

CRB 530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name CHAVEZ JESUS LOPEZ
(Last) (First) (Initial)

Prisoner Number J-01868 C.T.F.

Institutional Address P.O. BOX 689, ZW-346L, SOLEDAD, CALIF 95060

FILED
JUN - 5 2009
GERRARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JESUS LOPEZ CHAVEZ,

(Enter the full name of plaintiff in this action.)

vs.

BEN CURRY, ET. AL.,

(Enter the full name of respondent(s) or jailor in this action)

CV 09

2521

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

E-filing

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

CV-09-2521-CRB

Handwritten signature/initials

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

13 County Superior Court, Oakland):

14 LOS ANGELES SUPERIOR COURT

LOS ANGELES

15 Court

Location

16 (b) Case number, if known BA500431

17 (c) Date and terms of sentence 10/29/93 15 TO LIFE + 5

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes X No _____

20 Where?

21 Name of Institution: CORRECTIONAL TRAINING FACILITY (CTF)

22 Address: P.O. BOX 686, SOLEDAD, CA 93960

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 PENAL CODE SECTIONS 187 AND 12022.5(a)

27 SECOND DEGREE MURDER WITH USE OF FIREARM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Did you have any of the following?

Arraignment: Yes X No
 Preliminary Hearing: Yes X No
 Motion to Suppress: Yes X No

4. How did you plead?

Guilty Not Guilty X Nolo Contendere
 Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury Judge alone X Judge alone on a transcript

6. Did you testify at your trial?

Yes X No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No
 (b) Preliminary hearing Yes X No
 (c) Time of plea Yes X No
 (d) Trial Yes X No
 (e) Sentencing Yes X No
 (f) Appeal Yes X No
 (g) Other post-conviction proceeding Yes No X

8. Did you appeal your conviction?

Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No
 Year: 1995 Result: JUDGMENT AFFIRMED
 Supreme Court of California Yes No
 Year: Result:
 Any other court Yes No X
 Year: Result:

(b) If you appealed, were the grounds the same as those that you are raising in this

- 1 petition? Yes _____ No X
 2 (c) Was there an opinion? Yes X No _____
 3 (d) Did you seek permission to file a late appeal under Rule 31(a)?
 4 Yes _____ No X

5 If you did, give the name of the court and the result:
 6 _____
 7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
 9 this conviction in any court, state or federal? Yes _____ No X

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
 11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
 12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
 13 for an order authorizing the district court to consider this petition. You may not file a second or
 14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
 15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
 17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: LOS ANGELES SUPERIOR COURT
 19 Type of Proceeding: HABEAS CORPUS
 20 Grounds raised (Be brief but specific):
 21 a. SAME AS HERE
 22 b. _____
 23 c. _____
 24 d. _____
 25 Result: DENIED Date of Result: 7/14/08
~~7/12/08~~

26 II. Name of Court: SECOND APPELLATE DISTRICT, DIV. 2
 27 Type of Proceeding: HABEAS CORPUS
 28 Grounds raised (Be brief but specific):

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

a. SAME AS HERE
b. _____
c. _____
d. _____ 8/5/08
Result: DENIED Date of Result: ~~5/21/08~~

III. Name of Court: CALIFORNIA SUPREME COURT
Type of Proceeding: HABEAS CORPUS
Grounds raised (Be brief but specific):
a. SAME AS HERE
b. _____
c. _____
d. _____
Result: DENIED Date of Result: 5/21/09

IV. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?
Yes _____ No X

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SEE ATTACHED

6
7 Supporting Facts: SEE ATTACHED

8
9
10
11 Claim Two: SEE ATTACHED

12
13 Supporting Facts: SEE ATTACHED

14
15
16
17 Claim Three: _____

18
19 Supporting Facts: _____

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

THE BOARD VIOLATED PETITIONER'S RIGHT TO DUE PROCESS UNDER THE UNITED STATES CONSTITUTION BECAUSE THE DENIAL OF PAROLE IS NOT SUPPORTED BY THE PREPONDERANCE OF THE EVIDENCE. THE BOARD'S SOLE RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE RENDERED THE DECISION ARBITRARY AND CAPRICIOUS.

A. THE COMMITMENT OFFENSE.

Petitioner, Jesus Chavez, conspired with Mr. Duran and Mr. Dominguez to rob suspected drug dealer Mr. Paul Horace. They were supposed to provide him with a kilo of cocaine in exchange for \$2000.00. When they met on May 1, 1992, Petitioner and his collaborators showed up without the cocaine and Mr. Horace in turn had no intention of parting with his money. A shooting ensued and Mr. Horace was killed. Petitioner and his co-defendants were arrested shortly thereafter, not far from the scene of the crime. Petitioner was found guilty of second-degree murder in a trial by Judge. HT-16

B. THE BOARD'S DECISION

The Board found Petitioner not suitable for parole and that he would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. It stated that one of the many factors (NO OTHER FACTORS WERE CITED, HOWEVER) that the Panel did take into consideration does go back to the commitment offense. It was done in a very cruel and callous manner . . . It was very calculated . . . total callous disregard for human suffering and human life . . . and the motive was financial gain. And in any event, very trivial in relation to the results. HT-132

C. FORENSIC EVIDENCE IN FAVOR OF PAROLE.

Disciplinary Record:

Zero (0) CDC 115's

1 CDC 128B

a. 1994 – "Inmate Manufactured Alcohol"

INS Hold

D- SELF-HELP. HT:67

Education: GED

Vocation: Small Engine Repairs
Computer Refurbishing

NA – 1994-2001

IMPACT PROGRAM – 12/02

12 STEPS

IPEP: HIV/STD/TB – 2001

LAUDATORY CHRONOS:

- a. Officer Semano – Work related
- b. Sergeant Fordham – Work related

Letter of Appreciation – Officer Van Patton: “In the past 3 years I’ve worked in the housing unit in which he (CHAVEZ) lives in, IN X-Wing, the Wing in which he worked. I am impressed with him consistently trying to better himself and his complete lack of disciplinary actions.”

Letter of Appreciation – Officer B. Kline: “As the Wing’s tier officer for the last 4 years it is my duty to observe and maintain a constant visual of the tier. While performing my duties, I am always aware of the workers, Inmate Chavez, among others, in the midst of their jobs. I am always impressed by both the quality and quantity in which he performs these jobs.”

Letter of Appreciation – Officer J. Cordier: “I am always impressed by both the quality and quantity in which he (Chavez) performs his jobs.”

Letter of Appreciation – Soccer League

MANY LETTERS OF SUPPORT – HT: 78-92 [Leonard Rodriguez, Alejandrina Morales, Sylvia Rodriguez, Juana Hernandez, Concepcion Olivas, Jesus Muñoz, Rosalia Diaz, Guadalupe Olivas, Enriqueta Beltran, Guadalupe Lopez, Zepharina Ponce, Waldina Quintero, Candelaria Hernandez, Christian Chavez, Cecilia Pesos, Maria Quintero, Ingracia Felix, Maria Lopez, Eucenia Lopez, Nadia Lopez]

PSYCH EVALUATIONS: HT-69

10/2007 – Dr. Susan M. Hoyt, Ph.D.

ASSESSMENT OF DANGEROUSNESS

“Overall risk assessment estimates that this inmate poses a low likelihood to be involved in a violent offense if released to the free community. Assessment takes into account the inmate’s cultural background, personal, social and criminal history, institutional programming, community social support, release plans and current clinical presentation.”

12/10/05 – Dr. Melvin Macomber. Ph.D.

“The Level of Service Inventory-Revised, was administered. This is an actuarial measure that assesses criminal history, substance abuse (which in this case is not an issue), educational attainment, vocational attainment, emotional problems, and several other factors. His score indicated a 1.4 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better than 98% of them. This is an extremely low risk score. The prognosis for successful adjustment in the community is excellent.”

5/29/04 – Dr. Melvin Macomber. Ph.D.

ASSESSMENT OF DANGEROUSNESS: “In comparison to other inmates, his potential for dangerous behavior in the institutional environment is definitely below average.”

CLINICAL OBSERVATIONS: “There is no evidence of mental or emotional problems in this case that would interfere with being granted a parole date.”

GAF=70

DISCUSSION

Petitioner respectfully refers this court to the recent Second Appellate District decision of May 23, 2007, **In re Sandra Lawrence**, 150 Cal.App.4th 1511, 59 CR3d 537, which has significant bearing on this case. In 1971 Sandra Lawrence, distraught at her lover's betrayal, killed his wife. During a “cat fight,” Lawrence fired a handgun wildly at the victim, striking her in the hand, arm, leg, and neck, then stabbed her with a potato peeler. Lawrence fled and remained at large for 11 years during which she had no altercations with the law. She had no prior criminal record.

The Court analyzed in historic detail the standard of review for California and federal due process. After reviewing *Rosenkrantz, Dannenberg, McQuillion, Sass, Biggs, and Irons*, the Court concluded:

“Combining the California and federal standards of review, as they have been articulated thus far by the California Supreme Court and the Ninth Circuit, respectively, the commitment crime can lack the power to supply “some evidence” supporting a denial of parole because of the interplay between two factors – the nature of that crime and the passage of time since its commission. That is, the fact there is “some evidence” the crime was committed and committed a certain way at a certain time does not mean that crime necessarily represents “some evidence” the prisoner's release on parole will pose an unreasonable risk of danger to the public safety at the present time. Whether it possesses the necessary predictive value depends both on the nature of the crime and how long ago it happened.”

The Court explained in great detail why:

“Lawrence's commitment offense, now over 30 years in the past and after nearly a quarter century of incarceration, does not provide “some evidence” her present release would represent an “unreasonable risk” of danger to the community. The main issues before this court are whether “some evidence” supports the Governor's finding the commitment offense is properly characterized as a “shockingly vicious use of

lethality and an exceptionally callous disregard for human suffering” and, if so, whether this commitment offense given its nature and the passage of time provides “some evidence” supporting a conclusion the release of Lawrence on parole would represent an “unreasonable risk” of danger to public safety.

Other than rehabilitation, imprisonment of those who are convicted of committing crimes generally serves and is justified by one or more of three societal goals: 1- retribution-that is, punishment of the offender commensurate with the seriousness of the crime; 2- deterrence of future offenses by the offender and other potential offenders; 3- incapacitation of the offender so she is not free to commit other offenses.

When the Legislature sets an indeterminate maximum term with a fixed minimum term, the latter can be viewed as setting the period of imprisonment deemed necessary to satisfy the first two purposes, while the justification for continued imprisonment beyond that fixed minimum depends on the need for continued incapacitation of the offender.

