

ORIGINAL

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LOS ANGELES SUPERIOR COURT

MAY 18 2010

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT NW G HON. RICHARD KIRSCHNER, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
 VS.)
)
 RUPERT T. DITSWORTH)
)
 DEFENDANT.)

NO. LA055848
FELONY PLEA
AND SENTENCE
(PROBATION)

VAN NUYS, CALIFORNIA; TUESDAY, MAY 4, 2010
A.M. SESSION

UPON THE ABOVE DATE, THE DEFENDANT, RUPERT T.
DITSWORTH, BEING PRESENT AND REPRESENTED BY
PATRICK SMITH, DAVID KESTENBAUM, AND CURT
LIVESAY, PRIVATELY RETAINED, THE PEOPLE BEING
PRESENT AND REPRESENTED BY EDWARD NISON, DEPUTY
DISTRICT ATTORNEY, THE FOLLOWING PROCEEDINGS
WERE HELD:

1 THE COURT: This is the matter of People versus
2 Rupert T. Ditsworth, LA055848.

3 Counsel, please make your appearances.

4 MR. SMITH: Patrick Smith on behalf of the
5 Defendant, Rupert Ditsworth, who is present in court along
6 with David Kestenbaum and Curt Livesay, Your Honor.

7 MR. NISON: Edward Nison, Deputy District
8 Attorney, on behalf of the People.

9 THE COURT: The Court's understanding is that
10 there is one motion to be made and there will be a change
11 of plea in this matter. Is that correct?

12 MR. SMITH: That's correct, Your Honor.

13 THE COURT: Mr. Smith?

14 MR. SMITH: Your Honor, there is a motion to
15 correct the probation report by interlineation at page 2
16 where it indicates that the offense that the Defendant
17 was charged with is the offense of P.C. 187, which is
18 inaccurate.

19 THE COURT: That is inaccurate. It should be
20 664/187, attempted.

21 MR. SMITH: And then there are other numerous
22 specific inaccuracies that we pointed out in chambers to
23 the Court in the probation report, but my understanding
24 is we're not going to make those specific corrections.
25 I think the Court is going to indicate it has read the
26 preliminary hearing transcript.

27 THE COURT: Which I have. Counsel is referring
28 to that portion of the report under the title "Elements

1 and Relevance Circumstances of the Offense." There is
2 information contained therein that is not accurate. A
3 preliminary hearing transcript is an accurate statement
4 of what the People's evidence would show if there were a
5 trial in this matter. Therefore, to the extent that the
6 preliminary hearing transcript -- to the extent that the
7 portion of the Probation Department's report under the
8 heading that I've just enumerated is inconsistent with the
9 preliminary hearing transcript, the preliminary hearing
10 transcript shall control, and it is deemed a more accurate
11 statement of the offense.

12 MR. SMITH: And also, so the Court knows, under
13 the heading in there, also the statement, I think -- I'm
14 trying to locate it right now -- under that, the heading
15 about the statements of the victims and the parties,
16 there is some inaccuracies that we also later learned were
17 inaccurate and some other information that we would also
18 like the same statement for the balance of the probation
19 report. There are some indications in there that certain
20 facts, for example, would tell the Court that -- it says
21 in there that restitution has not been made.

22 THE COURT: It's the Court's understanding that
23 restitution has been made.

24 MR. SMITH: Right.

25 THE COURT: If there are specific items, though,
26 like that, please bring those to my attention because
27 that's not -- this is a victim statement. This is not
28 a recount of the offense, per se.

1 MR. SMITH: Right. And that restitution has
2 been made, Your Honor.

3 THE COURT: Yes.

4 MR. SMITH: Also, there is an indication -- let
5 me see. Oh, in the report, in the statement it indicates,
6 first of all, that the victim herself, who was an adult at
7 the time of the offense and is, of course, still an adult
8 now, had not given a statement. Secondly, in the report
9 it indicates that she told -- it's at page 4, line 12,
10 where it indicates that she was told that she was going to
11 be killed, and it's very vague as to who that's from.

12 But from my reading of the transcripts, there
13 was no indication at all that certainly Rupert Ditsworth
14 made any such statement to her, and so that one -- we
15 object to that one to the extent that that's not supported
16 in the transcript or the police report. Next, that the
17 report states that there are certain statements with
18 regard to the victim -- that she doesn't run, she doesn't
19 ride in cars, and things -- and while that may have been
20 true at one point in time, we know, I think, from -- there
21 was a civil case involved in this, and it was settled.
22 But from the discovery that I understand that was
23 exchanged in that case, she is running. She testified at
24 the preliminary hearing that she runs but she hurts after
25 she runs and that she took a cross-country trip in a car.
26 And one of the court hearings was delayed.

