

1 **DEAN D. FLIPPO**
2 **MONTEREY COUNTY DISTRICT ATTORNEY**
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9 Attorneys For Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**

12 **PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 vs.

15 **PATRICIA CONKLIN**

16 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S TRIAL BRIEF

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

17 **I. FACTUAL SUMMARY**

18 On March 1, 2013, around 12:30 PM, a 911 call was placed by the defendant. She tells the
19 operator “my mother has fallen down and she can’t get up”. After the call is transferred to an
20 ambulance dispatcher, she repeats the above line. Her mother, Margarita Zelada, can be heard in the
21 background and eventually gets on the phone. Zelada repeatedly says “she threw me down”. When
22 asked how her mother ended up on the floor the defendant says “she slipped”.

23
24 When Pacific Grove Police arrived, Zelada told Officer Anderson “she pushed me”. When
25 Officer Anderson asked defendant what happened she said while her mother was at the stove
26 cooking when she, the defendant, “bumped” her mother out of the way so that she would not burn
27 the food. She said her mother fell because of “bad balance”. Defendant has provided several
28

1 different versions of the events that night. Officer Anderson noticed that defendant's hand was
2 injured and she said after her mom fell she was angry and so she punched a glass cabinet door
3 causing it to shatter.

4
5 Officer Anderson then interviewed Zelada about what happened. Zelada said the two were
6 arguing over money and when she had her back turned the defendant pushed her.

7 Officer Anderson arrested the defendant and released her on a citation.

8 Sgt. Viray also responded and found Zelada on the kitchen floor. When she asked Zelada if
9 she was ok she responded "my daughter pushed me". When the paramedics were talking to Zelada,
10 Sgt. Viray heard the defendant yell "Mommy, now I'm gonna go to jail". Zelada responded "You
11 don't get my money, what happens to you, I don't know."

12
13 It was later determined that Zelada had suffered a intertrochanteric fracture of the femur. Dr.
14 Lin performed surgery on her and placed an orthopedic nail (or screw) at the fracture site to stabilize
15 the bone. He would consider this great bodily injury because the femur is such a large bone for
16 anyone but a fracture for an older person is certainly GBI in his opinion. Dr. Lin said she should
17 have been at a Level 1 care facility (such as Windsor) and would need a wheelchair, walker and or
18 cane for up to three months. He would not have recommended she leave the care facility after one
19 week.
20

21 Later on March 1, 2013, around 3:45 PM, officers from Pacific Grove were dispatched again
22 to the defendant's residence because an anonymous person had reported that Conklin was suicidal.
23 She was transported to CHOMP for an evaluation pursuant to Welfare and Institutions Code section
24 5150. A prior suicide attempt was documented on August 27, 2012.
25

26 The Public Guardian's office has the ability and responsibility of requesting a court grant
27 them conservatorship for people who are unable to care for themselves and have no one else to do so.
28

1 They can file for conservatorship of “the estate”, meaning the financial aspects of a person’s life or
2 of “the person”, meaning the person’s food, clothing, shelter and medical care. The Public Guardian
3 had filed for conservatorship of Zelada’s estate in September 2012 due to allegations of financial
4 abuse by the defendant. They were granted temporary conservatorship on October 5, 2012. Zelada
5 was being represented by attorney Chris Campbell in those proceedings. After the battery incident
6 on March 1, 2013 the Public Guardian applied for and was granted temporary conservatorship of
7 both Zelada’s “person” and “estate” on March 4, 2013. Defendant was made aware of these
8 proceedings by attorney Campbell.
9

10
11 Attorney Campbell kept defendant informed by email and with phone calls and voice
12 messages. Finally on March 8, 2013, Attorney sat down with defendant for approximately one and
13 one half hours and explained the temporary conservatorship, the need for defendant to cooperate
14 with the public guardian and Windsor care, the limited circumstances under which Zelada would be
15 coming home and the need to clean up the home. Ms. Campbell believes there was no question that
16 defendant understood that the court had granted the Public Guardian Temporary Conservatorship of
17 her mother’s “person” and “estate”.
18

19 On March 9, 2013, Zelada was at the Windsor Care Center recuperating from her hip surgery.
20 Around 6:00 PM her assigned nurse, ZhenongShen (known as Emily), noted that Zelada was wanting
21 to go home and had packed her luggage. Emily called Dr. Lin who said Zelada should not go home.
22 Around 6:20 PM Emily placed a call to the on call public guardian. Around 6:50 PM Emily spoke
23 with the on call public guardian, Carl Powers. Powers also said that Zelada could not go home and
24 apparently spoke directly with Zelada.
25

26 Around 7:00 PM defendant arrived at the Windsor Care Center. She saw Ms. Zelada on the
27 phone and grabbed the phone and started yelling and cursing. This is observed by staff at Windsor
28

1 Care Center and recalled by Carl Powers. It is believed that defendant's friend Tara Robinson was
2 present. Due to defendant's behavior, Emily called 911. Defendant continued to be confrontational
3 with Emily and claimed to have recorded the conversation on her phone. The People have not been
4 provided this recording by the defense.
5

6 Defendant began pushing her mother towards the front door and threatened the staff saying if
7 they tried to stop her "I will do something or kill anyone". This was overheard by Emily and the
8 receptionist, Rayleen Prarash. Emily again called 911 as the police had still not shown up.

9 Monterey Police Officer Wayland Kopp arrived and spoke with defendant, Zelada, Emily and
10 the Windsor Care Center Administrator, Alex Monte. Emily called Monte and handed the phone to
11 Officer Kopp. Officer Kopp claims that nobody told him a conservatorship was in place. Monte and
12 Emily both say they told him about the conservatorship. According to Prarash, a note requesting
13 contact with the conservator if problems with Zelada arose was posted in the nurse's station at
14 Windsor Care Center. Officer Kopp felt there was no reason Zelada had to stay at Windsor Care
15 Center and told everyone so.
16
17

18 Zelada and defendant both signed a form saying they were leaving against the advice of
19 Windsor Care Center and Zelada signed a form she was leaving against medical advice.

20 Defendant took her mother to their shared home in Pacific Grove. The Public Guardian who
21 was assigned this case, Jennifer Empasis, was on her days off when contacted by her colleague Carl
22 Powers. She arranged for the paperwork showing the temporary conservatorship be provided to the
23 Pacific Grove Police and requested their assistance in removing Zelada from the home.
24

25 Around 10:30 PM on March 9, 2013 PGPD officers Bliss, Haas, Young and Deis went to the
26 home of Zelada and defendant. Officer Bliss talked to Zelada who said she was in pain and could
27 not stand or walk easily. Zelada was transported to CHOMP for evaluation and then taken back to
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1 Windsor Care Center. While at the home officers noted the general condition of the home and the
2 lack of any crutches, walker, commode or other assistive devices. Pictures were taken later that
3 show the home has several uneven surfaces, cords running across the floor and other tripping
4 hazards. The house was generally messy. Electrical wiring was being worked on, apparently
5 illegally, and should there have been a fire, Zelada would have had a difficult time getting out of the
6 home. The bathroom did not have assistive bars for either the toilet or the shower. In addition,
7 according to the defendant, the stove malfunctioned and occasionally had flames shooting from it.
8 The defendant also told Officer Deis that the toilets in the home were not currently working. Finally,
9 the house was heated by a fireplace and there was no screen and there were several burn marks on
10 the floor in front of the fireplace area.