California’s sentencing structure in murder cases makes it clear the denial of parole can only be justified by the third of these purposes – the need for further incapacitation of the prisoner. Unless there is an unreasonable risk the parole applicant will re-offend and thus pose a risk to public safety she or he is to be released on parole.”

Petitioner submits that both the psych reports and his institutional programming weigh in favor of finding him suitable for parole and preclude further incapacitation.

E. DUE PROCESS IN THE PAROLE CONTEXT

The Fifth and Fourteenth Amendments prohibit the government from depriving an inmate of life, liberty, or property without due process of law. U.S. Const. Amends. V, XIV. It is now settled that California’s parole scheme, codified in California Penal Code section 3041, vests all “prisoners whose sentences provide for the possibility of parole with a constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest that is protected by the procedural safeguards of the Due Process Clause.” Irons v. Carey, 479 F.3d 658, 662 (9th Cir. 2007) (citing Sass v. Calif. Bd. Of Prison Terms, 461 F.3d 1123, 1128 (9th Cir. 2006); Biggs v. Terhune, 334 F.3d 910, 914 (9th Cir. 2003); McQuillon v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002).

As noted above, California courts and federal courts are under the impression that due process requires only that a parole board premise its decision on “some evidence” in the record such that it is not arbitrary. They rely on **Superintendent v.**

Hill, 472 US 445, 457 (1985) for this conclusion. However, the **Superintendent v. Hill** standard concerned the revocation of "good time" credits towards parole based on inmate misconduct. And in reality, this conclusion is misleading as the Supreme Court has never directly said anything about the standard of proof in prison discipline, so the question is open.

Parole hearings are more akin to a civil trial. In a civil trial, the plaintiff (Board) must usually prove his case by a "preponderance of the evidence."

The "preponderance" standard simply requires that for the hearing committee to convict you, it must be convinced that you are more likely guilty than innocent. **In re Winship** (1970) 397 US 358, 371, 90 S.Ct. 1068.

Parole hearings involve more than forfeiture of credits for prison misconduct. They involve a liberty interest protected by the United States Constitution and therefore require that the Board support its decision by more than just any evidence.

Petitioner thereby challenges the "some evidence" standard being presently used by state and federal courts reviewing Board decisions.

"Preponderance of the evidence" means alleged facts must be shown to be more likely true than not true. The preponderance of the evidence is not determined just by the number of witnesses on either side but also by the credibility of the evidence. One credible witness may carry more weight than ten incredible ones.

The party with the burden of proof on an issue also has the burden of going forward with the evidence. That is, he must establish a prima facie case. This is done by producing enough evidence to justify a finding in the party's favor unless the evidence is explained or discredited by the other side.

In the instant case, the commitment offense does not constitute sufficient credible evidence to deny parole and whatever weight it carried as evidence, was discredited by Petitioner's extensive self-help and therapeutic programming as documented above.

Petitioner has done his time. He has rehabilitated himself and is eligible for parole under the law. He prays a writ of habeas corpus is granted and a release order issued forthwith.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:

9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 5/31/2009
14 Date

James J. Chavez
Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

21
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, JESUS LOPEZ CHAVEZ, declare:

I am over 18 years of age and a party to this action. I am a resident of _____

CORRECTIONAL TRAINING FACILITY Prison,

in the county of MONTEREY

State of California. My prison address is: P.O. BOX 689, ZW-346L

SOLEDAD, CA 93960-0689

On 5/31/2009
(DATE)

I served the attached: PETITION FOR WRIT OF HABEAS CORPUS

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

OFFICE OF THE ATTORNEY GENERAL
110 WEST A STREET, SUITE 1100
SAN DIEGO, CA 92101
ATTN: MS. CYNTHIA LUMELY

I declare under penalty of perjury under the laws of the United States of America that the foregoing

is true and correct.

Executed on 5/31/2009
(DATE)

Jesus L. Chavez
(DECLARANT'S SIGNATURE)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: JULY 14, 2008
Honorable: PETER ESPINOZA

Judge M. ARVIZO
Bailliff

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH005278

In re,
JESUS CHAVEZ
Petitioner,
On Habeas Corpus

COUNSEL FOR PETITIONER:

COUNSEL FOR RESPONDENT:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on May 16, 2008 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on December 6, 1993 after a conviction for second degree murder with use of a firearm. He was sentenced to 20 years to life, and his life sentence began on April 24, 1995. His minimum parole eligibility date was April 23, 2005.

The record reflects that on May 1, 1992, petitioner was with two associates, Dominguez and Duran, and they planned to buy drugs from the victim, Mr. Horace. The petitioner and his associates decided to pretend that they were going to supply the drugs in order to get money from the victim. Petitioner and his associates brought bread made to look like a kilo of cocaine. Simultaneously, the victim intended to obtain the drugs without paying for them. Mr. Horace got into a car with petitioner and his associates. Petitioner was sitting in the back seat with Mr. Horace. As was the plan, Mr. Horace started giving directions on how to get to his house. At some point, Mr. Horace began to direct the driver to an area which was industrial and did not have houses, and the petitioner told him to be careful. The driver made a U-turn and petitioner's associates and Mr. Horace began to talk. Petitioner did not speak English at the time and he started counting the money he had

MinutesEntered
07-14-08
County Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: JULY 14, 2008
Honorable: PETER ESPINOZA

Judge M. ARVIZO
Bailiff

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH005278

In re,
JESUS CHAVEZ
Petitioner,
On Habeas Corpus

COUNSEL FOR PETITIONER:

COUNSEL FOR RESPONDENT:

been given. Suddenly, Mr. Horace got out of the car and began to run. At that point, the petitioner heard multiple shots. Mr. Horace was running from the car, and the petitioner lay down in the back of the car, pulled his arm up and started to shoot through the back window. Petitioner fired five or six bullets from a .45; his associate had a nine millimeter. Mr. Horace was killed by a .45.

The Board found the petitioner unsuitable for parole after a parole consideration hearing held on October 7, 2007. The petitioner was denied parole for two years. The Board concluded that the petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense, his psychological evaluation, and his need for further programming.

The Court finds that there is some evidence to support the Board's finding that the offense was carried out in a dispassionate and calculated manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The petitioner fired his gun out the car window without looking. Further, the offense was premeditated, as the petitioner planned to rob the victim by tricking him with a loaf of bread disguised as cocaine and armed himself for the incident. Therefore, the offense was more aggravated than is necessary to sustain a conviction for second-degree murder and it alone is some evidence to support the Board's denial at this time. See *In re Dannenberg* (2005) 34 Cal.4th 1061, 194-95.

The Board also considered the petitioner's post-conviction gains. However, although the petitioner has excellent family support, realistic parole plans, has obtained two or more vocations, and has excellent work reports, the Board noted that a recent psychological report indicated that he needed a longer period of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: JULY 14, 2008
Honorable: PETER ESPINOZA

Judge M. ARVIZO
Bailiff

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH005278

In re,
JESUS CHAVEZ
Petitioner,
On Habeas Corpus

COUNSEL FOR PETITIONER:

COUNSEL FOR RESPONDENT:

observation, evaluation, and further programming. The report also stated that the petitioner is a medium risk of recidivism. The Board concluded that the Petitioner would pose an unreasonable threat to public safety. Penal Code §3041(b). The Court finds that there is some evidence to support this determination based on the extraordinarily grave nature of the commitment offense and the psychological report.

In addition, the Board noted that the District Attorney's Office had opposed the petitioner's release. While this is not a factor on which the Board may rely to deny parole, such opposition may be properly considered. Penal Code § 3402.

The Court finds that the petitioner's additional arguments are without merit.

Accordingly, the petition is denied.

A copy of this minute this date via United States mail to the Following:

Jesus Chavez
J-01868
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960-0689

Department Of Justice - State Of California
Office Of The Attorney General
Cynthia Lumely
110 West A Street, Suite 1100
San Diego Ca 92101

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court
PLAINTIFF/PETITIONER: JESUS CHAVEZ		JUL 14 2008 John A. Clarke, Executive Officer/Clerk By <u>mea</u> , Deputy
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER: BH005278

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Petition for Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order re: Writ Error Coram Nobis |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: Appointment of Counsel |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus /Suitability Hearing Transcript for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

July 14, 2008
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Maria Elena Arvizo Clerk
Maria Elena Arvizo

Jesus Chavez
J-01868
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960-0689

Department Of Justice - State Of California
Office Of The Attorney General
Cynthia Lumely
110 West A Street, Suite 1100
San Diego Ca 92101

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COURT OF APPEAL - SECOND DIST.

FILED

AUG 05 2008

JOSEPH A. LANE Clerk

J. HATTER Deputy Clerk

In re JESUS CHAVEZ,

On Habeas Corpus.

B209629

(Super. Ct. No. BA500431)

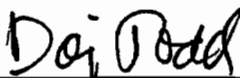
ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed July 29, 2008. The petition is denied.



BOREN, P. J.



DOI TODD, J.



CHAVEZ, J.

Jesus Chavez
CDC:J-01868
Correctional Training Facility
P.O. Box 689, ZW-232U
Soledad, CA 93960

Case Number B209629
Division 2

In re JESUS CHAVEZ on Habeas Corpus.

S166147

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JESUS CHAVEZ on Habeas Corpus

The petition for writ of habeas corpus is denied.

George, C.J., was absent and did not participate.

SUPREME COURT
FILED

MAY 20 2009

Frederick K. Ohlrich Clerk

Deputy

KENNARD

Acting Chief Justice

EXHIBIT

(HEARING TRANSCRIPT)

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life) CDC Number: J-01868
Term Parole Consideration)
Hearing of:)
)
JESUS CHAVEZ)
)

INMATE COPY

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

OCTOBER 4, 2007

8:42 A.M.

PANEL PRESENT:

Janice Eng, Presiding Commissioner
Fernando Perez, Deputy Commissioner

OTHERS PRESENT:

Jesus Chavez, Inmate
Katera E. Rutledge, Attorney for Inmate
Alexis Delagarza, Deputy District Attorney
Correctional Officer(s) Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

No See Review of Hearing
 Yes Transcript Memorandum

Marsha Mees, WPU, Inc.

I N D E X

	<u>Page</u>
Proceedings.....	1
Case Factors.....	17
Pre Commitment Factors.....	46
Post Commitment Factors.....	64
Parole Plans.....	74
Closing Statements.....	112
Recess.....	131
Decision.....	132
Adjournment.....	141
Transcriber Certification.....	142

P R O C E E D I N G S

1
2 **DEPUTY COMMISSIONER PEREZ:** Okay. We're on record.

3 **PRESIDING COMMISSIONER ENG:** Okay. Thank you.