27 So those are specific things that I understand
28 why they were made at the time but that we dispute to the

1 extent that, now that we've learned everything, that they
2 are not necessarily accurate.

3 And then the report that the medical bills had
4 not been settled, it has, in fact, been settled.

5 THE COURT: That's part of the restitution
6 issue.

7 MR. NISON: Yes.

8 MR. SMITH: And then there are statements in the
9 portion about the additional information at page 6 where
10 it talks about the case in the trial court and it gives
11 the indication that this case went to trial. I want to
12 make sure that the Probation Department doesn't think
13 that. This case did not go to trial.

14 And that it was in Department 500, which it
15 never was in Department 500.

16 Then the testimony of the two medical experts.
17 That's something that was in the course of the preliminary
18 hearing transcript. There is a statement about what they
19 said, but it's certainly not a complete statement and
20 hence not an accurate statement of the police report.

21 And finally the report states in that section
22 that the victim, Elizabeth, would be contacted, and I
23 don't see an indication in the report that she ever was
24 contacted or contacted the Probation Department. I want
25 to make sure that that was the case because she has not
26 given a statement, and to the extent that her statement
27 wasn't taken -- and she did testify at the preliminary
28 hearing -- and I want to make sure that that was noted.

1 THE COURT: People's position with respect
2 to these other items besides the Original Elements and
3 Relevance Circumstances of the Offense portion of the
4 probation report?

5 MR. NISON: Yes, Your Honor. Well, with regard
6 to the relevance circumstances, facts and circumstances of
7 the offense, I would note it is primarily accurate. There
8 are a couple of inaccuracies, but that's been cured by
9 what the Court had indicated, that the preliminary hearing
10 transcript would take precedence. I would note that it
11 makes reference to comments of a couple of witnesses that
12 are in police reports, but they were not called at the
13 preliminary hearing.

14 With regard to the victim's statement, those
15 concerns, my understanding is that the victim still has
16 pain when she runs. So she is not -- she is capable
17 of running, but it is not at the level that she was at
18 prior to the incident.

19 And regarding the fears --

20 THE COURT: Where do you see the statement about
21 running? I see still in pain, walks and does not run, and
22 is improving. Is that what you're talking about?

23 MR. NISON: Right.

24 THE COURT: That was a current condition then.

25 MR. NISON: Correct.

26 THE COURT: Not now.

27 MR. NISON: Right.

28 THE COURT: I don't see any reason to correct

1 that at this point. The victim's statement is the
2 victim's statement. Whatever she said is what she said
3 to the Probation Department. It may not be consistent
4 with what was testified to at the preliminary hearing,
5 but nevertheless it's her statement.

6 MR. SMITH: I just wanted the record to be
7 clear, though, that technically it's not her statement.
8 She never gave a statement to the Probation Department.

9 THE COURT: I understand. This is basically
10 hearsay.

11 MR. SMITH: The other point was that, at the
12 time that this probation report was made, the preliminary
13 hearing had already taken place. So actually at the time
14 the probation report was made she was running because she
15 testified at the preliminary hearing that she was running
16 and she hurt afterwards.

17 So I want to make sure that the report is
18 accurate because the probation report was written after
19 that time. So a lot of this information -- I don't know
20 when the probation officer got the information from the
21 family, but certainly at that time it was not accurate
22 information.

23 THE COURT: Mr. Nison?

24 MR. NISON: Yes, Your Honor. Not to belabor
25 the point, but I believe that Dr. Barcay, the victim's
26 father, made these statements. They were accurate at the
27 time they were made. The fact that she has improved and
28 has continued to improve is something that is common in

1 cases. I don't think this is anything unusual.

2 THE COURT: I'm not going to strike the victim's
3 statement portion here. It will remain really as it is.
4 If there is any clarification that needs to be submitted
5 to the Probation Department, the Defense can do that.
6 This is an ongoing situation. It's not static. And to
7 the extent it's relevant to the Probation Department,
8 you're welcome to bring it to their attention.

9 MR. NISON: And these facts were taken into
10 account in terms of working out the disposition.

11 THE COURT: I understand that.

12 MR. NISON: With regard to the restitution, all
13 of those statements are in fact correct, that all the
14 bills and outstanding restitution has been paid.

15 THE COURT: Good. Excellent.

16 MR. SMITH: And then the only other thing, Your
17 Honor, in there is that there is a portion there not from
18 the victim's statement that indicates that the case was
19 transferred to Juvenile Court because --

20 THE COURT: What page and what line?

21 MR. SMITH: This was, I think -- I think it's
22 page 2. Let me see. Unfortunately, I didn't bring my
23 written copy. I'm sorry. It may be page 6 under
24 "Additional Information."