11
12
13 On March 21, 2013, defendant's friend Tara Robinson attempted to remove Zelada again
14 from Windsor Care Center. It is believed that the Defendant was outside in the parking lot.
15 Robinson told Alex Monte she was a nurse and would be caring for Zelada at the home of Zelada
16 and defendant. The People were unable to find any license for a nurse with the name Tara Robinson.

17
18 On March 25, 2013 defendant was remanded into custody at her arraignment. Present with
19 her was her friend Tara Robinson who indicated she was homeless, had known defendant about two
20 months and was going to work as a caretaker for Zelada.

21 On March 26, 2013 and March 27, 2013, the Public Guardian's office entered the home of
22 defendant and Zelada and attempted to document the conditions, possessions and secure valuables.
23 Empasis noted several unusual issues with the home. She noted areas that were unsafe including
24 those mentioned above as well as the size of two entry/exit steps from the home. She noted there
25 was no landline phone on the ground floor where Zelada was. She noted the odor of dog feces and
26 urine. The closest exit door to Zelada's room had four separate locks on it. She noted an open and
27
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1 exposed electrical panel. In Zelada's room she noted numerous items strewn about the floor. She
2 found Zelada's mattress was soiled and a pair of underwear was found that appeared to be soiled
3 with blood and discharge. Empasis was unable to locate any other underwear and could only find
4 one bra to bring to Zelada.
5

6 On March 14, 2013 Zelada was interviewed by Dr. Thomas Reidy for the purpose of making
7 a capacity determination for the conservatorship proceeding. At the conclusion of his evaluation he
8 determined she was suffering "a global cognitive decline reflected in symptoms consistent with a
9 Dementia, particularly with regard to memory". He opined that she does not have the mental
10 capacity to make informed decisions regarding her finances, medical care and activities of daily
11 living. This appears to be a significant rapid decline as she was contacted by Steve Mudd and Mike
12 Atteridgein 2012 and found to be functioning pretty well.
13

14 As mentioned previously, defendant was previously suspected of financial abuse. That case
15 remains under investigation. Essentially, defendant had full access to her mother's money and
16 appears to have spent it on herself exorbitantly. The People have not been able to complete the
17 investigation and want to make it clear that regardless of the outcome of the present case, if a crime
18 can be proven, charges will be filed. The People have not provided discovery of this open
19 investigation but believe the issue may still arise as it explains the reason defendant and Zelada were
20 fighting and why the temporary conservatorship was in place.
21

22 On December 24, 2012, a neighbor, John Kendrick, received a phone call from defendant,
23 who said she was in San Francisco, asking for assistance with her mother. She indicated her mother
24 was at home with no phone and possibly no heat. Kendrick told defendant to come home
25 immediately after checking on Zelada. When Kendrick noticed that defendant was not home the
26 next day he called the police to do a welfare check. Officers responded but no report was generated.
27
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1 Defendant appears to have stolen her mother's jewelry and had her attorney pawn it for her.
2 See the People's motions related to this conflict for full details.

3 **MOTIONS IN LIMINE/EVIDENCE ISSUES**

4
5 See attached numbered motions.

6 **II. WITNESS LIST**

7 See attachment.

8 **III. SCHEDULING ISSUES**

9
10 The People's witness, Dr. Thomas Reidy is only available the morning of August 8, 2013.
11 Deputy District Attorney Rabow has an ongoing discovery motion in Department 6 on August 6,
12 2013 at 0830.

13 **V. PROPOSED VOIR DIRE**

14 See attachment.

15 **VI. EXHIBIT LIST**

16
17 See attachment.

18 **VII. PROPOSED JURY INSTRUCTIONS**

19 See attachment.

20 **VIII. VERDICT FORMS**

21
22 See attachment.

23 **IX. PEREMPTORY CHALLENGES**

24 CCP 231(a) provides for ten peremptory challenges for each side in criminal cases such as
25 this one. Each side is entitled to as many peremptory challenges as the number of alternates chosen
26 by the court. The People suggest two alternates.
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28

1 Dated: July 31, 2013

Respectfully submitted,

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3 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

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5 By: _____

6 David Rabow
7 Deputy District Attorney
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9 Attorneys For Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 **PATRICIA CONKLIN**

16 Defendants.

COURT CASE NO. SS130600A/B

PEOPLE'S WITNESS LIST

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

- | | | |
|----|--------------------------|---------------------------|
| 17 | 1. MARGARITA ZELADA | VICTIM |
| 18 | 2. RYAN ANDERSON | PGPD |
| 19 | 3. ROXANNE VIRAY | PGPD |
| 20 | 4. MEGAN BLISS | SHASTA SO (Formerly PGPD) |
| 21 | 5. DAN DEIS | PGPD |
| 22 | 6. JEFF HAAS | PGPD |
| 23 | 7. MARK YOUNG | PGPD |
| 24 | 8. BRANDON CEFALU | SEASIDE PD |
| 25 | 9. TERRI EDWARDS | MONTEREY PD |
| 26 | 10. THOMAS REIDY | PSYCHIATRIST |
| 27 | 11. JENNIFER EMPASSIS | PUBLIC GUARDIAN OFFICE |
| 28 | 12. CARL POWERS | PUBLIC GUARDIAN OFFICE |
| | 13. TERI SCARLETT | PUBLIC GUARDIAN OFFICE |
| | 14. CATHLEEN GIOVININI | COUNTY COUNSEL |
| | 15. RAYLEEN PRARASH | WINDSOR CARE FACILITY |
| | 16. ZHENONG "EMILY" SHEN | WINDSOR CARE FACILITY |
| | 17. HEATHER GOKEN | WINDSOR CARE FACILITY |
| | 18. ELENA DUNTON | WINDSOR CARE FACILITY |

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- 19. ALEX MONTE WINDSOR CARE FACILITY
- 20. MARGARITA JUBANE WINDSOR CARE FACILITY
- 21. DR. JAMES LIN SURGEON CHOMP
- 22. JOHN KENDRICK NEIGHBOR
- 23. ALLEN ROWE DISTRICT ATTORNEY INVESTIGATOR
- 24. STEVE MUDD ADULT PROTECTIVE SERVICES
- 25. JOHN MOUNT COUNTY COMMUNICATIONS
- 26. MARYANN BONSPER NURSE CHOMP
- 27. MYLES ROUTH AMR
- 28. LAWRENCE MIGNANO AMR
- 29. CHRIS CAMPBELL ATTORNEY
- 30. MIKE ATTERIDGE COURT INVESTIGATOR
- 31. MARGARET CAMARA CARE GIVER
- 32. GREG BENNETT CARE GIVER

Dated: July 31, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

By: _____
David Rabow, Deputy District Attorney
Attorney for Plaintiff

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11 **FOR THE COUNTY OF MONTEREY**

12 **PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 vs.