4 Good morning everyone. This is a subsequent parole
5 consideration hearing for Lopez Chavez, CDC number
6 J-01868. Today's date is October 4, 2007. The time is
7 8:42 a.m. We are located at CTF, Soledad. The inmate
8 was received on December 6, 1993 from Los Angeles
9 County. His life term began on April 24, 1995 and his
10 minimum eligible parole date was April 23, 2005. The
11 controlling offense for which the inmate has been
12 committed is murder two with use of a firearm, case
13 number BA500431, count one, Penal Code 187, along with
14 Penal Code 12022.5. The inmate received a term, a total
15 term of 20 years to life. This hearing is being
16 recorded. So for the purpose of voice identification
17 each of us will be required to state our first and last
18 name, spelling out our last name. So Mr. Chavez, after
19 you spell your last name, please provide us with your
20 CDC number.

21 **INMATE CHAVEZ:** Okay.

22 **PRESIDING COMMISSIONER ENG:** Okay. I'll begin.
23 We'll move around the room to my left. My name is
24 Janice Eng, E-N-G, Commissioner.

25 **DEPUTY COMMISSIONER PEREZ:** My name's Fernando

1 Perez, that's P-E-R-E-Z, Deputy Commissioner, Board of
2 Parole Hearings. Is your first name Jesus?

3 **INMATE CHAVEZ:** Yes.

4 **DEPUTY COMMISSIONER PEREZ:** So it's Jesus?

5 **PRESIDING COMMISSIONER ENG:** Oh, it's not Lopez?

6 **INMATE CHAVEZ:** No.

7 **DEPUTY COMMISSIONER PEREZ:** No, it's Lopez

8 (verbatim) Chavez.

9 **PRESIDING COMMISSIONER ENG:** I'm sorry.

10 **DEPUTY COMMISSIONER PEREZ:** All right.

11 **INMATE CHAVEZ:** Yeah, in Mexico we use the father
12 last name and the second is the mother's last name.

13 **DEPUTY COMMISSIONER PEREZ:** And I'm a Perez Chavez,
14 so --

15 **PRESIDING COMMISSIONER ENG:** So your name is Lopez
16 Chavez? Mr. --

17 **INMATE CHAVEZ:** Jesus Lopez Chavez.

18 **PRESIDING COMMISSIONER ENG:** -- Lopez Chavez?

19 **ATTORNEY RUTLEDGE:** I'm a Morales Estrada.

20 **INMATE CHAVEZ:** You can --

21 **PRESIDING COMMISSIONER ENG:** Or just Mr. Chavez?

22 Is it just Mr. Chavez?

23 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** It should be
24 Mr. Lopez because Lopez is the father's surname.

25 **INMATE CHAVEZ:** Father's.

1 **DEPUTY COMMISSIONER PEREZ:** Yeah, so it's Lopez.

2 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** -- Mexico it's
3 Chavez.

4 **PRESIDING COMMISSIONER ENG:** What would you like us
5 to call you, Mr. Lopez, Mr. Lopez Chavez or Mr. Chavez?

6 **INMATE CHAVEZ:** No matter, both of them are my
7 parents, so --

8 **PRESIDING COMMISSIONER ENG:** Okay. All right.
9 Sorry about that. Okay.

10 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** Alexis
11 Delagarza, D-E-L-A-G-A-R-Z-A, Deputy District Attorney,
12 Los Angeles County.

13 **ATTORNEY RUTLEDGE:** Katera E. Rutledge,
14 R-U-T-L-E-D-G-E, attorney for Mr. Chavez.

15 **INMATE CHAVEZ:** Jesus Lopez Chavez, last name
16 Chavez, C-H-A-V-E-Z. CDC number J-01868.

17 **PRESIDING COMMISSIONER ENG:** Okay. Thank you, sir.
18 We also have two correctional officers present for
19 security reasons and they will not be participating in
20 the hearing. Before we go any further, sir, I'm going
21 to ask if you would kindly read out loud the ADA
22 statement that's in front of you and you can begin at
23 any time.

24 **INMATE CHAVEZ:**

25 "ADA, Americans With Disabilities Act.

1 The Americans With Disabilities Act, ADA,
2 is a law to help people with disabilities.
3 Disabilities are problems that make it --
4 that make it harder for some people to
5 see, hear, breathe, talk, walk, learn,
6 think, work or take care of themselves
7 than it is for others. Nobody can be kept
8 out of public places or activities because
9 of a disability. If you have a
10 disability, you have the right to ask for
11 help to get ready for your BPT hearing,
12 get to the hearing, talk, read forms and
13 papers and understand the hearing process.
14 BPT will look at what you asked for to
15 make sure that you have a disability that
16 is covered by with the ADA and that you
17 have asked for the right kind of help. If
18 you do not get help or if you don't think
19 you got the kind of help you need, ask for
20 the BPT 1074 Grievance Form. You can also
21 get help to fill out -- to fill it out."

22 **PRESIDING COMMISSIONER ENG:** Okay. In general, do
23 you understand what your rights are under the ADA?

24 **INMATE CHAVEZ:** Yes.

25 **PRESIDING COMMISSIONER ENG:** Okay. Well, just to

1 be sure, we're going to go over a few more things. You
2 did sign a BPT 1073 back on May 2, 2007. I don't know
3 if you recognize this form. But --

4 **INMATE CHAVEZ:** Yes, I did sign it.

5 **PRESIDING COMMISSIONER ENG:** Okay. This is a
6 reasonable accommodation notice and request in
7 accordance with the provisions of the Americans With
8 Disabilities Act. And all that means is that this is
9 the form you would use to identify if you had any of the
10 disabilities as defined under ADA.

11 **INMATE CHAVEZ:** Okay.

12 **PRESIDING COMMISSIONER ENG:** And if you do have any
13 of those disabilities, then what type of accommodations
14 or help would you need in order to get to and get
15 through the hearing. Okay.

16 **INMATE CHAVEZ:** I don't need any.

17 **PRESIDING COMMISSIONER ENG:** Okay. But you didn't
18 check anything off. So do you have any of these, the
19 disabilities as defined under the ADA?

20 **INMATE CHAVEZ:** No.

21 **PRESIDING COMMISSIONER ENG:** Okay.

22 **INMATE CHAVEZ:** The only thing is one leg is
23 shorter than the other one.

24 **PRESIDING COMMISSIONER ENG:** Okay. But does it --
25 do you need --

1 **INMATE CHAVEZ:** No.

2 **PRESIDING COMMISSIONER ENG:** -- a wheelchair or --

3 **INMATE CHAVEZ:** No.

4 **PRESIDING COMMISSIONER ENG:** -- crutches or a cane
5 or anything?

6 **INMATE CHAVEZ:** No.

7 **PRESIDING COMMISSIONER ENG:** Okay. All right. And
8 then -- But you did check off that you did not need any
9 help for your hearing. Okay. All right. So, well,
10 sir, again, you have any problems though walking up or
11 down stairs or for long distances, like for 100 yards or
12 more, do you have problems walking?

13 **INMATE CHAVEZ:** I used to have back problems, but
14 they gave me a lift and after that --

15 **PRESIDING COMMISSIONER ENG:** Everything's a lot
16 better now?

17 **INMATE CHAVEZ:** Yes.

18 **PRESIDING COMMISSIONER ENG:** Okay.

19 **INMATE CHAVEZ:** Much better.

20 **PRESIDING COMMISSIONER ENG:** Okay. And do you need
21 glasses or a magnifying device in order to see or read?

22 **INMATE CHAVEZ:** Not yet.

23 **PRESIDING COMMISSIONER ENG:** Not yet. You're still
24 young. Okay. Do you have any hearing problems in
25 either one of your ears?

1 **INMATE CHAVEZ:** No.

2 **PRESIDING COMMISSIONER ENG:** Okay. Have you ever
3 been included in the Triple CMS or EOP programs?

4 **INMATE CHAVEZ:** I was included in Triple CMS when I
5 first come to the state when -- but problem with that
6 was -- with that one was that when I was in the county a
7 friend of mine, if we can call it a friend, told me that
8 if one day I wanted to get out, I should say that I hear
9 voices so they could start giving me medication, instead
10 of going to a Level IV facility, they will send me to
11 like San Luis Obispo or Vacaville where they take care
12 of whoever is sick or if you're hearing voices. But
13 after I got to the prison and saw what was happening
14 with them with the medication, I say, no, I don't want
15 this, so I decided to come clean.

16 **PRESIDING COMMISSIONER ENG:** Okay. So when you
17 first came into CDC, when you first came into the prison
18 system --

19 **INMATE CHAVEZ:** Yes.

20 **PRESIDING COMMISSIONER ENG:** -- that's when you
21 were in Triple CMS?

22 **INMATE CHAVEZ:** Yes.

23 **PRESIDING COMMISSIONER ENG:** Okay. And you
24 listened to what other people told you in order to get
25 to a different type of facility.

1 **INMATE CHAVEZ:** I'm trying to get out.

2 **PRESIDING COMMISSIONER ENG:** Okay. Well that's
3 being very upfront and honest. Okay. So you have not
4 been in Triple CMS since that time?

5 **INMATE CHAVEZ:** No.

6 **PRESIDING COMMISSIONER ENG:** Is that correct?
7 Okay. So you do know what the program is?

8 **INMATE CHAVEZ:** Yes.

9 **PRESIDING COMMISSIONER ENG:** All right. At that
10 time, had you taken psychotropic medications?

11 **INMATE CHAVEZ:** Yes.

12 **PRESIDING COMMISSIONER ENG:** They did -- They did
13 have you on the medications?

14 **INMATE CHAVEZ:** Yes.

15 **PRESIDING COMMISSIONER ENG:** Okay.

16 **INMATE CHAVEZ:** For like four -- from four to six
17 months.

18 **PRESIDING COMMISSIONER ENG:** Okay. All right.
19 Since that time, have you taken any psychotropic meds?

20 **INMATE CHAVEZ:** No.

21 **PRESIDING COMMISSIONER ENG:** Okay. All right. So,
22 sir, were you educated here in the U.S.? You weren't,
23 were you?

24 **INMATE CHAVEZ:** No.

25 **PRESIDING COMMISSIONER ENG:** Okay. I didn't think

1 so. All right. Do you suffer from any disability that
2 would prevent you from participating in the hearing
3 today?

4 **INMATE CHAVEZ:** No.

5 **PRESIDING COMMISSIONER ENG:** Okay. Thank you. All
6 right. Miss Rutledge, any ADA issues that you believe
7 need further discussion regarding your client?

8 **ATTORNEY RUTLEDGE:** No, Ma'am.