25 It's page 9. And it indicates at page 9, line
26 13, it's actually starting at -- yes, 13 -- it says "the
27 present matter is an adult filing because of the heinous
28 nature of the present offense." That statement is a

1 statement by the probation officer, and it's our position
2 that that is incorrect, and the reason it's incorrect is
3 we actually have a police report by Detective Jones, who
4 is the I.O. in this case, and in that report Detective
5 Jones details specifically why it was that the case was
6 transferred from Juvenile Court to adult court, and if I
7 could just read from the record what Detective Jones says,
8 it is that on Wednesday, May 23rd, he was contacted by a
9 Deputy District Attorney Shirley Sun in the D.A.'s Office
10 Appellate Division, and he writes that "she told me that
11 she was the D.A. assigned to petition the court for the
12 writ from Juvenile Court. She stated that she needed all
13 officers and detectives to come to her office to sign
14 declarations. On May 24, at 1530, I, Detective Jones,
15 went to Shirley Sun's office to give my declaration. When
16 I arrived, she told me that my statement would not be
17 needed because we would not win the writ hearing. She
18 went on to explain that the petition that was filed by
19 Deputy D.A. Diamond had two mistakes. The first mistake
20 was the petition indicated that Ditsworth was at home and
21 not in the hospital when, in fact, he was in the hospital.
22 And, two, the second mistake was that the fitness hearing
23 papers were supposed to have been filed with the petition,
24 and they were not. The judge in the Juvenile Court took
25 note of these mistakes and would not sign the warrant.

26 "Also, Deputy District Attorney Sun added that
27 the verbiage in the statute that governs a minor says the
28 judge may sign the arrest warrant and shall" -- and this

1 is the important language -- "to remedy the situation,
2 Lonnie Felker will file the case with assistant D.A.
3 Steve Franklin on May 25th in adult court."

4 And so the statement that it was filed as an
5 adult filing as stated in the probation report is not
6 accurate because of the statement that Detective Jones
7 made in his police report.

8 THE COURT: The record will reflect your
9 concerns.

10 People, you may respond.

11 MR. NISON: Your Honor, just for the record,
12 some of those statements, while I understand that they
13 were in a police report, I think the Court has indicated
14 perhaps what the concerns would be in taking those without
15 further looking into what those statements were.

16 THE COURT: Is there anything else?

17 MR. SMITH: That's it, Your Honor. Thank you.

18 THE COURT: Again it's the Court's understanding
19 that there will be a change of plea in this matter. And
20 before we get to that, I'm going to ask --

21 First of all, let me tell you folks this.
22 The Court has read and reviewed the preliminary hearing
23 transcript and the proposed terms of probation agreed upon
24 by the Defense and the Prosecution. I have read a letter
25 dated April 9th, from Leanne Smith, April 9, 2010; a
26 letter dated April 30th, 2010, from a Gary Gam; and I've
27 read Dr. Tramell's report as well.

28 Let's begin with statements of interested

1 parties. People?

2 MR. NISON: Yes, Your Honor. Dr. David Barcay
3 wishes to address the Court, and also the mother of the
4 victim.

5 THE COURT: Good morning.

6 DR. BARCAY: Good morning, Your Honor.

7 THE COURT: You may proceed.

8 DR. BARCAY: Mr. Ditsworth, three full years
9 have passed since you attacked our daughter. She and we,
10 her family, will never be the same. We wonder is it
11 possible that you are any different? Are you any less
12 dangerous now than you were three years ago? Why should
13 we believe that you will not do this again?

14 We were told that you do not remember what
15 happened. Let me remind you.

16 Lizzie went with you to Jamba Juice at your
17 invitation. It was an act of kindness and pregraduation
18 camaraderie on her part. But we believe you had a plan
19 all along.

20 On the drive back to school, you would not take
21 her back to Harvard-Westlake. Instead, you drove her to
22 the end of a cul de sac near the school. We believe this
23 was a place and an act that you had planned.

24 You entrapped her in your car, parking next to a
25 brick wall where you would not be clearly seen. With her
26 still strapped in the car seat, you attacked her with a
27 claw hammer, swinging it full force without provocation or
28 explanation. You brutally bludgeoned her head, her arms,

1 and her legs in an attempt to kill her. Twenty of the
2 head blows were completely through the scalp to the bone.
3 In all we counted at least forty visible blows. There
4 were most likely many more.

