

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN BERNARDINO

3 DEPARTMENT R-5

HON. CARA D. HUTSON, JUDGE

4  
5 THE PEOPLE OF THE STATE OF CALIFORNIA, )

6 Plaintiff, )

7 vs. )

Case No. FWV21002096

8 WILLIAM SHAE MCKAY, )

9 Defendant. )

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11  
12 REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

13 NOVEMBER 8, 2021

14  
15 **APPEARANCES:**

16 For the People:

JASON ANDERSON  
District Attorney  
BY: TESS PONCE  
Deputy District Attorney

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19 For the Defendant:

WILLIAM SHAE MCKAY  
IN PRO PER  
BY: WILLIAM SHAE MCKAY

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24 **REPORTED BY:**

Julie Quintanilla  
Official Reporter  
CSR No. 11309

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1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, NOVEMBER 8, 2021

2 MORNING SESSION

3 DEPARTMENT NO. R-5

HON. CARA D. HUTSON, JUDGE

4 APPEARANCES:

5 (The Defendant WILLIAM SHAE MCKAY, is  
6 present in pro per; TESS PONCE, Deputy  
7 District Attorney of San Bernardino  
8 County, representing the People of the  
9 State of California.)

10 (Julie Quintanilla, Official Reporter,  
11 C.S.R. No. 11309.)  
12

13 THE COURT: Back on the record in Mr. McKay's matter.  
14 Ms. Ponce is present. Mr. McKay is present. The Court got  
15 notified Friday by my clerk that Ms. Ponce has something to put  
16 on the record for the Court. The Court has no idea because that  
17 would be ex parting Mr. McKay so she couldn't give me heads up.

18 So Ms. Ponce, the floor is yours.

19 MS. PONCE: Thank you, your Honor. I have something for  
20 Mr. McKay, maybe Deputy Carbo can give that to Mr. McKay. And  
21 this is the Court's copy.

22 It came to light on Friday, came to my attention that  
23 there was a federal indictment for the alleged victim in this  
24 case.

25 THE COURT: Wow.

26 MR. MCKAY: There's what?

27 MS. PONCE: And the incident pre-dates the incident in  
28 this case by, I think, about eight months, something like that.

1 But I was not aware of it previously. I had run the rap sheet  
2 prior to the preliminary hearing in July, nothing stood out, as  
3 far as things that needed to be exposed. Nothing showed up on  
4 her rap sheet. And just to confirm that, I ran it again on  
5 Friday --

6 THE COURT: Uh-huh.

7 MS. PONCE: -- and nothing popped up. It wouldn't  
8 indicate warrants that we could see or any kind of flags based on  
9 that. And I just thought it would be best to disclose that as  
10 soon as I knew.

11 THE COURT: Thank you.

12 MR. MCKAY: Your Honor, I think that's a big -- I've been  
13 saying the whole time that Ms. Little she was a very -- I'm at a  
14 loss for words right now. And then twice we get served an  
15 immunity packet. It's like very coincidental, and I'm not  
16 accusing Ms. Ponce of anything, obviously, because you don't know  
17 federal things, right? I was told by the bail bondsman that  
18 Ms. Lisa had charges. And I specifically told Ms. Ponce look  
19 into her, you got the wrong person here. Look into the person  
20 who says they're the victim, please. And this whole time I sat  
21 in jail. My dog is still missing. My other one is at the pound.  
22 I had to bury the other one. There's people at my house still.  
23 The cops raided my house, like, three weeks ago, for these people  
24 that were at my house and took over all of my stuff. I only  
25 asked -- I told Ms. Ponce when I went September 23rd, you have  
26 the time right now to get on the side of right. Right now you  
27 can look into this, now that I'm telling you, maybe Gary didn't  
28 tell her these things.

1 I said you have time right now to get on the side of  
2 right. Look into this. Here is my reservation number. Here is  
3 this, look she had this. I know the lady was foul. And I didn't  
4 know that when we became friends. She was a friend of mine. She  
5 was there for me at a time when I had nobody, like Ms. Ponce  
6 said. And I still appreciate the words that Ms. Ponce said last  
7 Thursday, because it shows me I'm not just an animal to her  
8 anymore, maybe you guys look at me a little bit different, just a  
9 little bit. I might be an animal in my own cage but I stay in my  
10 cage.

11 THE COURT: Okay. So for the record, what the Court  
12 received was a federal, it looked like our equivalent to an  
13 Information showing charges which included importation of the  
14 drug known as Fentanyl.