9 **PRESIDING COMMISSIONER ENG:** All right. Thank you.
10 Mr. Chavez, this hearing is being conducted pursuant to
11 the Penal Code and the rules and regulations of the
12 Board of Parole Hearings governing parole consideration
13 hearings for life inmates. Okay. The purpose of
14 today's hearing is to once again to consider your
15 suitability for parole. And in doing that we will be
16 considering the number and nature of the crimes for
17 which you were committed, your prior criminal and social
18 history, your behavior and your programming since your
19 commitment and your plans if released. So we've already
20 had an opportunity to review your Central File and you
21 will also be given a chance to make any corrections or
22 clarify the record for.

23 **INMATE CHAVEZ:** Okay.

24 **PRESIDING COMMISSIONER ENG:** Okay. We will focus
25 on your progress since your commitment, your counselor's

1 reports and your mental health evaluations.

2 **INMATE CHAVEZ:** Okay.

3 **PRESIDING COMMISSIONER ENG:** But we'll really focus
4 though on your progress and new reports since your last
5 hearing. So if you've had any changes, like to your
6 parole plans, you should bring that to our attention
7 when we address that area.

8 **INMATE CHAVEZ:** Okay.

9 **PRESIDING COMMISSIONER ENG:** Okay. And for the
10 record, the last time you came before the Board was not
11 quite a year ago, it was October 30, 2006; is that
12 correct?

13 **INMATE CHAVEZ:** Yes.

14 **PRESIDING COMMISSIONER ENG:** Okay. All right.
15 Sir, we will reach a decision today and inform you
16 whether or not we find you suitable for parole and of
17 course the reasons for our decision. So if you are
18 found suitable for parole, the length of your
19 confinement will be explained to you at that time.

20 **INMATE CHAVEZ:** Okay.

21 **PRESIDING COMMISSIONER ENG:** Okay. Before we take
22 a recess for deliberations, the representative from the
23 District Attorney's office, your attorney and you
24 yourself will all be given a chance to make a final
25 statement to this Panel regarding parole suitability.

1 You don't have to make a statement if you don't want to.
2 You might be totally satisfied with what your counsel
3 states --

4 **INMATE CHAVEZ:** Okay.

5 **PRESIDING COMMISSIONER ENG:** -- to the Panel. But
6 if you decide that you want to say a few words to the
7 Panel, you should focus only on why you believe you are
8 suitable for parole today.

9 **INMATE CHAVEZ:** Okay.

10 **PRESIDING COMMISSIONER ENG:** Once that -- Once we
11 complete that, we'll go ahead and take a recess. We'll
12 clear the room and we'll begin our deliberations. Once
13 we complete those deliberations, we will resume the
14 hearing and then we'll announce our decision.

15 **INMATE CHAVEZ:** Okay.

16 **PRESIDING COMMISSIONER ENG:** California Code of
17 Regulations states that regardless of time served a life
18 inmate shall be found unsuitable for and denied parole
19 if in the judgment of the Panel the inmate would pose an
20 unreasonable risk of danger to society if released from
21 prison. Okay. Sir, you do have certain rights. Those
22 rights include the right to a timely notice of this
23 hearing, the right to review your Central File and the
24 right to present relevant documents. Okay.

25 Ms. Rutledge, so far have your client's rights been met?

1 **ATTORNEY RUTLEDGE:** Yes, Ma'am.

2 **PRESIDING COMMISSIONER ENG:** Okay. Thank you.

3 Sir, you have the additional right to be heard by an
4 impartial Panel. You have been introduced to this
5 Panel. Do you have any objections?

6 **INMATE CHAVEZ:** No.

7 **PRESIDING COMMISSIONER ENG:** Okay. Thank you.

8 Ms. Rutledge, any objections to the Panel?

9 **ATTORNEY RUTLEDGE:** No.

10 **PRESIDING COMMISSIONER ENG:** Thank you. Sir, you
11 will receive a copy of our written tentative decision
12 today. That decision does become final within
13 approximately 120 days.

14 **INMATE CHAVEZ:** Okay.

15 **PRESIDING COMMISSIONER ENG:** So a copy of the final
16 decision and a copy of the hearing transcript will be
17 sent to you later on.

18 **INMATE CHAVEZ:** Okay.

19 **PRESIDING COMMISSIONER ENG:** Please take note that
20 on May 1, 2004 the regulations regarding your right to
21 appeal a decision made at this hearing were repealed.
22 You basically have to go to court now. So if you have
23 any questions about that policy, you should discuss that
24 with your legal counsel or see if you can find a copy at
25 your prison law library and review it there.

1 **INMATE CHAVEZ:** Okay.

2 **PRESIDING COMMISSIONER ENG:** Sir, you're not
3 required to admit to or discuss your offense, but this
4 Panel does accept as true the findings of the court. Do
5 you really understand what that means?

6 **INMATE CHAVEZ:** Yes.

7 **PRESIDING COMMISSIONER ENG:** Okay. Commissioner
8 Perez, is there any confidential material in the file?
9 And if so, will we be using it today?

10 **DEPUTY COMMISSIONER PEREZ:** Yes, there is
11 confidential material in Mr. Chavez's file. However,
12 for purposes of this hearing they'll not be considered.

13 **PRESIDING COMMISSIONER ENG:** Okay. Thank you.
14 I've already passed a hearing checklist that is marked
15 Exhibit One over to your counsel and also to the Deputy
16 District Attorney. We've all signed off on it. We do
17 this, sir, to make sure that all of us are operating off
18 the same set of documents for your hearing. That goes
19 in with the rest of the paperwork. Okay. Ms. Rutledge,
20 any additional documents to be submitted to the Panel
21 today?

22 **ATTORNEY RUTLEDGE:** Not at this time.

23 **PRESIDING COMMISSIONER ENG:** Okay. And any
24 preliminary objections?

25 **ATTORNEY RUTLEDGE:** Not at this time.

1 **PRESIDING COMMISSIONER ENG:** And will your client
2 be speaking with the Panel?

3 **ATTORNEY RUTLEDGE:** Yes, I believe --

4 **INMATE CHAVEZ:** Yes.

5 **PRESIDING COMMISSIONER ENG:** On all matters, sir?

6 **INMATE CHAVEZ:** All matters.

7 **PRESIDING COMMISSIONER ENG:** Okay.

8 **INMATE CHAVEZ:** No matter what it is, bad or --
9 good or bad.

10 **PRESIDING COMMISSIONER ENG:** Okay.

11 **INMATE CHAVEZ:** Just ask me and I will tell you
12 exactly --

13 **PRESIDING COMMISSIONER ENG:** Okay. So I will have
14 to swear you in. Please raise your right hand. Do you
15 solemnly swear or affirm that the testimony you give at
16 this hearing will be the truth, the whole truth and
17 nothing but the truth?

18 **INMATE CHAVEZ:** I swear.

19 **PRESIDING COMMISSIONER ENG:** Okay. Sit back and
20 relax. Mr. Chavez, what I'm going to do first is read
21 into the record the Statement of Facts about the life
22 crime and then we'll have discussion about that.

23 **INMATE CHAVEZ:** Okay.

24 **PRESIDING COMMISSIONER ENG:** Okay. I'm going to
25 take that from the Appellate decision in the legal

1 section of our packets. And it really goes from -- I'm
2 going to read from pages two through five, so it's a
3 little long, but this states that:

4 "On May 1, 1992 Everado Tolentino
5 (phonetic) Trejo, T-R-E-J-O, was working
6 as a security guard at 1440 Walnut Street.
7 He was guarding two businesses in the wake
8 of the Los Angeles riots but was unarmed.
9 Around noon, Trejo was sitting on the
10 steps of the doorway of the building
11 facing Walnut Street and was reading a
12 newspaper. He saw a big red car enter
13 Walnut Street, turn around and stop. He
14 was about 40 or 50 meters from the car and
15 closest to the driver's side."

16 Oh, gosh, you know what, if somebody else has a
17 better copy because I could barely read the top
18 -- Okay.

19 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** What page?

20 **PRESIDING COMMISSIONER ENG:** Oh, I think it says:

21 "He did not see anyone else on Walnut
22 Street other than the car's occupants."

23 Okay. "He continued to read his newspaper
24 and heard people talking in English -- in
25 parentheses -- (he could not tell what was

1 being said because he only speaks
2 Spanish). Trejo noticed a black man
3 exiting the car from behind the driver's
4 seat and about two or three Hispanic
5 people in the car. He could not remember
6 if he saw anything in the black man's
7 hands or in the driver's hands. Soon
8 after, he heard 10 to 12 gunshots and then
9 headed back into the doorway because one
10 of the shoots hit close to where he was
11 sitting. He did not see the people
12 shooting, but it sounded like the shoots
13 were coming from the car and from two
14 different weapons. However, he was unsure
15 if the shots had come from the car or from
16 a place closer to Naomi Avenue. After the
17 shooting, Trejo remained in the doorway
18 for a short period. He looked back onto
19 Walnut Street and saw the red car moving
20 in a normal manner, making a right turn
21 onto Naomi Avenue and heading toward
22 Washington Boulevard and saw the black man
23 crawling and then lying on the ground.
24 When he saw the red car turning on Naomi
25 Avenue, he saw several vehicles parked on

1 both sides of the street, but did not look
2 to see if there were any people in those
3 cars. Miriam Martinez testified that she
4 was working at 1929 Hooper Avenue on the
5 day of the shooting. Martinez was sitting
6 at her desk from which she had a view of
7 Walnut Street. At around 10 a.m. she saw
8 a red or burgundy car drive onto Walnut
9 Street and park. The car left and
10 returned again shortly before noon. The
11 car entered Walnut Street, turned and
12 parked at a slant so that the passenger's
13 side was facing Martinez. The car was
14 about 135 feet from where she was sitting.
15 She saw a black man get out of the
16 passenger side of the car. Three young
17 Hispanic people were in the burgundy car.
18 She did not see anything in the black
19 man's hands or on him that resembled a gun
20 or a weapon. She also did not see him
21 turn to face the vehicle or make a motion
22 as if he was holding a gun. The black man
23 started running in an easterly direction
24 toward Martinez. And when he was about
25 eight steps away from the car, two people

1 in the car started shooting at him. It
2 appeared that there were two different
3 guns being fired. One from the front
4 passenger window and the other from a
5 smaller rear passenger window. She heard
6 about eight continuous shots. And after
7 the first couple of shots she heard glass
8 breaking. She did not see any shots come
9 from the rear window or see that window
10 break. About three or four shots hit the
11 side -- inside of Martinez's business.
12 She froze, but watched everything. The
13 black man fell as soon as the shooting
14 started and ended up face down on the
15 ground. She then saw the burgundy car
16 quickly turn right onto Naomi Avenue and
17 go toward Washington Boulevard 'pretty
18 fast.' She tried to calm her employees
19 down and then dialed 9-1-1. During the
20 time of the shooting, she did not see
21 anybody else on Walnut Street except for
22 Trejo, who was taking care of his
23 building. There were no other cars on
24 Walnut Street other than her employees'
25 cars. She did see other people walking or