5 She did not lose consciousness even though you
6 knew from your father that blows to the temporal bone
7 could be fatal. She used her legs to push you away,
8 unable to free herself from the seat belt. So you swung
9 wildly at her legs with the hammer, crushing her tibia
10 into shards.

11 When she could not be overpowered, you got out
12 of the car, you walked over to her side, you grabbed her
13 hair, and you started swinging. The hammer broke. So
14 then you tried to strangle her. At that point she managed
15 to bite your hand as you grabbed her neck. Only after she
16 bit you did you stop. You said, "I'm done." Then you
17 walked back around the car to the driver's side.

18 Lizzie managed to get out of the seat belt and
19 out of the car before you could drag her with you. But
20 she could not walk. You crushed her leg. You drove off
21 as she dragged herself across a lawn, screaming for help,
22 fearful that she was dying because of the profuse bleeding
23 from her head.

24 Thankfully, Lizzie is alive, and thankfully she
25 has been determined to reclaim as much of her life as she
26 can. But she is only alive because she refused to stop
27 fighting you despite your crushing blows to her head,
28 face, arms, and legs and despite your efforts to strangle

1 her. That day she not only saved her life. She saved
2 yours as well. It could easily have turned out otherwise.
3 She was one hammer blow away from being in a permanent
4 coma. She was one hammer blow away from dying at your
5 hands from your vicious attack. And you were one blow
6 away from a life and perhaps a death in prison.

7 Lizzie is in constant pain every day from
8 the injuries that you inflicted. Her shattered leg has
9 a rod in it from her knee to her ankle. This will
10 remain in place for the rest of her life because of your
11 incomprehensible act. She walks with a limp. Her leg
12 is permanently swollen and scarred. She cannot run.
13 She cannot jog. She cannot hike. She has nightmares
14 frequently, reliving your attack. She is nervous when
15 getting into someone else's car. She will never be able
16 to get away from the horrors of those moments.

17 You have changed her life permanently. You
18 have changed an entire family's life. You have scarred
19 us all. Have you changed?

20 Some days I ask Lizzie how she managed to
21 forge ahead. She has told me that it turned out the best
22 it could have. She believes that, if she refused your
23 invitation, you would have committed this brutal act on
24 someone else because it was your intent to commit murder
25 that day. If she had walked away and someone else was
26 murdered, she believes she would have suffered lifelong
27 irrational guilt, thinking that if she had not been kind
28 to you, you would have talked to somebody else.

1 But now because she was kind to you and never
2 mistreated you in any way, she thinks you are dangerous,
3 and so do we. You should have gone to prison. Instead,
4 you're going to school and making friends and enjoying
5 the outdoors and posing for pictures with your fraternity
6 brothers with paintball guns in army fatigues. Your
7 mother has hired I.T. experts to try to erase your past
8 with linked web pages, elementary school games, fuzzy
9 bunnies and rainbows, all designed to bury the searches
10 that reveal the brutal attack and the facts of your
11 actions. You have moved to Florida and created a life
12 that has allowed you to forget.

13 But we haven't. We have not heard you take
14 responsibility for your actions. We have not heard any
15 statements of remorse from you. We are told you do not
16 remember something that we will never forget. We have no
17 reason to believe that you're any less dangerous today
18 than you were three years ago. We did not insist that you
19 be sentenced to time in prison, but do not misinterpret
20 our act of restraint for weakness, for a failure to hold
21 you and your family accountable for your actions. We do
22 hold you and your family responsible. We will not forget
23 what you have done, and we will do everything we can to
24 be sure that you are treated more severely for any future
25 transgressions.

26 We had hoped that something good could come
27 of this. We haven't seen it yet. Perhaps the good is
28 there you will get the help you need and should have had

1 a decade earlier. We hope you never do this again. But
2 if you do, we will be there to guarantee that you suffer
3 fully the consequences of your actions.

4 THE COURT: Thank you, Dr. Barcay.

5 Mr. Nison?

6 MR. NISON: Your Honor, I think Dr. Barcay
7 eloquently sums up what the People's position is in
8 respects, that the proposed disposition takes into account
9 the Defendant's autism, although I think, as the Court has
10 indicated, the diagnosis itself does not explain why this
11 happened. I know the Defense has their theories and the
12 People have our theory, and I don't expect either the
13 Defense or the Defendant's mother to change their view
14 as to what the cause was. But our primary concern is
15 to ensure by the conditions we have imposed with probation
16 that the chances of this type of event happening again
17 are lessened and eliminated, and I believe that the terms
18 do that. I know that the Defendant understands and the
19 Defendant's mother understands, for any violation of
20 probation other than a minor technical violation, what our
21 position will be. And for any future criminal conduct,
22 I think also it's clear what the People's position would
23 be, that this was --