15 And Mr. McKay, the only relevance the Court sees in that,  
16 is it would be impeachable evidence and I still have it. So it  
17 works as impeachable evidence. I know that this lady has been  
18 charged, though not convicted, I don't think. There might be a  
19 warrant out for her. I'm not certain, because I just made a  
20 cursory glance. But, yes, I want Mr. McKay and Ms. Ponce to know  
21 before I give my ruling, which I'm going to give in a moment,  
22 that the Court knows that Ms. Little's hands are not clean. I'll  
23 just leave it that way. So she's not an angel to this Court.  
24 And that is considering -- that is going to be considered within  
25 the ruling and verdicts that I am going to give in this matter.  
26 So without further ado, I'm going to give my court reporter this  
27 in case I talk too fast.

28 Before I give my decision, I would like to say that this

1 case is extremely unfortunate. I do believe that Mr. McKay was a  
2 victim of burglary to his home, and that because Ms. Little had  
3 his property in her possession, she probably knew who took the  
4 rest of it. The record will reflect that Ms. Little's attorney  
5 Mr. James Brown was present for the majority of her testimony.

6 But here's the problem which Mr. McKay has reiterated to  
7 the Court on more than one occasion. The way he lives his life  
8 is not necessarily the way of the legal system. In this  
9 instance, the Court knows beyond a reasonable doubt that  
10 Mr. McKay decided to take matters into his own hands and dispense  
11 his brand of street justice in this matter. His way is not to  
12 involve law enforcement. But unfortunately, Ms. Little did  
13 involve law enforcement which triggers the obligation of this  
14 Court to sort through what has and has not been proven throughout  
15 the trial. The Court bases its rulings on the facts elicited in  
16 this trial. And now I'm also considering the new evidence that  
17 Ms. Ponce has provided to the Court. I'm ordering that that be  
18 filed and placed as part of the record since the Court just  
19 received it today. The preliminary hearing transcript of the  
20 victim's statements only, as well as the statements made by the  
21 defendant throughout the course of this trial acting as his own  
22 counsel.

23 I will start in the order of the counts presented in the  
24 Information.

25 Count 1, Penal Code Section 209(b)(1), kidnapping for the  
26 purpose of committing robbery. In order to find whether this  
27 charge is sustainable, I must first determine whether or not a  
28 kidnapping occurred. One of the elements concerns whether or not

1 the defendant moved Ms. Little a, quote, "substantial distance,"  
2 end quote. The law defines substantial distance as follows:  
3 More than a slight or trivial distance. I must consider all the  
4 circumstances relating to the movement, i.e., whether that  
5 movement was incidental to another crime, whether there was an  
6 increase of physical or psychological harm, whether the movement  
7 increased the danger of a foreseeable escape attempt, or gave the  
8 attacker a greater opportunity to commit additional crimes. All  
9 of these criteria relate uniquely to an analysis Penal Code  
10 Section 209(b)(1).

11 I looked at CALCRIM and the leading case on this is  
12 People versus Martinez, which is a 1999 case. Cited at 20  
13 Cal.4th, 225, which was overruled on other grounds, which defines  
14 the requirement of asportation. Summarizing, the court held that  
15 a movement of the victim must be substantial in character to meet  
16 the asportation requirement, but there are other factors which  
17 may be considered. It must be more than incidental to the  
18 commission of any underlying crime, and that increases the risk  
19 of harm to the victim over and above that necessarily present in  
20 the underlying crime itself.

21 There is no minimum number of feet a defendant must move  
22 a victim in order to satisfy the statute. The key is, is the  
23 victim subjected to a greater risk of harm. The *Martinez* court  
24 urges this Court to look at the totality of the circumstances and  
25 consider whether the distance moved is only a very short  
26 distance. The trier of fact must determine the scope and nature  
27 of the movement.

28 This case specifically mentions Penal Code

1 Section 209(b)(1) and says, "In a kidnapping case involving an  
2 associated crime, the trier of fact should consider whether the  
3 distance a victim was moved was incidental to the commission of  
4 that crime in determining the substantiality of the movement.  
5 Such consideration is relevant to determining whether more than  
6 one crime was committed applying the facts to the case at bar.

7         According to her testimony, which the Court finds was  
8 inconsistent at times regarding the order of events, as well as  
9 their duration, Ms. Little was moved from the garage, which was  
10 closed, to the living room, which was blocked, to a bedroom  
11 closet with shielded windows and back throughout her ordeal. The  
12 distance between these places appears slight as evidenced in the  
13 exhibits, specifically Exhibit 28, the entrance to the kitchen,  
14 Exhibit 29, the living room to the hallway, and Exhibit 47, the  
15 defendant's home.