1 driving by on Naomi Avenue. She saw one
2 of her employees approach the black man
3 and cover him with a sheet. She did not
4 see anyone else approach the body. She
5 called 9-1-1 and the police arrived around
6 15 to 20 minutes after the shooting. The
7 parties stipulated to the following
8 testimony from Lieutenant Kathleen
9 Murcott, M-U-R-C-O-T-T, of the Los Angeles
10 Police Department. On May 1, 1992 about
11 noon Lieutenant Murcott was a passenger in
12 a patrol car heading west on Washington
13 Boulevard approaching Naomi Avenue when
14 she heard about six to 10 rapidly fired
15 gunshots. She then saw a burgundy Ford
16 LTD with a broken rear window moving
17 quickly north on Naomi Avenue and then
18 quickly make a right turn eastbound on
19 Washington Boulevard, that the patrol car
20 made a U-turn and followed the Ford LTD.
21 As the patrol car made the U-turn, the
22 driver of the Ford LTD dropped a nine
23 millimeter handgun out of the driver side
24 window. The patrol car then pulled the
25 Ford LTD over on -- I think it could be

1 Tarlit (phonetic) Street. When the
2 officer stopped the Ford LTD, Dominguez
3 was the driver, Duran was in the right
4 front passenger seat and Chavez was in the
5 rear passenger seat. Before Duran exited
6 the vehicle, he reached under the
7 passenger seat. A .45 caliber handgun was
8 found under the right front passenger seat
9 and \$2,000 in currency was found in
10 Duran's right sock. About 10 minutes
11 later, Lieutenant Murcott responded to the
12 1400 block of Walnut Street and saw the
13 victim, Paul Horace, lying dead in the
14 street."

15 That was a rather long Statement of Fact that I
16 read from the Appellate decision. And I also
17 reviewed what was in the probation officer's
18 report. Okay. That was much shorter. But
19 basically was that a pretty accurate description
20 of sort of what occurred during that time of the
21 interface with Mr. Horace?

22 **INMATE CHAVEZ:** It's pretty close.

23 **PRESIDING COMMISSIONER ENG:** Okay. And why don't
24 you tell this Panel what precipitated the shooting.

25 **INMATE CHAVEZ:** It's not better if I tell you

1 exactly what I did?

2 **PRESIDING COMMISSIONER ENG:** Okay.

3 **INMATE CHAVEZ:** Maybe -- Maybe like that it will --
4 how can I explain this.

5 **PRESIDING COMMISSIONER ENG:** Well, why don't I ask
6 you a few questions and we'll get going that way. All
7 right.

8 **INMATE CHAVEZ:** Okay.

9 **PRESIDING COMMISSIONER ENG:** Did -- All right. You
10 were with these two other people, Dominguez and --

11 **INMATE CHAVEZ:** Yes.

12 **PRESIDING COMMISSIONER ENG:** -- Duran; correct?

13 **INMATE CHAVEZ:** Yes.

14 **PRESIDING COMMISSIONER ENG:** All right. Now,
15 did -- did all of you or did just one person know
16 Mr. Horace?

17 **INMATE CHAVEZ:** Only one person.

18 **PRESIDING COMMISSIONER ENG:** And which one was
19 that? Was that Mr. Duran?

20 **INMATE CHAVEZ:** Duran.

21 **PRESIDING COMMISSIONER ENG:** So he knew Mr. Horace.

22 **INMATE CHAVEZ:** Yes.

23 **PRESIDING COMMISSIONER ENG:** Correct? And did
24 Mr. Duran set up some type of a meeting?

25 **INMATE CHAVEZ:** Yes.

1 **PRESIDING COMMISSIONER ENG:** All right. And did
2 the three of you intend to purchase or supply drugs?

3 **INMATE CHAVEZ:** Supply.

4 **PRESIDING COMMISSIONER ENG:** Supply the drugs.

5 **INMATE CHAVEZ:** Yes..

6 **PRESIDING COMMISSIONER ENG:** Okay.

7 **INMATE CHAVEZ:** But we didn't have no drugs.

8 **PRESIDING COMMISSIONER ENG:** Right. So the purpose
9 really was to pretend that you were going to supply
10 drugs in order to get money from Mr. Horace?

11 **INMATE CHAVEZ:** Yes.

12 **PRESIDING COMMISSIONER ENG:** Okay. But what you
13 didn't realize is that -- did Mr. Horace intend to get
14 the drugs without paying for it?

15 **INMATE CHAVEZ:** Yeah, we never expect anything like
16 that.

17 **PRESIDING COMMISSIONER ENG:** But didn't you expect
18 that?

19 **INMATE CHAVEZ:** No.

20 **PRESIDING COMMISSIONER ENG:** Okay. So was the
21 whole idea about -- about getting money from Mr. Horace,
22 that was all planned in advance between the three of
23 you?

24 **INMATE CHAVEZ:** The one who start everything was
25 Duran. He's the one who tell us because he knew that I

1 needed the money for my bills and I was trying to get
2 married and all of that. So he told me, when I knew him
3 a few weeks before, a few months before, I don't
4 remember exactly, that if I needed any money he could
5 help me. He say, if you need money for that, I could
6 help you. So the whole idea was to go over there, make
7 the kilo of bread look like a kilo of cocaine and go
8 show it to him, and he was going to give us the money
9 and we were going to leave. I thought that I was going
10 to get away with that. No easy thing anymore. I was
11 totally wrong.

12 **PRESIDING COMMISSIONER ENG:** That would be a lot of
13 cocaine; right? A kilo of cocaine? And you were trying
14 to pass off a loaf of bread?

15 **INMATE CHAVEZ:** Actually, we make it look like
16 (indiscernible).

17 **PRESIDING COMMISSIONER ENG:** But that's still a lot
18 of cocaine with a lot of money.

19 **INMATE CHAVEZ:** Yes.

20 **PRESIDING COMMISSIONER ENG:** Yeah. So did it ever
21 occur to you that maybe Mr. Horace was a seasoned drug
22 dealer and would know how to check to see if you were in
23 fact providing true drugs before he handed over a large
24 sum of money? Or did that -- did you --

25 **INMATE CHAVEZ:** That was my first time.

1 **PRESIDING COMMISSIONER ENG:** Okay. Well, what
2 about Mr. Duran and Dominguez? Did they ever discuss
3 that, how they were going to pass --

4 **INMATE CHAVEZ:** No.

5 **PRESIDING COMMISSIONER ENG:** -- this off?

6 **INMATE CHAVEZ:** No. They never said anything like
7 that. I thought that it was going to be like an easy
8 thing. Just go over there, show it to him, he was going
9 to give us the money. They make it look easy.

10 **PRESIDING COMMISSIONER ENG:** Right. So and this --
11 Did you plan this out on that same day or was it a
12 couple of days before or one day before that?

13 **INMATE CHAVEZ:** They call me that day.

14 **PRESIDING COMMISSIONER ENG:** That day.

15 **INMATE CHAVEZ:** Mr. Duran called me that day.

16 **PRESIDING COMMISSIONER ENG:** In the morning or
17 something?

18 **INMATE CHAVEZ:** Like two hours before.

19 **PRESIDING COMMISSIONER ENG:** Two hours before.

20 **INMATE CHAVEZ:** Yes.

21 **PRESIDING COMMISSIONER ENG:** Okay. And Mr. Duran
22 knew that you were in need of money?

23 **INMATE CHAVEZ:** Yes.

24 **PRESIDING COMMISSIONER ENG:** Okay. Had you been
25 working?

1 **INMATE CHAVEZ:** In a tire shop.

2 **PRESIDING COMMISSIONER ENG:** In a tire shop.

3 **INMATE CHAVEZ:** Since I come to the United States,
4 I was working with my uncle painting houses,
5 construction and all of that. But he went bankrupt, so
6 I had to look for a job. And I found a job in a tire
7 shop, which I wasn't making enough money to make the
8 payments on my bills and all of that. That's what I was
9 having problems with, money.

10 **PRESIDING COMMISSIONER ENG:** Who were you living
11 with at the time?

12 **INMATE CHAVEZ:** Prudencia (phonetic)
13 (indiscernible). We were going to get married.

14 **PRESIDING COMMISSIONER ENG:** Your girlfriend?

15 **INMATE CHAVEZ:** Yes.

16 **PRESIDING COMMISSIONER ENG:** You were living with
17 your girlfriend.

18 **INMATE CHAVEZ:** Yes.

19 **PRESIDING COMMISSIONER ENG:** How old was she?

20 **INMATE CHAVEZ:** Right now?

21 **PRESIDING COMMISSIONER ENG:** No, back then, how old
22 was she?

23 **INMATE CHAVEZ:** Okay. I was 19 and she was like
24 23.

25 **PRESIDING COMMISSIONER ENG:** So she was older than

1 you.

2 **INMATE CHAVEZ:** Yes.

3 **PRESIDING COMMISSIONER ENG:** Okay. Both of you are
4 living together. Was she working?

5 **INMATE CHAVEZ:** No.

6 **PRESIDING COMMISSIONER ENG:** She was just staying
7 home?

8 **INMATE CHAVEZ:** Yeah. She didn't have no job. She
9 was looking for a job, but she didn't have no job. You
10 know how it is when you don't have any documents, you're
11 an illegal immigrant, it's more difficult.

12 **PRESIDING COMMISSIONER ENG:** Did you understand
13 back then about drug dealing and that it was illegal?

14 **INMATE CHAVEZ:** I knew it was illegal, but like I
15 said, I never expect it to happen like this. Never
16 expecting this to happen.

17 **PRESIDING COMMISSIONER ENG:** Where did you get the
18 gun?

19 **INMATE CHAVEZ:** They -- They set it up on the car.
20 I don't know if it was Dominguez or Duran. They put it
21 under the seat of the car.

22 **PRESIDING COMMISSIONER ENG:** How many guns -- Did
23 all three of you have a --

24 **INMATE CHAVEZ:** No.

25 **PRESIDING COMMISSIONER ENG:** -- gun? So only two

1 of you had guns?

2 **INMATE CHAVEZ:** Only two of us.

3 **PRESIDING COMMISSIONER ENG:** And at what point did
4 things turn? Mr. Horace, was he in the car with you?

5 **INMATE CHAVEZ:** Yes.

6 **PRESIDING COMMISSIONER ENG:** Okay.

7 **INMATE CHAVEZ:** He was on the backseat of the
8 driver.

9 **PRESIDING COMMISSIONER ENG:** So he was sitting next
10 to you?

11 **INMATE CHAVEZ:** Yes.