24 THE COURT: Let me make this very, very clear,
25 Mr. Ditsworth. The Barcays, the victim, the family, have
26 shown you great compassion and kindness, probably much
27 more so than you deserve. But understand this: The Court
28 knows that there has been a plea agreement worked out

1 here. The Court knows that the family of the victim has
2 been consulted with respect to the terms and conditions.
3 Their wishes have been incorporated with respect to the
4 terms and conditions. But understand this: Should there
5 be a violation of probation while you are in or under the
6 jurisdiction of this Court, absent a very minor violation,
7 the consequences will be very, very serious. This Court
8 has an obligation. That obligation is an obligation of
9 sentencing. The objectives of sentencing are protection
10 of the public, punishment, and rehabilitation, and that's
11 exactly the order in which I look at this. Protection of
12 the public is first. So understand that. There is a
13 message that I'm conveying to you now.

14 All right. The Court has received a document
15 that's entitled "List of Terms of Probation After Grant
16 of Probation." It has -- it's typewritten as well as it
17 has a handwritten portion.

18 MR. SMITH: Your Honor, before the Court does
19 that, may I speak?

20 THE COURT: Yes. I'm sorry. Go ahead.

21 MR. SMITH: Your Honor, I've spoken obviously
22 in detail with Rupert over the course of this case, and
23 as the Court knows, my practice in addition to criminal
24 practice primarily focuses on issues related to young
25 adults and children with disabilities. And Mr. Nison has
26 been very patient with me notwithstanding the difficulties
27 in our different theories of the case. But what I wanted
28 to say and make sure that it's on the record to the Barcay

1 family is that Rupert -- I think there are documents that
2 maybe the Barcays have not seen where Rupert has expressed
3 remorse that someone such as their daughter could have
4 been so kind to him, and he expresses complete remorse
5 that she was hurt and the manner in which she was hurt.

6 And the family, the Barcay family, I think, in
7 this case, it has brought -- and perhaps the words "great
8 joy" is inappropriate in this circumstance -- that she is
9 doing well and that she is doing better, and the Ditsworth
10 family has expressed that they are obviously relieved just
11 for the sake of the family that she's doing better. And
12 Mr. Barcay indicated -- and I spoke with Rupert about this
13 specifically -- essentially the expression of patience
14 that the Barcay family have shown towards Rupert, and I
15 can understand as anybody understands their dread about
16 this whole circumstance, and it's important that they
17 understand that the family cannot express enough their
18 gratitude for the patience that the family has shown in
19 working out this sentence. I would agree with Mr. Barcay
20 that that is not a sign of weakness. In fact, that is a
21 sign of great strength and a sign of great healing, and
22 I think that the Ditsworth family recognizes that. That
23 is why the family -- in the course of making restitution
24 and the course of the civil case, the case went relatively
25 smoothly, as I understand it, because the family felt
26 responsible that restitution must be made.

27 But I think that, despite the sadness that the
28 Ditsworth family feels about the suffering that the Barcay

1 family has endured, the treatment program Rupert is in has
2 shown great progress, and he is in fact getting better,
3 and we believe that he will not be a threat in the future
4 and he will be a productive member of society and that
5 this will go on for a number of years during the course of
6 probation and beyond that where he gets treatment, where
7 it's that he has not forgotten this incident, that it's
8 addressed every day in his therapy. It's addressed every
9 day in his treatment, every day in his behavioral program
10 in the sense that they are dealing with how Rupert
11 responds to stressful situations and progresses. He has
12 shown that -- and I think the District Attorney's office
13 had an independent evaluation by a doctor, and I think
14 that confirmed it -- that he is making progress, and
15 substantial progress.

16 So to the extent that the family -- I could
17 never imagine that I could allay their fears, but in terms
18 of progress, Rupert is making progress, and I hope that
19 for the Barcay family -- and I really believe strongly
20 that we won't be here ever again in this court, and I
21 can't make any guarantees -- but based on the progress,
22 Rupert is moving in the right direction, and we want to
23 express that this forgiveness that they have shown is a
24 sign of healing on everybody's part, and Rupert does want
25 to express his remorse for everything that's happened and
26 is appreciative to both the Barcay family and the District
27 Attorney's office for seeing it to a certain extent from
28 the position of the experts in this case.

1 THE COURT: Thank you.

2 The Prosecution and the Defense have submitted a
3 list of terms of probation to the court. I assume that
4 this list of conditions of probation has been discussed
5 with the Barcay family. Is that correct, Mr. Nison?