15 **PATRICIA CONKLIN**

16 Defendants.

COURT CASE NO.SS130600A

**PEOPLE'S PROPOSED VOIR
DIRE QUESTIONS**

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

17 **I. GENERAL VOIR DIRE:**

- 18 1. Does anyone have any religious, moral or ethical problems with judging the conduct of another
19 person?
20 a) How will that impact your deliberations? How will that impact the People's burden to
21 prove the case beyond a reasonable doubt?
- 22 2. What is your occupation?
23 Do you supervise others at work?
24 How many?
25 Does your responsibility include resolving conflicts at work?
26 What jobs have you held previously?
- 27 3. What are the occupations of your family members and housemates?
28 Of your grown children?
4. Have you ever sat on a jury before?
What kind of case?
Did the jury arrive at a verdict?
Anything about that experience that would give you trouble in sitting on a jury again?

1
2 5. Have you ever been in court before for any reason?

3 What were the circumstances?

4 Have you ever been a party to a lawsuit? Explain.

5 Have you ever fought a speeding ticket in court?

6 Have you ever been a witness in court?

7 For whom?

8 Has anyone ever been arrested or convicted of any crime other than speeding?

9 What? When? Did you have a trial?

10 Did you feel that you were treated fairly?

11 6. Does anyone have any relatives or close friends who have been arrested or convicted of any
12 similar offense? (ELDER ABUSE, BATTERY, ASSAULT)

13 What was your relationship to that person?

14 Did s/he talk to you about their case?

15 Did s/he feel that s/he was treated fairly?

16 What type of case was it?

17 Did the person go to trial?

18 Did you feel s/he was treated fairly?

19 7. Has anyone ever posted bail for someone else?

20 Who? What type of crime?

21 8. Does anyone know any attorneys or judges?

22 **II. REASONABLE DOUBT**

23 1. Does anyone disagree with the concept that, to be found guilty of a crime, a person must be
24 found guilty beyond a REASONABLE DOUBT, not beyond ALL doubt?

25 2. Have you ever been in a situation where you had to determine who was telling the truth, or which
26 of two scenarios was more reasonable?

27 When?

28 Do you feel comfortable in that role?

How good are you at looking behind stories that people tell to determine if there is any
bias or motive or reason which might be coloring their perception?

III. POLICE

1. Does anyone know any police officers?

In what capacity?

2. Does anyone have any strong feelings for or against the police in general?

1 3. Has anyone had a bad experience with a police officer? When?
2 Can you put that aside in this case, or would that be hard for you to do?

3 4. If you were convinced beyond a reasonable doubt that the defendant was guilty as charged, but
4 felt for some reason that the police could have done a better job in their investigation, would
5 you vote not guilty just to teach the police a lesson?

6 5. Has anyone ever worked for or applied to a police agency?
7 Were you hired?
8 Why did you leave?

9 **IV The elderly**

- 10 1. Does anyone have a parent who they care for?
11 2. Has anyone heard of the term “caregiver fatigue”?
12 3. Does anyone have any training or experience dealing with someone who has alzheimers
13 or dementia?
14 4. Has anyone heard of the public guardian’s office? Do you have any feelings about them
15 good or bad? Anybody had a family member who the public guardian has attempted to or
16 actually filed conservatorship on? Was that a good or bad experience
17 5. Even if you have not had that experience what do you think when you hear about the
18 public guardian, a government agency, obtaining conservatorship over someone?
19 6. Has anyone had a family member at Windsor Care Center on Skyline Dr. in Monterey?
20 Any strong feelings about that place or other similar places, often called Skilled Nursing
21 Facilities or rehab centers?
22 7. Anyone have strong feelings about the health care system or health care providers
23 particularly for the elderly?
24 8. I hesitate to ask but anyone have strong feelings about people who may be difficult to
25 understand because English is not their first language?

26 **V Legal Concepts**

27 What if the victim did not testify in this case, would you consider that if the judge told you
28 only to consider the evidence you heard? Ex. Homicide

Dated: July 31, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

By: _____

David Rabow
Deputy District Attorney

1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF MONTEREY**

3 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO. SS130600A

4 Plaintiff,

VERDICT OF THE JURY

5 vs.

COUNT 1 - LESSER

6 **PATRICIA CONKLIN,**

ELDER ABUSE

(Penal Code section 368)

7 Defendant.

8
9
10 WE, the JURY, duly sworn to try the above-entitled case, having unanimously found the
11 defendant NOT GUILTY of Elder Abuse under circumstances likely to produce great bodily
12 injury, find the Defendant, PATRICIA CONKLIN, _____ of the lesser crime
13 **GUILTY/NOT GUILTY**
14 of Elder Abuse under circumstances other than those likely to produce great bodily injury
15 upon Margarita Zelada, in violation of Penal Code Section 368(c), a lesser crime of Count 1,
16 occurring on March 1, 2013.

17 Date: _____

18 _____
19 **PRESIDING JUROR**
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1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF MONTEREY**

3 **PEOPLE OF THE STATE OF CALIFORNIA,**

4 Plaintiff,

5 vs.

6 **PATRICIA CONKLIN,**

7 Defendant.

COURT CASE NO. SS130600A

VERDICT OF THE JURY

COUNT 2

ELDER ABUSE
(Penal Code section 368)

8
9
10 WE, the JURY, duly sworn to try the above-entitled case, find the Defendant,

11 PATRICIA CONKLIN, _____ of the crime of **ELDER ABUSE**
12 **GUILTY/NOT GUILTY**

13 of Margarita Zelada, in violation of Penal Code Section 368(B)(1), as charged in Count 2,
14 occurring on March 9, 2013 (removal from facility).

15 Date: _____

16 _____
17 **PRESIDING JUROR**
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1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF MONTEREY**

3 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO. SS130600A

4 Plaintiff,

VERDICT OF THE JURY

5 vs.

COUNT 3

6 **PATRICIA CONKLIN,**

ELDER ABUSE

(Penal Code section 368)

7 Defendant.

8
9
10 WE, the JURY, duly sworn to try the above-entitled case, find the Defendant,

11 PATRICIA CONKLIN, _____ of the crime of **ELDER ABUSE**

12 **GUILTY/NOT GUILTY**

13 of Margarita Zelada, in violation of Penal Code Section 368(B)(1), as charged in Count 3,

14 occurring on March 9, 2013 (placed at 171 Laurel, Pacific Grove).

15 Date: _____

16 _____
17 **PRESIDING JUROR**
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1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF MONTEREY**

3 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO. SS130600A

4 Plaintiff,

VERDICT OF THE JURY

5 vs.

COUNT 2 - LESSER

6 **PATRICIA CONKLIN,**

ELDER ABUSE

(Penal Code section 368)

7 Defendant.

8
9
10 WE, the JURY, duly sworn to try the above-entitled case, having unanimously found the
11 defendant NOT GUILTY of Elder Abuse under circumstances likely to produce great bodily
12 injury, find the Defendant, PATRICIA CONKLIN, _____ of the lesser crime
13 **GUILTY/NOT GUILTY**
14 of Elder Abuse under circumstances other than those likely to produce great bodily injury
15 upon Margarita Zelada, in violation of Penal Code Section 368(c), a lesser crime of Count 1,
16 occurring on March 9, 2013 (removal from facility).
17

18 Date: _____

PRESIDING JUROR

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1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF MONTEREY**

3 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO. SS130600A

4 Plaintiff,

VERDICT OF THE JURY

5 vs.