12 **PRESIDING COMMISSIONER ENG:** But weren't you in the
13 backseat?

14 **INMATE CHAVEZ:** He was the one who was telling us
15 where to go.

16 **PRESIDING COMMISSIONER ENG:** Okay. And before all
17 this happened, were you aware that there was going to be
18 a gun that you could have access to?

19 **INMATE CHAVEZ:** They told me.

20 **PRESIDING COMMISSIONER ENG:** They told you.

21 **INMATE CHAVEZ:** Yes.

22 **PRESIDING COMMISSIONER ENG:** Okay. Had you ever
23 used a gun before?

24 **INMATE CHAVEZ:** Only a BB-guns.

25 **PRESIDING COMMISSIONER ENG:** Okay. So the three of

1 you knew that if things started turning bad that you had
2 weapons to take care of the situation; is that correct?

3 **INMATE CHAVEZ:** You could say that.

4 **PRESIDING COMMISSIONER ENG:** Okay. All right. So
5 at what point did things start going bad?

6 **INMATE CHAVEZ:** Going bad. Okay. When we get to
7 the -- what was it, Naomi Streets?

8 **PRESIDING COMMISSIONER ENG:** Naomi.

9 **INMATE CHAVEZ:** Yeah. Okay. When we get to that,
10 before we get into that part, Mr. Horace was telling us
11 where to go. He was supposed to take us to his house.
12 But I knew all the area.

13 **PRESIDING COMMISSIONER ENG:** -- money?

14 **INMATE CHAVEZ:** Yes. He was driving us to his
15 house, that's what he was saying, so -- but the thing
16 was that I knew all the area and I was watching. So
17 when he say that around the street was his house, I told
18 them like this to Mr. Dominguez and Duran, be careful,
19 there's no houses over here.

20 **PRESIDING COMMISSIONER ENG:** Okay.

21 **INMATE CHAVEZ:** So when he told us to turn, the
22 street was like a dead end, so he told us around this --
23 this street is my house. So I told them, look, there's
24 no houses over here. It's only like an industrial area.
25 So be careful. So what I did, Duran at the time he asks

1 gives me like three, \$400. So I was sitting down and
2 counting the money. They stop, make a U-turn and look
3 the opposite direction we were coming from. I didn't
4 speak English at the time, so I didn't know exactly what
5 was happening. They stop. The only that speak English
6 at the time was Duran. So he's the one who was speaking
7 with Mr. Horace.

8 **PRESIDING COMMISSIONER ENG:** Right.

9 **INMATE CHAVEZ:** So they make a U-turn, stop, they
10 keep talking. I start counting the money. Next minute,
11 he get out of the car and then in my side view he
12 disappear. And as soon -- disappear, I start hearing
13 shots. I look to the -- to the driver's seat to my left
14 side and I see Dominguez trying to get inside the car
15 and try to pull the gun out. And then everything went
16 bam, bam, bam and start shooting and everything. My
17 reaction to lay back on the -- on the seat, grab the gun
18 from under the seat, put my arm up and start shooting.
19 By the time I start shooting, I believe that Dominguez
20 have no more bullets. So --

21 **PRESIDING COMMISSIONER ENG:** So -- Okay. I got a
22 little confused there.

23 **INMATE CHAVEZ:** Okay.

24 **PRESIDING COMMISSIONER ENG:** You're saying they --
25 Mr. Horace got out of the car.

1 **INMATE CHAVEZ:** And start running.

2 **PRESIDING COMMISSIONER ENG:** And started running.

3 And then you heard shots and you looked up and saw
4 Mr. Dominguez?

5 **INMATE CHAVEZ:** No. Almost at the same times when
6 -- when he disappear in my --

7 **PRESIDING COMMISSIONER ENG:** In your side vision?

8 **INMATE CHAVEZ:** In my side vision, I try to look
9 around. And when I was trying to look, I start hearing
10 shots. And then I saw Dominguez trying to get inside
11 the car and try to pull the gun out because he got
12 (indiscernible) on him.

13 **PRESIDING COMMISSIONER ENG:** So you're stating that
14 Dominguez did not have a gun?

15 **INMATE CHAVEZ:** Yes. He had the hand -- I'm sorry.
16 He had the gun but he got it on the --

17 **PRESIDING COMMISSIONER ENG:** He had it in his
18 waistband?

19 **INMATE CHAVEZ:** Yes.

20 **PRESIDING COMMISSIONER ENG:** Well, you heard shots
21 but you don't believe it was from Mr. Dominguez?

22 **INMATE CHAVEZ:** Not at the beginning.

23 **PRESIDING COMMISSIONER ENG:** Because he -- Okay.
24 So he had jumped out of the car also?

25 **INMATE CHAVEZ:** Mr. Horace.

1 **PRESIDING COMMISSIONER ENG:** Well I know Mr. Horace
2 jumped out --

3 **INMATE CHAVEZ:** Okay.

4 **PRESIDING COMMISSIONER ENG:** -- of the car and he
5 was running, but Dominguez was driving; correct?

6 **INMATE CHAVEZ:** Yes.

7 **PRESIDING COMMISSIONER ENG:** And you --

8 **INMATE CHAVEZ:** He step out of the car to let -- to
9 let Mr. Horace come out of the car because the car was
10 two-driver --

11 **PRESIDING COMMISSIONER ENG:** Oh, it was --

12 **INMATE CHAVEZ:** -- two -- two-door car.

13 **PRESIDING COMMISSIONER ENG:** Oh, all right. So he
14 got out of the car.

15 **INMATE CHAVEZ:** Yes.

16 **PRESIDING COMMISSIONER ENG:** He left Mr. Horace get
17 out of the car.

18 **INMATE CHAVEZ:** And then Mr. Horace start running.

19 **PRESIDING COMMISSIONER ENG:** All right. And you
20 heard shots.

21 **INMATE CHAVEZ:** I start hearing shots.

22 **PRESIDING COMMISSIONER ENG:** At the same time you
23 saw Dominguez trying to get into the car.

24 **INMATE CHAVEZ:** Yes.

25 **PRESIDING COMMISSIONER ENG:** And also trying to get

1 the gun out of his --

2 **INMATE CHAVEZ:** He was trying to get --

3 **PRESIDING COMMISSIONER ENG:** -- waistband?

4 **INMATE CHAVEZ:** Yes.

5 **PRESIDING COMMISSIONER ENG:** And when he did, he
6 turned around and he started shooting?

7 **INMATE CHAVEZ:** He start shooting.

8 **PRESIDING COMMISSIONER ENG:** And that's when you
9 ducked down?

10 **INMATE CHAVEZ:** I lay down. No, I didn't back
11 down. What I did, I lay -- laid down on the car.

12 **PRESIDING COMMISSIONER ENG:** Okay.

13 **INMATE CHAVEZ:** With my arm and grab the gun under
14 the seat, start shooting.

15 **PRESIDING COMMISSIONER ENG:** So you --

16 **INMATE CHAVEZ:** The last time I saw Mr. --

17 **PRESIDING COMMISSIONER ENG:** So you pulled your
18 right arm up over your head while you're laying down on
19 the backseat?

20 **INMATE CHAVEZ:** Actually it was like I was laying
21 down like this, grab the gun.

22 **PRESIDING COMMISSIONER ENG:** But see, sir, you have
23 to describe it because the recording doesn't know
24 when --

25 **INMATE CHAVEZ:** That's the difficult part to

1 describe it. Okay. I laid down like --

2 **PRESIDING COMMISSIONER ENG:** You laid down across
3 the backseat?

4 **INMATE CHAVEZ:** With my back on the backseat.

5 **PRESIDING COMMISSIONER ENG:** Your back was on the
6 backseat.

7 **INMATE CHAVEZ:** I laid back. I laid back --

8 **PRESIDING COMMISSIONER ENG:** So --

9 **INMATE CHAVEZ:** -- pulled my arm up and started
10 shooting.

11 **PRESIDING COMMISSIONER ENG:** So when you brought
12 your arm up, you were going over the -- the backside of
13 the backseat?

14 **INMATE CHAVEZ:** Yes.

15 **PRESIDING COMMISSIONER ENG:** Through the back
16 window?

17 **INMATE CHAVEZ:** Yes.

18 **PRESIDING COMMISSIONER ENG:** And that's what you
19 were shooting?

20 **INMATE CHAVEZ:** Yes.

21 **PRESIDING COMMISSIONER ENG:** So do you remember
22 that the -- all the glass shattered?

23 **INMATE CHAVEZ:** Well, what happened, the last time
24 I saw Mr. Horace he was like --

25 **PRESIDING COMMISSIONER ENG:** Was he running behind

1 the car?

2 **INMATE CHAVEZ:** Yeah. Yes.

3 **PRESIDING COMMISSIONER ENG:** So that's why you
4 reached over.

5 **INMATE CHAVEZ:** Yes.

6 **PRESIDING COMMISSIONER ENG:** Okay. And aimed out
7 the back window.

8 **INMATE CHAVEZ:** Yeah, started shooting.

9 **PRESIDING COMMISSIONER ENG:** And you discharged the
10 weapon through --

11 **INMATE CHAVEZ:** Yes.

12 **PRESIDING COMMISSIONER ENG:** -- the back window
13 because you knew he was going in that direction.

14 **INMATE CHAVEZ:** The last time I saw Mr. Horace he
15 was like -- as far is this from the floor?

16 **PRESIDING COMMISSIONER ENG:** About two feet?

17 **INMATE CHAVEZ:** Around that. He was going down.
18 That was the time I saw him. After that, I started
19 shooting like this because I saw that when I was going
20 back. When I was laying down, I pulled the arm -- my
21 arm.

22 **PRESIDING COMMISSIONER ENG:** You saw him falling to
23 the ground as you were laying down on the backseat?

24 **INMATE CHAVEZ:** Yes.

25 **PRESIDING COMMISSIONER ENG:** To get the gun.

1 **INMATE CHAVEZ:** Yes.

2 **ATTORNEY RUTLEDGE:** Hold on. When you say -- we're
3 -- What we think when you lay down on the backseat,
4 you're sprawled out like on your side or your back.
5 Were you laid back against the backseat? Was your
6 bottom on the seat and your feet in front of you?

7 **PRESIDING COMMISSIONER ENG:** In other words, were
8 you sitting --

9 **ATTORNEY RUTLEDGE:** (Indiscernible).

10 **PRESIDING COMMISSIONER ENG:** -- up?

11 **INMATE CHAVEZ:** No.

12 **PRESIDING COMMISSIONER ENG:** Were you sitting up --

13 **INMATE CHAVEZ:** No.

14 **PRESIDING COMMISSIONER ENG:** -- like we are right
15 now but maybe crouched down?

16 **INMATE CHAVEZ:** No.