6 MR. NISON: Yes, that is correct, Your Honor.

7 THE COURT: And that these terms and conditions
8 are agreeable to the Prosecution; is that correct?

9 MR. NISON: Yes, Your Honor.

10 THE COURT: And the Prosecution as well as
11 the Defense drafted these terms and conditions; is that
12 correct?

13 MR. NISON: Yes, Your Honor, that is correct.
14 And just so it's clear -- and I think I made it clear
15 before -- the purpose of these terms and conditions in
16 allowing probation is that the People feel that this
17 is the most realistic way to ensure that the Defendant
18 doesn't reoffend.

19 THE COURT: As the Court has indicated, the
20 Court's primary concern is one of protection of the
21 public, and I have not accepted this disposition lightly.
22 I want to be as sure as one can be that these terms and
23 conditions are restrictive enough to prevent this from
24 happening again, knowing that, if a State Prison sentence
25 were imposed, he would be out of prison within a shorter
26 period of time than he would be while he's on probation
27 and then there would be certainly less restriction placed
28 upon him. These terms and conditions place restrictions

1 on his movement for a longer period of time than there
2 would be had he gone to State Prison.

3 The Court is mindful of that. The Court is also
4 mindful of the rehabilitative aspects of this and the fact
5 that he is out of the State of California now and for an
6 appreciable period of time that will be the case.

7 Have you discussed these terms and conditions
8 with your client, Mr. Smith?

9 MR. SMITH: I have, Your Honor.

10 THE COURT: Does he understand them?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: The Court has what's known as a
13 felony advisement of rights, waiver, and plea form, the
14 pink form. This is going to be a change of plea.

15 Mr. Ditsworth, have you taken any drugs or
16 alcohol or anything of that nature today that would have
17 the effect of reducing or diminishing your ability to
18 understand what we are doing?

19 THE DEFENDANT: No.

20 THE COURT: Has your attorney explained to
21 you and do you understand the nature of the proceedings
22 against you, the possible defenses you may have, as well
23 as all of the consequences of your plea today?

24 THE DEFENDANT: Yes.

25 THE COURT: As I indicated, the Court has what's
26 known as a felony advisement of rights, waiver, and plea
27 form, the pink form. Did you sign that form and initial
28 the boxes?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you do that to indicate that you
3 had read the form, understood the form, and agreed to each
4 term and condition on the form that you initialed?

5 THE DEFENDANT: Yes.

6 THE COURT: There are certain possible
7 consequences that follow from your plea that you should
8 be aware of.

9 If you're on parole or probation for anything
10 else, a plea in this matter can result in a violation of
11 that probation or parole.

12 If you're not a citizen, a plea can result
13 in deportation, exclusion from admission to the United
14 States, denial of amnesty, or denial of naturalization.

15 People, please take the plea to Count 2.

16 MR. NISON: Yes, Your Honor. One moment. There
17 is one thing I want to discuss with Mr. Smith.

18 (Counsel conferred)

19 MR. SMITH: Can I have him stand up for just a
20 moment?

21 THE COURT: Please.

22 (Counsel conferred with the Defendant)

23 MR. NISON: Your Honor, there is one additional
24 waiver that wasn't discussed before that I spoke to
25 Mr. Smith about and I anticipated would not be a problem.
26 Mr. Ditsworth is waiving any appellate rights so that this
27 case is resolved at this time and that there will not be
28 any appeal of either the prior rulings with regard to the

1 writ or with regard to the conditions of probation.

2 THE COURT: Why don't you take that waiver?

3 MR. NISON: Okay. Mr. Ditsworth, do you
4 understand what I just stated, that you are agreeing
5 that you're not going to appeal any decisions that have
6 been made previously in this case or any of the terms
7 and conditions of this sentence or the plea itself?

8 THE DEFENDANT: Yes.

9 THE COURT: Which you would have a right to do.
10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you waive your right, your
13 appellate rights, with regard to this case?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you have any questions about
16 that? You can talk to your attorney. Do you need to talk
17 to your attorney at all regarding that?

18 THE DEFENDANT: No.

19 THE COURT: Counsel, do you join in this waiver?

20 MR. SMITH: I do.

21 THE COURT: You thoroughly discussed with your
22 client his appellate rights?

23 MR. SMITH: Yes.

24 THE COURT: And does he appear to you to
25 understand what those rights are?

26 MR. SMITH: He does.

27 THE COURT: And to you does he knowingly waive
28 those rights?

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: All right. Mr. Nison?