16         There did not appear to be added danger to the victim  
17 between locations. Additionally, the movement of the victim did  
18 not assist in the alleged robbery because the movement of the  
19 victim did not contribute in any way to the carrying out of the  
20 robbery as is required in *Martinez*. The movement was merely  
21 incidental.

22         Because the People have not proven that a kidnapping took  
23 place under the applicable case law, the Court finds the  
24 defendant not guilty of Count 1.

25         Count 2 Penal Code Section 207(a) kidnapping, per the  
26 analysis already articulated in Count 1, the Court finds the  
27 defendant not guilty of Count 2.

28         Count 3, Penal Code Section 236 false imprisonment by

1 violence. The Court finds that Mr. McKay did restrain Ms. Little  
2 by violence. The Court knows from statements made by Mr. McKay  
3 and Ms. Little that he was very angry at what he perceived to be  
4 a betrayal and collusion with thieves in regard to his home.  
5 Ms. Little did give inconsistent statements, but what is sure is  
6 that at some point Mr. McKay demanded to know who had his  
7 property, that Ms. Little knew those people, and that Mr. McKay  
8 was so angry that he struck her in the face and stranded her at  
9 his home by taking her car, and various credit cards, social  
10 security cards, and other things necessary for her to leave.

11 Additionally, Ms. Little was left with Josh, who was  
12 there to keep her there per instruction. What was also obvious  
13 to the Court was that this was all done against Ms. Little's  
14 will. Ms. Little did go to the house voluntarily in some attempt  
15 to curry favor with Mr. McKay by bailing him out of jail and  
16 cooking him food. But once she got there the second time around,  
17 she was not free to leave until Mr. McKay said so. The Court  
18 finds the defendant guilty of Count 3 beyond a reasonable doubt.

19 Count 4, Penal Code Section 69, resisting an executive  
20 officer. Deputy Cole testified as to Mr. McKay running from the  
21 car once it became disabled. Although there was a knife in his  
22 hand, the Court heard no evidence of Mr. McKay brandishing it at  
23 any law enforcement or striking the officer in any way or making  
24 the threat thereof. Therefore, as one of the elements to prove  
25 this charge is that the defendant used violence or a threat of  
26 violence against law enforcement, the Court finds him not guilty  
27 of Penal Code Section 69. However, as he did ignore several  
28 commands to stop, as Deputy Cole testified, the Court finds him



1 guilty of the lesser included offense of Penal Code Section 148,  
2 resisting, obstructing, or delaying a peace officer.

3 Count 6, Vehicle Code Section 2800.2, evading an officer  
4 with willful disregard. Mr. McKay has repeatedly admitted that  
5 he was guilty of this offense, but for the record, I wanted  
6 Ms. Ponce to do her job. She has done so. Deputy Cole testified  
7 that she and her sergeant conducted a traffic stop. The driver  
8 was Mr. McKay who, after a time, took off in the truck down the  
9 Cajon Pass. The deputy was in uniform, in a marked patrol car  
10 with her lights and siren on, the defendant was clearly eluding  
11 the deputies, and clearly did so because the deputies lost sight  
12 of him for a time and had to depend on 40 King to re-establish  
13 contact. There is a clear violation of evading. The only  
14 question is whether this is the felony as alleged, or misdemeanor  
15 conduct as a lesser included offense. The speed at which  
16 defendant was travelling was 40-45 miles per hour. However,  
17 there were roadwork signs, cones, at one point defendant was  
18 riding on the shoulder, was weaving in and out of traffic, and a  
19 couple of times almost colliding with other cars. Once off of  
20 the freeway, he further ran a stop sign. This is clearly felony  
21 conduct, and the Court finds Mr. McKay guilty of Count 6 beyond a  
22 reasonable doubt.

23 Count 7, 10851, the Court already granted 1118.1 motion.  
24 But the Court would like to clear the record. 1118.1 refers to a  
25 jury trial. Since this is a court trial, the Court will amend  
26 its ruling pursuant to Penal Code Section 1118.

27 Count 8, Penal Code Section 422(a) criminal threats.  
28 During Ms. Little's ordeal she testified that the defendant at

1 one point told her that he would kill her and her mother and take  
2 everything. She further testified that she was in fear for her  
3 life because he was so angry. While the Court does believe that  
4 Mr. McKay said these words, and the Court believes he was very  
5 angry, the Court is suspicious of the victim adding the knife  
6 placed at her throat on redirect. That should have been at the  
7 forefront of her testimony, and the Court is curious as to why it  
8 was first spoken on redirect. And for the record, the Court read  
9 the preliminary hearing transcript and there was no mention of a  
10 knife to her throat there either. Nevertheless, Mr. McKay even  
11 admitted in his closing that he may have said the words. This  
12 evidence clearly constitutes a threat to kill made orally by  
13 Mr. McKay. He intended for his statement to be taken as a  
14 threat, and the threat was very clear. The Court finds Mr. McKay  
15 guilty of this count.