COUNT 3 - LESSER

6 **PATRICIA CONKLIN,**

ELDER ABUSE

(Penal Code section 368)

7 Defendant.

8
9
10 WE, the JURY, duly sworn to try the above-entitled case, having unanimously found the
11 defendant NOT GUILTY of Elder Abuse under circumstances likely to produce great bodily
12 injury, find the Defendant, PATRICIA CONKLIN, _____ of the lesser crime
13 **GUILTY/NOT GUILTY**
14 of Elder Abuse under circumstances other than those likely to produce great bodily injury
15 upon Margarita Zelada, in violation of Penal Code Section 368(c), a lesser crime of Count 1,
16 occurring on March 1, 2013(placed at 171 Laurel, Pacific Grove).
17

18 Date: _____

19 _____
PRESIDING JUROR

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12 **PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 vs.

15 **PATRICIA CONKLIN**

16 Defendants.

COURT CASE NO. SS130600A

PEOPLE'S EXHIBIT LIST

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

- 17 1. Diagram
18 2. Photos
19 3. 911 Recordings
20 5. Medical records

21 A detailed list will be provided throughout the trial.

22 Dated: July 31, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

23 By: _____

24 David Rabow
25 Deputy District Attorney
26 Attorney for Plaintiff

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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11
12 Plaintiff,
13 vs.
14 **PATRICIA CONKLIN**
15 Defendants.

16 **COURT CASE NO: SS130600A**
17 **PEOPLE’S PROPOSED**
18 **JURY INSTRUCTIONS**
19 Date: **August 5, 2013**
20 Time: 8:30 A.M.
21 Department: 2

22 **PROPOSED JURY INSTRUCTIONS**

- 23 100 Trial Process (Before or During Voir Dire).
- 24 101 Cautionary Admonitions: Jury Conduct (After Jury Is Selected).
- 25 102 Note Taking.
- 26 103 Reasonable Doubt.
- 27 104 Evidence.
- 28 105 Witnesses
- 106 Jurors Asking Questions
- 121 Abide by Translation
- 124 Separation Admonition.
- 200 Duties of Judge and Jury.
- 201 Do Not Investigate.
- 202 Note Taking.
- 220 Reasonable Doubt.
- 222 Evidence.

1	223	Direct and Circumstantial Evidence: Defined
2	224	Circumstantial Evidence: Sufficiency of Evidence
3	225	Circumstantial Evidence: Intent or Mental State.
4	226	Witnesses.
5	250	Union of Act and Intent: General Intent.
6	253	Union of Act and Intent: Criminal Negligence
7	300	All Available Evidence.
8	301	Single Witness's Testimony.
9	302	Evaluating Conflicting Evidence.
10	318	Prior Statements as Evidence.
11	332	Expert Witness Testimony.
12	333	Opinion testimony of Lay Witness
13	355	Defendant's right NOT to testify
14	357	Adoptive Admissions
15	358	Evidence of Defendant's Statements
16	359	Corpus Delicti
17	370	Motive
18	371	Consciousness of Guilt
19	830	Elder Abuse
20	853	Prior Uncharged Elder Abuse
21	3162	Great Bodily Injury
22	3515	Multiple Counts: Separate Offenses
23	3550	Pre-Deliberation Instructions.
24	3577	Instruction to Alternate on Submission of Case to Jury.
25	3590	Final Instruction on Discharge of Jury.

/// /// ///

1 Dated: July 31, 2013

Respectfully submitted,

2 OFFICE OF THE DISTRICT ATTORNEY
3 DEAN D. FLIPPO, DISTRICT ATTORNEY

4
5 BY: _____
6 David Rabow, Deputy District Attorney

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1 **DEAN D. FLIPPO**
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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO: SS130600A

11 Plaintiff,

PEOPLE’S MOTION IN LIMINE # 1

12 vs.

Date: **August 5, 2013**

13 **PATRICIA CONKLIN**

Time: 8:30 A.M.

Department: 2

14 Defendants.

15 **DEFENDANT MAY NOT INTRODUCE HER OWN STATEMENTS**

16 The rule of admissibility of the defendant's out-of-court statements is quite clear. It is
17 hearsay and inadmissible pursuant to Evidence Code section 1200 except when offered as an
18 admission pursuant to Evidence Code section 1220. Thus, the defendant, his counsel, and their
19 witnesses should be ordered not to comment on the defendant's out-of-court statements until they are
20 or have been introduced by the plaintiff, the People of the State of California or have been deemed
21 admissible by this court after an offer of proof and a legal theory of admissibility presented. Stated
22 another way, the People move to exclude all statements by the defendant which the defendant is
23 seeking to introduce.

24 Dated: July 31, 2013

Respectfully submitted,

25 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

26 By: _____

David Rabow, Deputy District Attorney

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2 **MONTEREY COUNTY DISTRICT ATTORNEY**
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE #2

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **DEFENDANT’ STATEMENTS**

16 The People are allowed to introduce the defendant’s statements as admissions of a party
17 opponent. Admissions does not have a technical meaning as such statements are not hearsay.

18
19 Moreover, a hearsay objection would have lacked merit. Evidence Code section 1220
20 provides that "Evidence of a statement is not made inadmissible by the hearsay rule
21 when offered against the declarant in an action to which he is a party" The
22 evidence was of statements, defendant was the declarant, the statements were offered
23 against him, and he was a party to the action. Accordingly, the hearsay rule does not
24 make the statements inadmissible. Defendant argues that the statements were not
25 "admissions." The argument is irrelevant to the hearsay question. Evidence Code
26 section 1220 refers to a "statement," not an "admission." It is true that the section
27 heading refers to "Admission of party," but the heading is irrelevant to its
28 construction. (Evid. Code, § 5.)The hearsay rule does not compel exclusion of any
statement offered against a party declarant, whether or not it can be described as an
admission.

People v. Carpenter, 21 Cal. 4th 1016, 1048-1049 (Cal. 1999)

1 Dated: July 31, 2013

Respectfully submitted,

2 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

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4 By: _____
5 David Rabow
6 Deputy District Attorney

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8 Attorneys For Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MONTEREY**

9 PEOPLE OF THE STATE OF CALIFORNIA,
10
11 Plaintiff,
12 vs.
13 **PATRICIA CONKLIN**
14 Defendants.

COURT CASE NO: SS130600A
PEOPLE’S MOTION IN LIMINE #3
Date: **August 5, 2013**
Time: 8:30 A.M.
Department: 2

15 **WITNESS COMPETENCY**

16 Evidence Code section 700 provides that except as otherwise provided by statute, every
17 person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any
18 matter. Evidence Code section 701, however, further delineates as follows:

19 (a) A person is disqualified to be a witness if he or she is:

- 20 1) Incapable of expressing himself or herself concerning the matter so as to be
21 understood, either directly or through interpretation by one who can understand
22 him; or
23 2) Incapable of understanding the duty of a witness to tell the truth.