17 **PRESIDING COMMISSIONER ENG:** You were laying out?

18 **INMATE CHAVEZ:** Okay.

19 **PRESIDING COMMISSIONER ENG:** On the bottom of the
20 seat?

21 **INMATE CHAVEZ:** Instead of trying to crouch down,
22 it's not like that. It's like if I'm going to the side.

23 **PRESIDING COMMISSIONER ENG:** Okay.

24 **INMATE CHAVEZ:** But instead of going to my side, I
25 have to go back --

1 **PRESIDING COMMISSIONER ENG:** You put your back flat
2 out --

3 **INMATE CHAVEZ:** Yes.

4 **PRESIDING COMMISSIONER ENG:** -- on the --

5 **INMATE CHAVEZ:** To be able --

6 **PRESIDING COMMISSIONER ENG:** -- on the seat.

7 **INMATE CHAVEZ:** To be able to grab the gun.

8 **PRESIDING COMMISSIONER ENG:** Okay. Okay.

9 **INMATE CHAVEZ:** And then all I did was pull my arm
10 up and start shooting. And after that, I didn't see
11 nothing else because even when the glass shatter, it was
12 a small hole like this.

13 **PRESIDING COMMISSIONER ENG:** Okay.

14 **INMATE CHAVEZ:** Where the bullets was going out.

15 **PRESIDING COMMISSIONER ENG:** Right. Right. So is
16 it your -- are you stating to this Panel that you
17 believe that Mr. Horace had a gun and was shooting at
18 you?

19 **INMATE CHAVEZ:** I never saw him with a gun. I'm
20 not going to lie to you.

21 **PRESIDING COMMISSIONER ENG:** Did you think that he
22 did?

23 **INMATE CHAVEZ:** Well, me personally, I think so.
24 But I'm not sure because I never saw him.

25 **PRESIDING COMMISSIONER ENG:** You never saw --

1 **INMATE CHAVEZ:** No, I never saw him with a gun.

2 **PRESIDING COMMISSIONER ENG:** You just know that you
3 heard gunshots?

4 **INMATE CHAVEZ:** Yes. All I know is that when we
5 were at court they said that they had -- he had got --

6 **ATTORNEY RUTLEDGE:** Gun powder.

7 **INMATE CHAVEZ:** -- gun powder on his hands. And
8 the court says that that was because he was working in a
9 company -- I don't know exactly what kind of company it
10 was, but they say something like that, that he was
11 working in a -- man, I cannot say this, I could remember
12 --

13 **PRESIDING COMMISSIONER ENG:** So, what, he tested
14 positive for --

15 **INMATE CHAVEZ:** Yes.

16 **PRESIDING COMMISSIONER ENG:** -- gunshot residue?

17 **INMATE CHAVEZ:** Yes.

18 **PRESIDING COMMISSIONER ENG:** But then again, you
19 admitted that you discharged a weapon?

20 **INMATE CHAVEZ:** Yes, I did.

21 **PRESIDING COMMISSIONER ENG:** And when they checked
22 you, you came up negative --

23 **INMATE CHAVEZ:** Yeah.

24 **PRESIDING COMMISSIONER ENG:** -- for gunshot
25 residue, so --

1 **INMATE CHAVEZ:** I don't know how, because I did --
2 I did --

3 **PRESIDING COMMISSIONER ENG:** Because you did --

4 **INMATE CHAVEZ:** -- fire the gun.

5 **PRESIDING COMMISSIONER ENG:** -- discharge --

6 **INMATE CHAVEZ:** Yes, I did.

7 **PRESIDING COMMISSIONER ENG:** -- the weapon.

8 **INMATE CHAVEZ:** I did.

9 **PRESIDING COMMISSIONER ENG:** Okay. So it seems
10 that that's -- I'm not too sure about the test or
11 something. But okay. All right. But you did -- Do you
12 know how many times you shot?

13 **INMATE CHAVEZ:** I didn't know how many bullets, but
14 I think it was like five or six times I think.

15 **PRESIDING COMMISSIONER ENG:** The other gun was a
16 nine millimeter?

17 **INMATE CHAVEZ:** Yes.

18 **PRESIDING COMMISSIONER ENG:** You had the .45;
19 correct?

20 **INMATE CHAVEZ:** Yes.

21 **PRESIDING COMMISSIONER ENG:** Okay. And you are
22 aware that -- that Mr. Horace was killed by a .45?

23 **INMATE CHAVEZ:** When I read the coroner's report,
24 that's when I found out. Because at the beginning when
25 my lawyer come to see me, I used to argue with him, say,

1 how I'm going to hit him if I was laying down on the
2 backseat. And what he told me was like this, a lucky
3 shot. I say, not so lucky for me and for the guy.

4 **PRESIDING COMMISSIONER ENG:** Not so lucky for
5 Mr. Horace.

6 **INMATE CHAVEZ:** Yeah, that too.

7 **PRESIDING COMMISSIONER ENG:** Yeah.

8 **INMATE CHAVEZ:** Period.

9 **DEPUTY COMMISSIONER PEREZ:** Mr. Lopez (verbatim),
10 could I have you back up, move that --

11 **INMATE CHAVEZ:** Too close?

12 **DEPUTY COMMISSIONER PEREZ:** Well, no, you don't
13 have to back up. Just move that microphone. It's just
14 coming up a little --

15 **PRESIDING COMMISSIONER ENG:** Yeah, you don't have
16 to --

17 **DEPUTY COMMISSIONER PEREZ:** -- too loud in here.

18 **INMATE CHAVEZ:** Okay.

19 **DEPUTY COMMISSIONER PEREZ:** All right. Thank you.

20 **PRESIDING COMMISSIONER ENG:** Okay.

21 **DEPUTY COMMISSIONER PEREZ:** You don't have to speak
22 too loud. It'll -- It'll pick up.

23 **INMATE CHAVEZ:** Okay.

24 **PRESIDING COMMISSIONER ENG:** Let me ask you
25 something else, sir. Had you -- Had you ever dealt in

1 drugs before?

2 **INMATE CHAVEZ:** Never dealt before. What happened
3 one time with some friends of mine, we were looking for
4 a job going to like another -- another city. I think it
5 was Topanga. And we were driving by. Actually we were
6 coming back. The hood of the car opened up. And we
7 have to stop to tie them up everything --

8 **PRESIDING COMMISSIONER ENG:** Right.

9 **INMATE CHAVEZ:** -- because it bend completely. So
10 we have to grab a piece of clothes or something and tie
11 them up so we can go home. By the side, one of the
12 phones there was a bag full of clothes like -- like if
13 it was a laundry bag or something, but it was a big
14 trash bag. What we find in there was three guns and
15 \$2,000. And after we went back, then they arrest us.
16 The police say that they also find some heroin in that
17 one. But we never saw them. We were happy because we
18 didn't have no money. We find the \$2,000. We found the
19 three guns, say, well we can sell them and get the
20 money. And after that, they arrest us and they release
21 us 72 hours later. Because when they -- they took our
22 statement, they separated us. And everybody -- every
23 one of us say the same thing.

24 **PRESIDING COMMISSIONER ENG:** That you just happened
25 to find --

1 **INMATE CHAVEZ:** Yes.

2 **PRESIDING COMMISSIONER ENG:** -- bag on the side of
3 the road. Okay.

4 **INMATE CHAVEZ:** That was the only time that I
5 know --

6 **PRESIDING COMMISSIONER ENG:** That you -- That you
7 had drugs?

8 **INMATE CHAVEZ:** No. I never saw them.

9 **PRESIDING COMMISSIONER ENG:** Right. Okay. Okay.
10 So did you -- Were you a drug user at any time?

11 **INMATE CHAVEZ:** Well, when I was 14 years old I
12 drink alcohol like two times. I use cocaine one or two
13 times the most, but I didn't like it. The same thing
14 with alcohol. And the weed, marijuana, I use it like 10
15 times.

16 **PRESIDING COMMISSIONER ENG:** Okay. When you were
17 14?

18 **INMATE CHAVEZ:** When I was 14 years old.

19 **DEPUTY COMMISSIONER PEREZ:** And this was in
20 Sinaloa?

21 **INMATE CHAVEZ:** No.

22 **DEPUTY COMMISSIONER PEREZ:** It was here?

23 **INMATE CHAVEZ:** I was living with my dad.

24 **DEPUTY COMMISSIONER PEREZ:** (Indiscernible) in
25 here?

1 **INMATE CHAVEZ:** No. I was living in Guadalajara
2 with my dad.

3 **DEPUTY COMMISSIONER PEREZ:** Guadalajara. But
4 you're from Sinaloa?

5 **INMATE CHAVEZ:** Yes.

6 **PRESIDING COMMISSIONER ENG:** Because even back
7 then, you know, where did you get the money for the
8 cocaine?

9 **INMATE CHAVEZ:** No, they just give it to me.

10 **PRESIDING COMMISSIONER ENG:** They just gave it to
11 you. Okay.

12 **INMATE CHAVEZ:** You see, when you're a young kid
13 and you try to look -- look out for friends, they're
14 going to invite you to their things. And if you try to
15 blend in, you're going to do some bad things, and I did
16 that. I'm not going to deny that. I did try that. But
17 once I saw that there was no way that they're going to
18 be good friends for me, I stopped.

19 **PRESIDING COMMISSIONER ENG:** Okay.

20 **INMATE CHAVEZ:** I say, no.

21 **PRESIDING COMMISSIONER ENG:** Any questions about
22 the life crime?

23 **DEPUTY COMMISSIONER PEREZ:** No.

24 **PRESIDING COMMISSIONER ENG:** Okay. So you were
25 soon after arrested; correct?

1 **INMATE CHAVEZ:** Yes.

2 **PRESIDING COMMISSIONER ENG:** That's all that's
3 happened. Yeah. Okay. And you didn't find out
4 until -- was it that same day that --

5 **INMATE CHAVEZ:** Three months later.

6 **PRESIDING COMMISSIONER ENG:** I'm sorry, what?

7 **INMATE CHAVEZ:** Three months later.

8 **PRESIDING COMMISSIONER ENG:** Three months later
9 that you'd killed him?

10 **INMATE CHAVEZ:** Yes.

11 **PRESIDING COMMISSIONER ENG:** Well you knew he died;
12 correct?

13 **INMATE CHAVEZ:** I knew.

14 **PRESIDING COMMISSIONER ENG:** But you didn't
15 think --

16 **INMATE CHAVEZ:** When they arrest us.

17 **PRESIDING COMMISSIONER ENG:** Yeah, you knew that he
18 was dead?

19 **INMATE CHAVEZ:** Yes.

20 **PRESIDING COMMISSIONER ENG:** Okay.

