

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

REYNALDO A. MALDONADO,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
MATEO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

A126236

(San Mateo County
Super. Ct. No. SC065313A)

THE COURT:

The opinion filed May 13, 2010, is modified on the court's own motion as follows:

On pages 39 and 40 of the majority opinion, all text within Section III (Disposition and Order) shall be deleted and replaced with the following text:

"The alternative writ is discharged and the petition is granted in part and denied in part consistent with the views expressed in this opinion. A peremptory writ of mandate shall issue directing the trial court to vacate its September 8, 2009 order with respect to request numbers 5, 6, 7, 8 and 10 and enter a new order consistent with the views expressed in this opinion. The order shall provide that:

1) Prosecuting attorneys and their agents shall be barred from observing the examinations of Maldonado in realtime. All persons present at the examinations, including the examiners, shall be barred from disclosing any statements made by Maldonado during the course of the examination until expressly authorized to do so by the trial court.

2) Within a specified amount of time after the conclusion of each examination (to be determined by the trial court), Maldonado may assert any privilege objections to disclosure of his statements, or any portion thereof, made during the course of the

examinations. The motion may be filed under seal and the trial court must conduct an initial in camera review of the motion to determine whether the motion has merit.

3) In ruling on the motion, the trial court shall determine if Maldonado's statements to the examiners, in whole or in part, remain subject to Fifth Amendment privilege, redact any statements it finds to be privileged, and may then order the balance of the results of the examinations, including any notes and recordings, disclosed to the prosecution. The court must also consider whether disclosure should be conditioned or limited in any fashion in order to preserve any valid assertion of privilege, or to preclude derivative use.

The previously issued stay shall remain in effect until the remittitur issues."

This modification changes the judgment.

Dated _____ P.J.