16 Penal Code Section 496 receiving stolen property  
17 exceeding \$950. In this count, the crucial inquiry regarding  
18 this charge is whether Mr. McKay knew or should have known that  
19 this car was stolen. The condition of the ignition and the way  
20 the car was forced to start, coupled with the testimony that the  
21 victim had reported that the car was stolen leads this Court to  
22 find there was evidence adduced to find Mr. McKay guilty of this  
23 count beyond a reasonable doubt.

24 Finally, are the special allegations in the Information.  
25 Mr. McKay acknowledged in his closing argument that he did indeed  
26 commit the prior convictions alleged in the Information. He  
27 explained that he did have a firearm in a failed attempt at,  
28 quote, "suicide by cop" and pled guilty to that, which

1 corresponds to a conviction of Penal Code Section 245(a)(2).  
2 Additionally, he admits that he did 13 years at 85 percent in an  
3 incident in which two individuals were beaten which may  
4 correspond to a Penal Code Section 211, robbery conviction in  
5 2006. However, for the clarity of the record, I will go over the  
6 prior convictions and make the determination as to whether or not  
7 they are provable as belonging to Mr. McKay.

8         Exhibit 51 is a L.A. County prior conviction for  
9 violation of Penal Code Section 211 under case MA031420 on  
10 April 3rd, 2006. In that conviction a prior strike is also  
11 admitted pursuant to Penal Code Sections 1170.12 (a) through (d)  
12 and Penal Code Section 667(b) through (i) under case FWV17179.  
13 The person who entered the plea was William Shae Amador McKay.

14         Exhibit 52 is from the Department of Corrections and on  
15 page 4 there is an Abstract of Judgment concerning William Shae  
16 Amador McKay under Case No. MA031420. Among the convictions  
17 numerated is violation of Penal Code Section 211, first degree  
18 robbery conviction date of April 3rd, 2006. On the last page is  
19 a photograph of the person who was convicted. The Court finds  
20 beyond a reasonable doubt that the person convicted of the prior  
21 strike is here in court, Mr. McKay.

22         Exhibit 53 is an Abstract of Judgment concerning William  
23 Shae McKay under case number FWV17179. The conviction was for  
24 violation of Penal Code Section 245(a)(2), assault with a firearm  
25 conviction date January 21st, 1999.

26         Exhibit 54 is a Complaint under Case No. FWV17179.

27         Exhibit 55 is a Minute Order regarding William McKay and  
28 on page 5 it shows a plea of guilty to a violation of Penal Code

1 Section 245(a)(2), assault with a firearm, under Case  
2 No. FWV17179.

3 Exhibit 56 is a plea bargain agreement regarding William  
4 Shae McKay. He pled to violation of Penal Code  
5 Section 245(a)(2), assault with a firearm on January 21st, 1999.

6 Exhibit 57 is from the Department of Corrections and  
7 Rehabilitation. Within the packet is the same abstract of  
8 judgment that is Exhibit 53. On the last page is a photograph of  
9 the person convicted. The Court finds beyond a reasonable doubt  
10 that this person is Mr. McKay, and that he suffered this  
11 conviction.

12 Those are the verdicts and findings of this Court.

13 The Court at this time will refer the matter to probation  
14 for a pre-sentence investigation report. I must inform counsel,  
15 Ms. Ponce may know this, Mr. McKay may not, there will be  
16 significant changes in the law in 2022, which may affect the  
17 allegations. So I will, unless I hear an objection from counsel,  
18 place this matter for sentencing Friday, January 7th, 2022, 8:30,  
19 is there any objection?

20 MS. PONCE: No objection.

21 MR. MCKAY: Your Honor, I understand there's going to be  
22 significant changes in the laws that are going to determine the  
23 sentencing. I would like to ask for a stay to be granted to be  
24 able to either resume bail or ankle monitor for the holidays.  
25 I've been in jail for seven months. I've learned a valuable  
26 lesson in all this. I'm not going nowhere. I sat here for three  
27 hours when Ms. Ponce took my bail the first time. I paid bail.  
28 I satisfied the government's needs that they asked for at that

1 time. And I sat in the front of this courtroom for three hours  
2 while Ms. Ponce did the paperwork. I'm not going anywhere.  
3 There's going to be significant amount of changes to the rules.  
4 But to have me sit here for two months while it waits, you know,  
5 we're at the beginning of November, that's two months. I'd like  
6 to be able to get my affairs in order at home. Consider it a  
7 Cruz waiver sort of type thing. I haven't -- the high speed  
8 chase was a high speed chase I have admitted to that.