21 **INMATE CHAVEZ:** I never thought that it was me.
22 Like I say, I even got into big argument with my lawyer.

23 **PRESIDING COMMISSIONER ENG:** Right. After this big
24 shootout, and the two of you discharged quite a few
25 bullets there, and this was on a street; right?

1 **INMATE CHAVEZ:** Yes.

2 **PRESIDING COMMISSIONER ENG:** Did you think possibly
3 when you're shooting arbitrarily out the window that you
4 could have hit quite a few people?

5 **INMATE CHAVEZ:** I was in shock.

6 **PRESIDING COMMISSIONER ENG:** Okay. Okay. We'll
7 let's move on. Let's take a look at your -- your prior
8 criminal history, which I'm taking a look at the
9 probation officer's report. And I don't believe -- I
10 know you -- you came to the United States in around
11 1988; is that correct?

12 **INMATE CHAVEZ:** Yeah, close to that.

13 **PRESIDING COMMISSIONER ENG:** You were about 16?

14 **INMATE CHAVEZ:** Sixteen, 16 and a half.

15 **PRESIDING COMMISSIONER ENG:** And as a juvenile, did
16 you ever have contacts with the police?

17 **INMATE CHAVEZ:** In Mexico or --

18 **PRESIDING COMMISSIONER ENG:** Here.

19 **INMATE CHAVEZ:** -- here in the United States?

20 **PRESIDING COMMISSIONER ENG:** Here. Here.

21 **INMATE CHAVEZ:** Okay. Here, tickets, mostly
22 tickets.

23 **PRESIDING COMMISSIONER ENG:** Yeah, but when you
24 were 16 and 17?

25 **INMATE CHAVEZ:** No.

1 **PRESIDING COMMISSIONER ENG:** Okay.

2 **INMATE CHAVEZ:** No.

3 **PRESIDING COMMISSIONER ENG:** No. Okay. Well back
4 in Mexico, did you have problems?

5 **INMATE CHAVEZ:** Never.

6 **PRESIDING COMMISSIONER ENG:** Never got picked up
7 and got --

8 **INMATE CHAVEZ:** Only in the school when I was
9 fighting with the other kids.

10 **PRESIDING COMMISSIONER ENG:** Okay. But nothing
11 serious?

12 **INMATE CHAVEZ:** Nothing serious.

13 **PRESIDING COMMISSIONER ENG:** So here as an adult
14 the first time that you were arrested was November 12,
15 1990. Do you remember that? It looks -- It was a
16 Vehicle Code violation, exceeding 55 mile per hour
17 limit. You pled guilty. You didn't have -- You were an
18 unlicensed driver. No proof of car insurance. Do you
19 remember that?

20 **INMATE CHAVEZ:** I know they gave me the ticket, but
21 I don't remember exactly. I know --

22 **PRESIDING COMMISSIONER ENG:** Do you remember you
23 were driving around without a license or any car
24 insurance?

25 **INMATE CHAVEZ:** Yeah. Yes.

1 **PRESIDING COMMISSIONER ENG:** Okay. Did you realize
2 that was against the law?

3 **INMATE CHAVEZ:** Yes.

4 **PRESIDING COMMISSIONER ENG:** But you did it anyway?

5 **INMATE CHAVEZ:** I had to go to work.

6 **PRESIDING COMMISSIONER ENG:** Too far to walk?

7 **INMATE CHAVEZ:** Way too far.

8 **PRESIDING COMMISSIONER ENG:** Ever think of a
9 bicycle? Too far?

10 **INMATE CHAVEZ:** Too far for the bicycle.

11 **PRESIDING COMMISSIONER ENG:** Okay. All right. So
12 -- And you had no car insurance. You were ordered to
13 pay a fine. You failed to appear, so they issued a
14 bench warrant for you, but they recalled it. Okay. And
15 do you recall did you end up serving six days in county
16 jail?

17 **INMATE CHAVEZ:** It was three days.

18 **PRESIDING COMMISSIONER ENG:** It was -- ended up
19 three days in county jail?

20 **INMATE CHAVEZ:** Yes.

21 **PRESIDING COMMISSIONER ENG:** Okay. All right. So
22 that was November 13th. And then in less than a month,
23 December 1, 1990, you got caught again, unlicensed
24 driver. Is this -- This could be the same thing. I'm
25 not sure. But a bench warrant was issued.

1 **INMATE CHAVEZ:** Do you have the address where they
2 caught me over there with the driver's license --
3 driving?

4 **PRESIDING COMMISSIONER ENG:** No, it doesn't say.

5 **INMATE CHAVEZ:** Because --

6 **PRESIDING COMMISSIONER ENG:** It just says in
7 east -- You appeared in East Los Angeles Municipal Court
8 on December 20, 1990. So it looks like these are -- I
9 think that these two are related. Because if you
10 appeared in court on the 20th of December and then they
11 show that on December 1st that you had another charge
12 for an unlicensed driver, so I don't know if this makes
13 any sense. But basically you -- with this one you ended
14 up being placed on one year summary probation.

15 **INMATE CHAVEZ:** No, that's a different one.

16 **PRESIDING COMMISSIONER ENG:** It is a different one?
17 Okay.

18 **INMATE CHAVEZ:** Yeah, that's a different thing.

19 **PRESIDING COMMISSIONER ENG:** They ended up -- And
20 on the condition that you pay a fine of \$150.00 or you
21 serve five days. And you -- You know what, did you
22 serve five days on that one?

23 **INMATE CHAVEZ:** No. I was only three days.

24 **PRESIDING COMMISSIONER ENG:** Okay. So --

25 **INMATE CHAVEZ:** Yeah, never -- never -- never

1 again.

2 **ATTORNEY RUTLEDGE:** But with credits it might be --

3 **PRESIDING COMMISSIONER ENG:** Yeah, I think you got
4 credit, so I think --

5 **INMATE CHAVEZ:** Oh, it might be.

6 **PRESIDING COMMISSIONER ENG:** Did you end up paying
7 any fines?

8 **INMATE CHAVEZ:** No.

9 **PRESIDING COMMISSIONER ENG:** Okay.

10 **INMATE CHAVEZ:** I went to jail.

11 **PRESIDING COMMISSIONER ENG:** So then you did --

12 **INMATE CHAVEZ:** Because I didn't have the money.

13 **PRESIDING COMMISSIONER ENG:** Right. All right.

14 Then we see in March '91, possession of narcotic
15 controlled substance for sale. This was the bag --

16 **INMATE CHAVEZ:** Yes.

17 **PRESIDING COMMISSIONER ENG:** -- that you're talking
18 about. Okay. And all right. This is exactly what you
19 told us about. All right. Then we've got grand theft
20 on March 18, 1992, motor vehicle.

21 **INMATE CHAVEZ:** You're going to laugh on that.

22 **PRESIDING COMMISSIONER ENG:** All right. Why don't
23 you tell us about -- What did you do?

24 **INMATE CHAVEZ:** Okay. I always said that sometimes
25 my choice of friends wasn't good enough, right. And

1 this is proof what I'm doing right now, what happening
2 right now, this is proof of that. So that one, I was
3 with a friend outside the car of my girlfriend. And we
4 saw a car outside -- parked outside the street. And we
5 never saw him before. So he had the same kind of car
6 and everything. They say, hey, look, like that car is
7 stolen. See, I told them like this, okay, let's go
8 look. We went to look. Even the screws for the tires
9 were loose. So he say, yeah, it's stolen, you know
10 what, I need the tires. Come on, man, you can buy them.
11 Come on, man, help me out, because I need the tires.
12 Okay. What do you want me to do? Say, look, everything
13 is loose already. Screws are loose. All you got to do
14 is lift up the car and I take the tires off. That's all
15 I did. I put myself on the side of the car, grab it
16 with my hands, bend my knees, and with my knees pull
17 them up with my legs. That's what I did. After that,
18 he went to take the tires to his house. We come back.
19 And when we come back, we were jumping on top of the car
20 when the police arrived. We got arrested.

21 **PRESIDING COMMISSIONER ENG:** Well it says here that
22 you were looking into the hood of the car to see what
23 other parts you could steal?

24 **INMATE CHAVEZ:** No, we were jumping --

25 **PRESIDING COMMISSIONER ENG:** But you were actually

1 jumping on --

2 **INMATE CHAVEZ:** Jump on top --

3 **PRESIDING COMMISSIONER ENG:** -- top of the car?

4 **INMATE CHAVEZ:** -- of the car.

5 **ATTORNEY RUTLEDGE:** Why were you jumping on top of
6 the car?

7 **INMATE CHAVEZ:** We were kids. We were just trying
8 to have fun. Bad fun, but it was -- that's what
9 happened.

10 **PRESIDING COMMISSIONER ENG:** You ever think about
11 the person, if that were your car, if people were doing
12 that to you, did it ever occur to you how that would
13 make you feel?

14 **INMATE CHAVEZ:** When you're young, you don't think
15 about anything.

16 **PRESIDING COMMISSIONER ENG:** You didn't think about
17 that. Okay. All right. So you got arrested for that.
18 You ended up being placed on two years summary
19 probation. And again, this was on the condition that
20 you serve 30 days with credit for 30. Okay.

21 **INMATE CHAVEZ:** On that one, I don't remember if it
22 was a month later when they arrest me. They took me to
23 court when I was fighting for this case for like a year.
24 Well, it was more than that for this case. But they
25 took me to court for that case for over a year until I

1 got tired. They keep postponing the case, postponing
2 the case because they were saying that if I go to jury,
3 that would look bad on me. So they were trying to hold
4 that down. But I got so tired of going back and forth,
5 back and forth, back and forth, then I told them, you
6 know what, yes, close this down.

7 **PRESIDING COMMISSIONER ENG:** Yeah.

8 **INMATE CHAVEZ:** They told me, are you sure? Yes,
9 I'm tired of all of this. Anyhow, this case, what I'm
10 doing right now, I messed up already.

11 **PRESIDING COMMISSIONER ENG:** Yeah.

12 **INMATE CHAVEZ:** I blew it up bad, so this is
13 going -- all of that, please, just close the case. They
14 even asked me again, are you sure? I said, yes, please,
15 close -- After that, they gave me 30 days.

16 **PRESIDING COMMISSIONER ENG:** Right.

17 **INMATE CHAVEZ:** And I think it was one year -- one
18 year probation. But I haven't got out, so --

19 **PRESIDING COMMISSIONER ENG:** Well, it didn't make
20 any difference because soon after you did the life
21 crime, so --

22 **INMATE CHAVEZ:** No, that was -- that was when I was
23 for this, I haven't got out yet.

24 **PRESIDING COMMISSIONER ENG:** But you did this --
25 You did this, the grand theft motor vehicle before you