24 (b) In any proceeding held outside the presence of a jury, the court may reserve challenges
25 to the competency of a witness until the conclusion of the direct examination of that
26 witness.

27 “A witness's competency to testify is determined by the trial court and will be upheld in the
28 absence of a clear abuse of discretion.” People v. Tatum, 108 Cal. App. 4th 288, 297 (2003). “If

1 there is evidence that the witness has the capacity to perceive and recollect, the determination
2 whether he in fact perceived and does recollect is left to the trier of fact.” Id at 298.

3 Evidence Code section 702 adds that the testimony of a witness concerning a particular
4 matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a
5 party, such personal knowledge must be shown before the witness may testify concerning the matter.
6 If mental illness deprives a witness of the ability to perceive, recollect or communicate, personal
7 knowledge under Evidence Code section 702 does not exist. People v. St. Andrew (1980) 101
8 Cal.App.3d 450.

9
10
11 It is not known until Ms.Zelada testifies at the trial whether she is presently incompetent to
12 testify about items of personal knowledge. It is noteworthy that the Supreme Court in People v.
13 Lewis (2001) 26 Cal.4th 334, rehearing denied, certiorari denied 535 U.S. 1019, pointed out that
14 capacity to perceive and recollect is a condition for the admissibility of a witness's testimony on a
15 *certain matter*, rather than a prerequisite for the witness's competency. The Court reasoned that
16 although many have referred to a witness' capacity to perceive and to recollect as an issue of
17 competency to testify, the term “competency” is more precisely referring to a witness's qualification
18 to testify as related to the witness' capacity to communicate and to understand the duty to tell the
19 truth. The Court further noted that a witness’ mental defect or insane delusions does not necessarily
20 reflect that the witness lacks the capacity to perceive or recollect.

21
22
23 The People have interviewed Ms. Zelada on two occasions and spoken with others who have
24 been in regular contact with her. She is certainly able to express herself and it is believed that she
25 can understand the duty to tell the truth. She retains her memory for past events but sometimes gets
26 confused about current events. The People anticipate she will say that she did not have surgery but
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1 believe this is based on her background as a nurse and the lack of a large scar. In other words she
2 does not recall the surgery and has concluded based on the available evidence to her that she did not
3 have surgery. On the other hand, her recent statements about the incident which led to the surgery
4 have been ambiguous and thus the court will have to determine on an issue by issue basis whether
5 Ms. Zelada can testify about the particular matter.
6

7
8 Dated: July 31, 2013

Respectfully submitted,

9 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

10 By: _____

11 David Rabow
12 Deputy District Attorney
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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE #4

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **CALIFORNIA’S RECIPROCAL DISCOVERY**

16 In June 1990 the voters passed Proposition 115 amending the California Constitution to read
17 in part, “In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal
18 in nature, as prescribed by the Legislature or by the people through the initiative process.” (Cal.
19 Const., Art. I, § 30(c).)

20 The benefit of such a statute to the fair and orderly conduct of a criminal trial was discussed
21 in Taylor v. Illinois (1988) 484 U.S. 400: “Discovery, like cross-examination, minimizes the risk
22 that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated
23 testimony. The ‘State’s interest in protecting itself against an eleventh hour defense’ is merely one
24 component of the broader public interest in a full and truthful disclosure of critical facts.” (Id. at pp.
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1 411-412; similarly see In re Littlefield (1993) 5 Cal.4th 122, 130-131; People v. Jackson (1993) 15
2 Cal.App.4th 1197, 1201.)

3 To implement the constitutional reciprocal discovery provision, the initiative added a new
4 chapter to the Penal Code at section 1054 et seq. Section 1054.3 requires the defense to disclose:
5

6 (a) The names and addresses of persons, other than the defendant, he or she intends to
7 call as witnesses at trial, together with any relevant written or recorded statements of those persons,
8 or reports of the statements of those persons, including any reports or statements of experts made in
9 connection with the case, and including the results of physical or mental examinations, scientific
10 tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.
11

12 (b) Any real evidence which the defendant intends to offer in evidence at the trial.

13 In Izazaga v. Superior Court (1991) 54 Cal.3d 356, the California Supreme Court upheld the
14 prosecution discovery provisions of Proposition 115 against all major defense challenges. The Court
15 held that pretrial prosecutorial discovery of defense witness names and addresses does not violate the
16 right against self-incrimination. This information is not personal to the defendant and does not come
17 within the protection of the Fifth Amendment. (Id. at pp. 365-367, 369-372; Hobbs v. Municipal
18 Court (1991) 233 Cal.App.3d 670, 681-686.) Penal Code section 1054.3 requires the defendant to
19 disclose only that which he or she intends to offer at trial. Accelerated disclosure of such material
20 does not violate the Fifth Amendment self-incrimination privilege. (Williams v. Florida (1970) 399
21 U.S. 78, 85.) Disclosure of statements or reports summarizing statements of defense witnesses also
22 does not violate the defendant's Fifth Amendment rights. (United States v. Nobles (1975) 422 U.S.
23 225, 234; Izazaga v. Superior Court, *supra*, at pp. 367-369.)
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1 Nor does prosecutorial discovery violate the Sixth Amendment right to counsel. (United
2 States v. Nobles, supra, 422 U.S. at p. 241; Izazaga v. Superior Court, supra, 54 Cal.3d at pp. 379-
3 380; Hobbs v. Municipal Court, supra, 233 Cal.App.3d at pp. 689-690.) And, Penal Code section
4 1054.3 does not violate a defendant's Sixth Amendment due process rights because there are
5 reciprocal discovery requirements imposed on the prosecution which are far more extensive than
6 those imposed on the defendant. (Izazaga v. Superior Court, supra, at pp. 372-378; Hobbs v.
7 Municipal Court, supra, at pp. 686-689.)

9 Penal Code section 1054.3 requires disclosure of witnesses and evidence the defendant
10 intends to call or offer at trial. This means that the defense must disclose all discoverable material
11 they can "reasonably anticipate" using in their case at any stage of the trial, including in rebuttal.
12 (Izazaga v. Superior Court, supra, 54 Cal.3d at pp. 375-376 and fn. 11.) "Trial," in the context of
13 defendant's obligation to disclose before trial, includes the penalty phase of a capital case in the
14 absence of a showing justifying deferral. (People v. Superior Court (Mitchell) (1993) 5 Cal.4th
15 1229; People v. Superior Court (Sturm) (1992) 9 Cal.App.4th 172.)

17 [S]ection 1054.3 . . . reasonably should be construed to require the defense to provide the
18 prosecution with the names and addresses of prospective defense witnesses to the extent this
19 information is known to, or reasonably accessible to, the defense. Allowing the defense to refrain
20 deliberately from learning the address or whereabouts of a prospective witness, and thus to furnish to
21 the prosecution nothing more than the name of such a witness, would defeat the objectives of the
22 voters who enacted section 1054.3.

23
24 (In re Littlefield, supra, 5 Cal.4th at p. 131.)