3 MR. NISON: Rupert Tumin Ditsworth -- that is
4 your correct name?

5 THE DEFENDANT: Yes.

6 MR. NISON: And your date of birth is July 1,
7 1989?

8 THE DEFENDANT: Yes.

9 MR. NISON: To a violation of Penal Code Section
10 245, subdivision (A)(1), assault with a deadly weapon, to
11 wit, a hammer, as alleged in Count 2 of the Information,
12 what is your plea at this time?

13 THE DEFENDANT: No contest.

14 MR. NISON: Does counsel join in the waivers,
15 concur in the plea, and stipulate to a factual basis
16 based upon the police reports and preliminary hearing
17 transcripts in this matter?

18 MR. SMITH: Yeah. The plea is based on People
19 v. West but for the stipulation.

20 THE COURT: There is a factual basis --

21 MR. SMITH: Yes.

22 THE COURT: -- based on the information
23 contained in those documents?

24 MR. SMITH: That's correct. Yes.

25 MR. NISON: And just so it's clear, I believe
26 the Court may have addressed this, and I know it's in the
27 written waivers. Mr. Ditsworth, you understand you are
28 pleading to a strike, that the count you have pled to is

1 considered a strike so it could be used to significantly
2 enhance any future felony conviction that you were to
3 receive?

4 THE DEFENDANT: Yes.

5 THE COURT: The Court finds the Defendant has
6 expressly, knowingly, intelligently, and understandingly
7 waived and given up his constitutional and statutory
8 rights and that his plea is freely and voluntarily made
9 with an understanding of the nature and consequences
10 thereof. The Court accepts your plea, Mr. Ditsworth, you
11 stand convicted on your plea, and the Court orders the
12 waiver form incorporated as part of the docket in this
13 matter.

14 Counsel, do you waive further arraignment on the
15 judgment as well as time for sentencing?

16 MR. SMITH: Yes, Your Honor. No legal cause.

17 THE COURT: Pursuant to the plea agreement
18 in this matter, on Count 2 imposition of sentence is
19 suspended. You're placed on probation for six years on
20 the following terms and conditions:

21 You shall pay \$200 to the state restitution
22 fund; \$200 in a probation revocation fine, which is stayed
23 pending your successful completion of probation; \$30 in
24 a court securities charge; \$30 in a criminal conviction
25 assessment charge.

26 You are to provide D.N.A. and blood samples
27 pursuant to Penal Code Section 296.

28 You're ordered to make restitution to the

1 victim in full. All parties have stipulated that that
2 restitution has been made.

3 You are to obey all laws and orders of the
4 Court and all rules and regulations and instructions of
5 the Probation Department.

6 You are to report to the Probation Department
7 within 48 hours.

8 You shall for the first 180 days of this
9 sentence be restricted to your home or to those activities
10 outside your home as approved by Leanne Smith, Ph.D.,
11 or Gary Gam, Master of Education, who shall apprise the
12 Probation Department of your activities.

13 You shall report to the Probation Department
14 within 48 hours, as I've indicated. You shall cooperate
15 with the Probation Department in a behavioral modification
16 program prescribed by Gary Gam and Leanne Smith. This
17 plan has been developed, approved by all counsel, and will
18 be submitted to the Probation Department, and that will
19 be forthwith.

20 You shall cooperate in a plan for treatment and
21 therapy as prescribed by Leanne Smith. Again, this plan
22 has been developed and approved by all counsel and will
23 be submitted to the Probation Department forthwith.

24 You shall maintain a residence as approved by
25 the Probation Department and recommended by Gary Gam and
26 Leanne Smith and keep the Probation Department advised
27 as to your home address, work address, and telephone
28 numbers at all times. A current plan for housing has

1 been developed and approved by all counsel and will be
2 submitted to the Probation Department forthwith.

3 You shall seek and maintain training, schooling
4 or employment as recommended by the Probation Department
5 and Gary Gam and Leanne Smith. A current plan for your
6 schooling has been developed and approved by all counsel
7 and will be submitted to the Probation Department
8 forthwith.

9 You are required to have Gary Gam monitor,
10 observe, and report your progress to Leanne Smith.
11 Leanne Smith will then file a report with the courts
12 in California -- with this Court -- and the assigned
13 probation officer every 30 days for the first 12 months
14 of probation. During the second year of probation, Leanne
15 Smith will provide reports every 90 days unless the Court
16 or the probation officer determines that more or less
17 frequent reporting is required. Thereafter, reports
18 will be submitted every six months unless the Court or
19 the Probation Office decides that more or less frequent
20 reporting is required.