9 My record reflects that I'm the only person that's been  
10 here, between me and Ms. Little, who has proven to be a liar.  
11 I've admitted to everything that I've done.

12 THE COURT: Okay. Hold on. Ms. Ponce, in light of the  
13 Court's verdicts, is bail set at one million?

14 MS. PONCE: I think it's just short of that. I think it  
15 was reduced maybe by 50.

16 MR. MCKAY: It was one million-fifty. But the bail was  
17 just put so far overhead, that's why I had a Humphrey's motion  
18 ready because I paid the initial bail. I still paid \$300 on that  
19 bail that I'm not out on. I'm asking for an OR, Cruz waiver,  
20 something. I'll pay for the ankle monitor. I'll check in every  
21 day. I'll come to the district attorney's office once a week or  
22 something. I've gone through this. I'm going to have, like,  
23 14 month's credit in. 16, 2, 3 is usually false imprisonment,  
24 from what I understand and there's going to be some changes. And  
25 I appreciate your verdict. And I went with a judge jury because  
26 you're a trier of fact. And I know if I did something, I have to  
27 pay for that crime and I will. I'll walk in here gladly in  
28 January and take that time if that's necessary, but please don't

1 make me sit in here for two months just wasting away. I still  
2 have to find my dog. I am not going to go -- there's no street  
3 justice coming out of me. I learned a whole different thing.

4 THE COURT: I'm going to stop you right here. The fact  
5 of the matter is this is still a three strikes case. Although a  
6 million does seem beyond the bail schedule of a three strikes  
7 case. I will reset bail at \$500,000, which is the bail for a  
8 three strikes case. I will not release you OR because the  
9 verdict is in and I have to always be mindful of the fact that  
10 you are still looking down the barrel of a life sentence. And so  
11 I must keep bail at \$500,000 now. I can entertain something else  
12 if you have something else to present, but that is my ruling  
13 because the verdict has changed, circumstances have changed and I  
14 have adjusted the bail to those circumstances.

15 MR. MCKAY: Is there any way, your Honor, under the  
16 Humphrey's motion, I spent all of my money on the first bail. I  
17 can't afford \$500,000. Is there any way to reinstate my bail at  
18 what it was to where I pay \$1,000 with the bail bonds I was  
19 through? I know it's a lot asking the Court and I appreciate you  
20 even entertaining it. And I appreciate no objection from  
21 Ms. Ponce, I don't hear one yet. If I can just get my bail  
22 reinstated that I currently had, I won't have to pay as much.  
23 Because they took the bail they started -- what happened from my  
24 understanding, is when Ms. Ponce refiled, she filed under a new  
25 case number. So all the money that I paid for that bail, the  
26 \$12,000 that I paid out is gone. They don't put that towards my  
27 \$500,000 bail now, it's gone. And I still pay \$300. I still  
28 have \$17,000 to pay off on it.

1 THE COURT: Ms. Ponce -- let me ask Ms. Ponce's reaction.

2 MR. MCKAY: Please.

3 MS. PONCE: Your Honor, I think given the change of  
4 circumstances and given -- just given the stakes I was going to  
5 say no bail should be appropriate. I'll submit to the Court.

6 THE COURT: Okay. That's her stance. And I will leave  
7 it at \$500,000 at this point to give you an opportunity.

8 So that only leaves when do you want sentencing, so you  
9 want it within the 20 days? I will tell counsel this, the law is  
10 going to change in 2022 so no matter what happens on the day of  
11 sentencing, this case may come back. Because once January 1st  
12 happens and the new law kicks in, a lot of people are coming  
13 back. So that's why I said over to the new year. I'll do it  
14 within the 20 days if that's what you'll prefer. I'll refer it  
15 to probation, we'll come back December 9th, entertain further  
16 arguments, if necessary. Right now, Mr. McKay, I'm leaving my  
17 ruling as is. See you back here December 9th, 8:30, this  
18 department.

19 What are we going to do with that trailing case?

20 MS. PONCE: Move to dismiss it.

21 THE COURT: Thank you. Granted. See you back here  
22 December 9th, 8:30.

23 MR. MCKAY: Yes, ma'am.

24 (Proceedings were concluded.)  
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