1 Similarly, the defense cannot avoid its obligation to disclose statements of those witness to a
2 defense investigator or defense counsel by simply not writing them down or otherwise recording
3 them. (Roland v. Superior Court (2004) 124 Cal.App.4th 154, 165.) The objective of promoting the
4 ascertainment of truth in trials “is achieved only if section 1054.3 is interpreted to require not only
5 the disclosure of relevant written and recorded statements of intended witnesses, other than the
6 defendant, but also the disclosure of relevant oral statements communicated directly to counsel by
7 such a witness or communicated to counsel via an investigator or some other third party.” (Id. at p.
8 167.)
9

10 A failure by either party to provide the disclosures required by the statute permits appropriate
11 court action, which may range from an order enforcing the statute to one prohibiting related evidence
12 or testimony. (Pen. Code, § 1054.5, subds. (b) and (c).) An informal request for discovery is all that
13 is required to impose sanctions for a defendant’s failure to comply with the statute. (People v.
14 Jackson, supra, 15 Cal.App.4th at p. 1202.) In Taylor v. Illinois, supra, 484 U.S. 400, the Court
15 upheld the sanction of precluding the defense from calling a witness who was not named in the
16 pretrial exchange of witnesses required by Illinois’ pretrial discovery statute. Similarly, in People v.
17 Jackson, supra, at pages 1203-1204, the court found preclusion of a witness’s exculpatory testimony
18 an appropriate sanction for counsel’s willful failure to disclose the witness to obtain a tactical
19 advantage. And, in In re Littlefield, supra, 5 Cal.4th at pages 136-137, the court held the defense
20 counsel’s refusal to obtain and provide the address of a witness the defense intended to call at trial
21 constituted a punishable act of contempt.
22
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25 Defendant has provided two witness statements, a disc with photographs and a disc with a
26 recording of defendant and her mother from December 2012.
27
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1 Dated: July 31, 2013

Respectfully submitted,

2 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

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4 By:

David Rabow
Deputy District Attorney

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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE # 5

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **Motion to Admit 911 and Initial statements**

16 The People will move to admit the 911 recording and the initial statements of the victim to
17 the police upon their arrival (See statement of facts in the People’s trial brief). The People contend
18 the statements of the victim are admissible pursuant to Evidence Code section 1240 and the
19 statements of the defendant are admissible pursuant to Evidence Code section 1220 (See Motion in
20 limine # 2). The records themselves are admissible under Evidence Code section 1280. The People
21 also contend the statements are not testimonial for purposes of Sixth Amendment analysis. See
22 People v. Johnson, (2010) 189 Cal. App. 4th 1216, for full discussion of a similar issue.
23

24 A “spontaneous utterance[.]” is considered trustworthy, and admissible at trial despite its
25 hearsay character, because “in the stress of nervous excitement, the reflective faculties may
26 be stilled and the utterance may become the instinctive and uninhibited expression of the
27 speaker's actual impressions and belief.” (People v. Farmer (1989) 47 Cal.3d 888, 903.)
28 Evidence Code section 1240 provides that “[e]vidence of a statement is not made

1 inadmissible by the hearsay rule if the statement: (a) Purports to narrate, describe, or explain
2 an act, condition, or event perceived by the declarant; and (b) Was made spontaneously while
3 the declarant was under the stress of excitement caused by such perception.” For admission
4 of a spontaneous statement, “ ‘(1) there must be some occurrence startling enough to produce
5 this nervous excitement and render the utterance spontaneous and unreflecting; (2) the
6 utterance must have been before there has been time to contrive and misrepresent, i.e., while
7 the nervous excitement may be supposed still to dominate and the reflective powers to be yet
8 in abeyance; and (3) the utterance must relate to the circumstance of the occurrence preceding
9 it.’ [Citations.]” (People v. Poggi (1988) 45 Cal.3d 306, 318.) Whether the statement was
10 made before there was “time to contrive and misrepresent” is informed by a number of
11 factors, including the passage of time between the startling occurrence and the statement,
12 whether the statement was a response to questioning, and the declarant's emotional state and
13 physical condition.

9 People v. Clark, 52 Cal. 4th 856, 925 (Cal. 2011).

10 Here the victim had just been pushed and had fallen and was injured. She was still on the
11 floor when she was speaking with the dispatcher and when the police arrived. She was still shocked
12 that her daughter had pushed her and was describing that she had been pushed (or thrown) down by
13 her daughter. Clearly, the elements of EC 1240 are met.

14 CRAWFORD ANALYSIS

15 As mentioned above, the People anticipate defendant objecting to the admission of
16 statements made to the dispatchers and the police based on the Sixth Amendment right to
17 confrontation. However, the California Supreme Court and United States Supreme Court have both
18 found there is no violation of the Sixth Amendment if the statements admitted are not testimonial.
19
20

21 In Davis v. Washington (2006) 547 U.S. 813, the high court held that a victim's out-of-court
22 statements made to a 911 operator were not “testimonial,” explaining: “Statements are
23 nontestimonial when made in the course of police interrogation under circumstances
24 objectively indicating that the primary purpose of the interrogation is to enable police
25 assistance to meet an ongoing emergency. They are testimonial when the circumstances
26 objectively indicate that there is no such ongoing emergency, and that the primary purpose of
27 the interrogation is to establish or prove past events potentially relevant to later criminal
28 prosecution.”

1 People v. Thomas, 51 Cal. 4th 449, 495 (Cal. 2011). The California Supreme Court went on to
2 explain:

3
4 In the present case, Deputy Calzada responded to a request for assistance, found McCowan
5 with his throat slashed, and asked what happened. Like the 911 operator in Davis, Deputy
6 Calzada was responding to an emergency situation. Like the emergency room physician in
7 Cage, he asked the victim a simple question to determine what had occurred so he could
8 determine what needed to be done to address the situation. Deputy Calzada did not conduct a
9 formal interrogation, and McCowan's response was not testimonial within the meaning of
10 Crawford.

11 People v. Thomas, 51 Cal. 4th 449, 497 (Cal. 2011). Similarly here, the dispatchers were simply
12 trying to determine what happened after the call for medical assistance came from the defendant.

13 The police walked in and may not even have spoken before the victim yelled “she pushed me” but in
14 any case they certainly had not started the formal process of interrogation.

15 Depending upon the court’s ruling related to the victim’s competency to testify, the People
16 note that this may not even be a confrontation issue.

17 In United States v. Owens (1988) 484 U.S. 554, however, the high court held that the
18 admission of a prior out-of-court statement does not violate the confrontation clause even
19 when the witness is unable to remember making the prior statement or the circumstances the
20 statement described so long as the declarant is present at trial and the defense is provided an
21 opportunity for effective cross-examination. As the Owens court explained, “ [T]he
22 Confrontation Clause guarantees only “an opportunity for effective cross-examination, not
23 cross-examination that is effective in whatever way, and to whatever extent, the defense
24 might wish.” ’

25 People v. Clark, (2011)52 Cal. 4th 856, 927.

26 Dated: July 31, 2013

27 Respectfully submitted,
28 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

By: _____
David Rabow
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO: SS130600A

11 Plaintiff,

PEOPLE’S MOTION IN LIMINE #6

12 vs.

