 322; *People v. Dunkle, supra*, 36 Cal.4th at p. 940, citing *People v. Brown, supra*, 33 Cal.4th at pp. 403-404.) Furthermore, for the reasons explained throughout Respondent's Brief, death is the appropriate punishment for Suff's murders of twelve women and attempted murder of a thirteenth. (See *Enmund v. Florida* (1982) 458 U.S. 782, 797-801 [102 S.Ct. 3368, 73 L.Ed.2d 1140].)

Finally, Suff claims California's capital sentencing scheme violates the Sixth, Eighth and Fourteenth Amendments to the United States Constitution because it does not require a jury to render written findings as to the aggravating circumstances it has relied upon, nor does it require any reasons for the choice of sentence. (AOB 406-407.) This Court has held, and should continue to hold, that the jury need not make written findings disclosing the reasons for its penalty determination. (*People v. Dunkle, supra*, 36 Cal.4th at p. 939; *People v. Young supra*, 34 Cal.4th at p. 1233; *People v. Maury* (2003) 30 Cal.4th 342, 440; *People v. Hughes* (2002) 27 Cal.4th 287, 405; *People v. Welch, supra*, 20 Cal.4th at p. 772; *People v. Ochoa* (1998) 19 Cal.4th 353, 479; *People v. Frye, supra*, 18 Cal.4th at p. 1029.) The above decisions are consistent with the United States Supreme Court's pronouncement that the federal Constitution "does not require that a jury specify the aggravating factors that permit the imposition of capital punishment." (*Clemons v. Mississippi* (1990) 494 U.S. 738, 746, 750 [110 S.Ct. 1441, 108 L.Ed.2d 725], citing *Hildwin v. Florida* (1989) 490 U.S. 638 [109 S.Ct. 2055, 104 L.Ed.2d 728].)

X.

THERE ARE NO MATERIAL ERRORS TO CUMULATE

Suff contends that there were numerous errors, the cumulative effect of which require reversal of both the guilt and penalty verdicts in his case. (AOB 408.) Assuming, arguendo, that those claims of error Suff ascribes to the guilt and penalty phases of his trial were in fact error, each was harmless under the applicable standard of review. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1009, 1038; see *People v. Heard, supra*, 31 Cal.4th at p. 982; *People v. McDermott, supra*, 28 Cal.4th at p. 1005 [no individual error, so rejecting claim of cumulative error]; accord *People v. Pollock, supra*, 32 Cal.4th at p. 1197 [no single error, thus no cumulative error]; *People v. Slaughter* (2002) 27 Cal.4th 1187, 1223 [taken individually or cumulatively, errors harmless].) Suff was

entitled to a fair trial, not a perfect one. (*People v. Box, supra*, 23 Cal.4th at p. 1214.) Because the issues addressed were either not error, were forfeited, or were harmless, there could be no prejudice to Suff, and no cumulative effect. (*People v. Kipp, supra*, 26 Cal.4th at p. 1141.)

Accordingly, even if errors occurred, viewed cumulatively, such errors did not significantly influence the fairness of Suff's trial or detrimentally affect the jury's determination of the appropriate penalty. (*People v. Cunningham, supra*, 25 Cal.4th at p. 1038.) Therefore, the entire judgment should be affirmed.

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: February 7, 2008

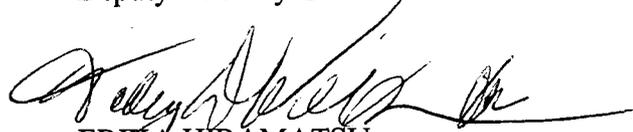
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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 91681 words.

Dated: February 7, 2008

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Erika Hiramatsu', with a stylized flourish at the end.

ERIKA HIRAMATSU
Deputy Attorney General

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. William Suff**

No.: **S049741**

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 that same day in the ordinary course of business.

On February 8, 2008, I served the attached **RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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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 February 8, 2008, at San Diego, California.

Bonnie Peak
Declarant



Signature