21 You are to submit your person and/or property
22 to search and seizure at any time of the day or night by
23 any probation officer, other peace officer, or program
24 provider -- that means the folks at your school -- with
25 or without a warrant, with or without probable cause or
26 reasonable suspicion.

27 You are not to own, use, threaten to use,
28 possess, buy, or sell any deadly or dangerous weapons,

1 including but not limited to knives, firearms, or other
2 concealable weapons.

3 You are not to use or threaten to use force or
4 violence against any person.

5 You are not to annoy, molest, harass, intimidate
6 or contact directly or indirectly any victim or witness
7 in this case, including but not limited to Elizabeth
8 Barcay.

9 You are to stay away from -- I'm sorry. You are
10 to stay at least 100 yards away from and have no contact
11 with Elizabeth Barcay, either directly or indirectly or
12 through any third person.

13 You are to cooperate in any plans for travel
14 with the Probation Department, and you may not travel
15 unless you have the Probation Department's approval.
16 You may travel within the State of Florida. However,
17 you must obtain preapproval from the Probation Department
18 and Leanne Smith for all travel outside of the State of
19 California.

20 MR. NISON: Your Honor, do you mean Florida?
21 You indicated "California."

22 THE COURT: I should have said "Florida." This
23 means your probation will be transferred to Florida.

24 It is understood that you have family in
25 California and Hawaii and may request to travel there.
26 Whether or not that request is granted is going to be
27 something that will be up to the Probation Department
28 and the Court.

1 If you decide to change your residence back to
2 California, it is ordered that you will not live -- your
3 residence will not be within three miles of the then
4 Barcay family home.

5 You are not to own, use, possess, buy, or sell
6 any controlled substances or associated paraphernalia
7 except with a valid prescription. You are to stay away
8 from places where users, buyers, or sellers congregate.
9 You are not to associate with persons known by you to
10 be controlled substance users or sellers except in an
11 authorized treatment program.

12 You are prohibited from using alcohol without
13 the prior approval of Leanne Smith. You are to stay out
14 of places where it is the chief item of sale. You may
15 possess wine and use it for independent living skills
16 cooking classes only.

17 Prior to you traveling to California or Hawaii,
18 the Probation Department is ordered to notify the victim,
19 Elizabeth Barcay, through her parents, Dr. David Barcay
20 and Barbara Hayden, of such travel and your proposed
21 length of stay. Prior to approving travel to locations
22 other than within Florida, the Probation Department shall
23 contact the victim's family -- in this case I'm referring
24 to Dr. David Barcay and Barbara Hayden -- to ensure that
25 their daughter, the victim, is not in the same location.
26 The purpose of this provision is to allow the Probation
27 Department to avoid having inadvertent contact between
28 you and the victim in this particular case.

1 MR. SMITH: Can I correct something?

2 THE COURT: Yes.

3 MR. SMITH: It should be prior to approval
4 of travel to other locations separate from Florida,
5 California, and Hawaii, not just Florida on that last
6 paragraph.

7 THE COURT: Mr. Nison, is that your
8 understanding?

9 MR. NISON: Yes, Your Honor. Just so it's
10 clear, they need -- the Probation Department needs to
11 notify the Barcays regarding the Defendant coming to
12 California or Hawaii since he has family here. With
13 regard to any other location outside of Florida, Southern
14 California, or Hawaii, the Probation Department is to
15 notify the Barkays prior to approval to ensure that
16 they are not going to be in the same location.

17 THE COURT: All right. That's the Court's order
18 with respect to that provision of the probationary terms.

19 The Probation Department shall provide contact
20 information to the victim's parents solely for the purpose
21 of reporting any contact violations.

22 Do you understand and accept those terms and
23 conditions of your probation, Mr. Ditsworth?

24 THE DEFENDANT: Yes.

25 THE COURT: Counsel join?

26 MR. SMITH: Counsel joins.

27 THE COURT: People's motion to dismiss the
28 remaining counts and allegations?

1 MR. NISON: So moved, Your Honor.

2 THE COURT: The motion is granted. That
3 concludes this matter.

4 MR. SMITH: Thank you, Your Honor.

5 (End of Proceeding)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW G

HON. RICHARD KIRSCHNER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

RUPERT T. DITSWORTH,)

DEFENDANT.)

NO. LA055848

REPORTER'S
CERTIFICATE

I, CHRISTOPHER FEDOROFF, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES 1 THROUGH 30, INCLUSIVE, COMPRISE A FULL,
TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN
THE ABOVE-ENTITLED MATTER ON MAY 4, 2010.

DATED THIS 18th DAY OF May, 2010.


CHRISTOPHER FEDOROFF
CSR NO. 10558
OFFICIAL REPORTER