Date: **August 5, 2013**

13 **PATRICIA CONKLIN**

Time: 8:30 A.M.

14 Defendants.

Department: 2

15 **Exclusion of improper evidence**

16 The People of the State of California move this Court for an in limine order excluding any
17 reference by any of the parties and any witness to the fact that defendant is charged with a felony and
18 the possible punishment the Defendant may suffer if convicted. (People v. Shannon (1956) 147
19 Cal.App.2d 300, 306). CALJIC 17.42 states: "In your deliberations, do not discuss or consider the
20 subject of penalty or punishment. That subject must not in any way affect your verdict." CALJIC
21 merely directs the jury to reach a verdict without considering punishment. CALJIC 101. Any
22 reference to penalty or punishment would be an improper attempt to manipulate the jury.

23 Defense counsel should also not make any reference to whether the charge is a “strike” nor
24 whether the charge is a felony or misdemeanor as these issues are also reserved for the court.

25 /// /// ///

1 Dated: July 31, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

2
3 By:

BY: David Rabow
Deputy District Attorney

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO: SS130600A

11 Plaintiff,

PEOPLE’S MOTION IN LIMINE # 7

12 vs.

Date: **August 5, 2013**

13 **PATRICIA CONKLIN**

Time: 8:30 A.M.

Department: 2

14 Defendants.

15 **EXCLUSION OF IMPEACHMENT**

16 The People have examined the criminal history information by running “rap sheets” for the
17 victim and civilian witnesses and found no criminal history.

18 The People are aware that defense counsel made reference to the victim accusing attorney
19 Chris Campbell of stealing. Without any evidence, the People move to exclude any questions of any
20 witness about this subject without prior approval of this court.

21 The People therefore move to exclude any impeachment for prior conduct without permission
22 of the court to determine the basis and nature of the impeachment

23 Dated: July 31, 2013

Respectfully submitted,

24 **OFFICE OF THE DISTRICT ATTORNEY**
25 **DEAN D. FLIPPO, DISTRICT ATTORNEY**

26 _____
27 David Rabow, Deputy District Attorney

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE #8

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **STATEMENTS IN MEDICAL RECORDS**

16 The People issued a Subpoena Duces Tecum for the medical records of Ms. Zelada.
17 These records were opened in open court and the parties stipulated that they could be released
18 to the People without issue as to any foundation at a later date. (See minute order of April 3,
19 2013.) This stipulation covers the foundation that these are business records within the
20 meaning of Evidence Code section 1271.
21

22 The records contain relevant information related to the treatment of Ms. Zelada which
23 is admissible under Evidence Code section 1250. EC 1250 admits reliable hearsay if the
24 evidence is offered to prove the “declarant’s state of mind, emotion or physical sensation”.
25

26 These records will show the treatment provided to Ms. Zelada and how she was progressing
27
28

1 in her recovery which is all relevant to whether her injury was “great bodily injury” and for
2 the jury to consider the danger posed by defendant’s removal of her mother from the care
3 facility.
4

5 However, the records also contain numerous hearsay statements which the People
6 believe are not admissible without some other exception.

7 The People request the court order defendant to identify any statements she is seeking
8 to admit and any she is seeking to exclude so that the court can rule and the records can be
9 properly redacted.

10 The People previously bates stamped the pages and will use this as a reference.

11 The People seek to exclude the following statements:

- 12 1. Page 4 statement by Zelada to Dr. Lin
- 13 2. Page 11 statement of Zelada to Dr. Lin
- 14 3. Page 13 statement of Zelada to Dr. Harris
- 15 4. Page 29 statement of Empasis to Nurse Landry
- 16 5. Page 70 statement of Zelada to Nurse Avidane (could be multiple hearsay)
- 17 6. Page 73 statement of Zelada to Nurse Avidane (could be multiple hearsay)
- 18 7. Page 82 statement of Zelada to chaplain
- 19 8. Page 83 statement of Zelada to chaplain
- 20 9. Page 85 statement of Zelada to Nurse Wright (could be multiple hearsay)
- 21 10. Page 86 Summary Nurse Wright
- 22 11. Page 86 statement of Zelada to Nurse Naylor
- 23 12. Page 87 Summary of Nurse Naylor

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13. Page 88 statement of Zelada to Nurse Barnum

14. Page 89 statement of Nurse Barnum

15. Page 92-94 statement of social worker Hall

16. Page 104 statement of Zelada to Nurse Yamaguchi

The People seek to admit the following statements:

1. Page 16 statement of Zelada to Nurse Bonsper. Nurse Bonsper is subpoenaed to testify and the statement is admissible as a past recollection recorded.
2. Page 17 statement of Zelada to Nurse Bonsper. Nurse Bonsper is subpoenaed to testify and the statement is admissible as a past recollection recorded. It may also be a prior inconsistent statement.
3. Page 21 statement of Zelada to EMT Routh. Routh is subpoenaed to testify and the statement is admissible as a past recollection recorded and as a spontaneous statement. It may also be a prior inconsistent statement.

For the full argument related to these hearsay exceptions see the specific motions in limine.

Dated: July 31, 2013

Respectfully submitted,

OFFICE OF THE DISTRICT ATTORNEY
DEAN D. FLIPPO, DISTRICT ATTORNEY

BY: David Rabow
Deputy District Attorney

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2 **MONTEREY COUNTY DISTRICT ATTORNEY**
3 David Rabow, Deputy District Attorney
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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11
12 Plaintiff,
13 vs.
14 **PATRICIA CONKLIN**
15 Defendants.

16 **COURT CASE NO: SS130600A**
17 **PEOPLE’S MOTION IN LIMINE #9**
18 Date: **August 5, 2013**
19 Time: 8:30 A.M.
20 Department: 2

21 **DEFENDANTS MUST COMPLY WITH LOCAL RULES AND PROVIDE A LIST OF**
22 **REQUESTED JURY INSTRUCTIONS**

23 Local rules require all parties to submit proposed jury instructions. There are particular legal
24 issues related to jury instructions which will likely require briefing and argument. The People
25 request an order that all reasonably anticipated defense jury instructions be submitted by August 2,
26 2013 so that the People may prepare a legal response for any particular instructions requested.

27 Dated: July 31, 2013

28 Respectfully submitted,

OFFICE OF THE DISTRICT ATTORNEY
DEAN D. FLIPPO, DISTRICT ATTORNEY

BY: David Rabow
Deputy District Attorney

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2 **MONTEREY COUNTY DISTRICT ATTORNEY**
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE # 10

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **ADMISSION OF CONDITIONAL EXAMINATION TESTIMONY**

16 The People seek to admit the testimony of RayleenPrakash from the conditional examination
17 conducted on July 19, 2012. This former testimony is admissible as she was subject to cross
18 examination and is unavailable to testify.

19 Evidence Code section 1291¹ provides that if a witness is unavailable at trial and has testified
20 at a previous judicial proceeding against the same defendant and was subject to cross-examination by
21

22 _____
23 ¹(a) Evidence of former testimony is not made inadmissible by the hearsay rule if the
24 declarant is unavailable as a witness and:

25 (1) The former testimony is offered against a person who offered it in evidence in his own
26 behalf on the former occasion or against the successor in interest of such person; or

27 (2) The party against whom the former testimony is offered was a party to the action or
28 proceeding in which the testimony was given and had the right and opportunity to cross-
examine the declarant with an interest and motive similar to that which he has at the hearing.

1 that defendant, the previous testimony may be admitted at trial. The videotape of the conditional
2 examination may be shown at trial if the court finds that the witness is unavailable as a witness
3 within meaning of Evidence Code § 240. (Penal Code § 1345) The proponent of the evidence has the
4 burden of showing by competent evidence that the witness is unavailable. (People v. Price (1991) 1
5 Cal.4th 324, 424) The California Supreme Court has set forth the standards for “unavailability” under
6 which prior testimony is admissible: “(1) when the declarant is 'unavailable' under the traditional
7 hearsaystandard (Evid. Code, § 240), (2) when the declarant, although not legally unavailable, can be
8 brought to the hearing only through great difficulty or expense, or (3) when the declarant's presence
9 would pose a risk of harm (including, in appropriate circumstances, mental or emotional harm) to the
10 declarant.” (People v. Arreola (1994) 7 Cal.4th 1144, 1160, People v. Winson (1981) 29 Cal.3d 711).

13 Here, the witness is unavailable as she is out of the country. See attached declaration of
14 Deputy District Attorney David Rabow. “Even though Evidence Code section 240 does not define
15 an out-of-state witness as unavailable, we believe a reading of Penal Code sections 1335- 1345
16 mandates such a conclusion. Therefore, the court did not err in admitting Rollin's conditional
17 testimony.” People v. Thompson, (1998) 61 Cal. App. 4th 1269, 1280.

21 (b) The admissibility of former testimony under this section is subject to the same limitations
22 and objections as though the declarant were testifying at the hearing, except that former
23 testimony offered under this section is not subject to:

24 (1) Objections to the form of the question which were not made at the time the former
25 testimony was given.

26 (2) Objections based on competency or privilege which did not exist at the time the former
27 testimony was given.

28 Cal Evid Code § 1291.

DECLARATION

I, David Rabow, hereby declare:

1. I am a Deputy District Attorney employed by the Monterey County District Attorney's Office and I am assigned to handle the case of People v. Conklin, SS130600A.
2. I personally spoke with RayleenPrakash who informed me she would be out of the United States from July 21 through August 14, 2013.
3. On July 19, 2013, Prakash was conditionally examined by me and defendant's counsel. The transcript is available for purchase from the court reporter and the video recording was provided to defense.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of July 2013, at Salinas, California.

David Rabow

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2 **MONTEREY COUNTY DISTRICT ATTORNEY**
3 David Rabow, Deputy District Attorney
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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

COURT CASE NO: SS130600A

11 Plaintiff,

PEOPLE’S MOTION IN LIMINE # 11

12 vs.

Date: **August 5, 2013**

13 **PATRICIA CONKLIN**

Time: 8:30 A.M.

14 Defendants.

Department: 2

15 **STATEMENTS OF THE VICTIM**

16 The People believe that some of the statements of the victim are admissible as spontaneous
17 statements, Evidence Code section 1240, but there is a second hearsay exception that may apply.

The statements may be past recollections recorded as defined by Evidence Code section 1237.

18 Evidence Code section 1237 permits evidence of a witness's past statement “if the statement
19 would have been admissible if made by him while testifying, the statement concerns a matter
20 as to which the witness has insufficient present recollection to enable him to testify fully and
21 accurately, and the statement is contained in a writing which: (1) was made at a time when
22 the fact recorded in the writing actually occurred or was fresh in the witness's memory; (2)
23 was made ... (ii) by some other person for the purpose of recording the witness's statement at
24 the time it was made; (3) is offered after the witness testifies that the statement he made was
25 a true statement of such fact; and (4) is offered after the writing is authenticated as an
26 accurate record of the statement.” (Evid. Code, § 1237, subd. (a).) Here, Phinney testified he
27 “had no idea” of when his meeting with defendant at the auto parts store occurred, and that he
28 “would not have remembered any” of what he had seen at defendant's brother's house, other
than a 1922 silver dollar, but for having read a transcript of his December 1984 interview
with police. He also testified he could not remember what he told officers during the
December 1984 interview. Accordingly, the first requirement of the statute is met: Phinney
had insufficient independent recollection to testify “fully and accurately” about the events in
1984.

1 [timeliness argument omitted]

2 Defendant next argues the trial court abused its discretion in admitting the statement because
3 Phinney could not reliably vouch for its truthfulness, as Evidence Code section 1237,
4 subdivision (a)(3) requires. We disagree. Phinney repeatedly testified that he told Diederich
5 the truth to the best of his ability. Defendant points out that Phinney admitted that his
6 memory in 1984 was “jumbled” and “scrambled” because of the drugs he had been taking;
7 that he sometimes suffered from delusions; that he had talked to Diederich only to “exonerate
8 himself” from his association with the Colt .25-caliber pistol and to give the officers enough
9 information so that he could get out of jail; and that he had seen a newspaper article about the
10 Merck murders before he spoke to Diederich. Phinney further admitted that he might have
11 lied to Diederich about his personal involvement in the trade of the Colt .25-caliber pistol
12 between defendant and Lutts. But by the time Phinney spoke to Diederich he had been in
13 custody for over two months, and Diederich testified that Phinney did not appear delusional
14 or to be on drugs or going through withdrawal. Phinney admitted he spoke with the officers
15 because he wanted to get out of jail, but pointed out that he had to give the officers “enough
16 fact to be substantiated.” Furthermore, the only subject about which Phinney said he might
17 have lied was his involvement in the gun transaction, which was not the subject of the portion
18 of Phinney's statement the prosecution sought to introduce, and when confronted with the
19 inconsistency between his 1984 and 1994 statements on the subject Phinney forthrightly
20 admitted he might have lied in 1984. Finally, defense counsel thoroughly cross-examined
21 Phinney about his multiple motives and opportunity to lie to Diederich, and a copy of a
22 newspaper article Phinney might have read was admitted into evidence. The jury no doubt
23 considered all of these factors in deciding the weight to be accorded to Phinney's 1984
24 statement. Under the circumstances, we cannot say that the trial court abused its discretion in
25 determining the statement was sufficiently reliable to be admitted under section 1237. (Cf.
26 *People v. Cummings* (1993) 4 Cal.4th 1233, 1293–1294 [statement admissible under Evid.
27 Code, § 1237 despite witness's delusions and drug problems at time of trial, where witness
28 had sufficient recall of the events surrounding the statement that the trial court could
conclude it was reliable]; *U.S. v. Edwards* (9th Cir. 1976) 539 F.2d 689, 691–692 [witness's
statement to police admissible under rule 803(5) of Fed. Rules of Evid., 28 U.S.C.,
notwithstanding witness's admission that he was drunk when he made the statement].)

21 Defendant next asserts that because Judge Felice did not personally observe Phinney's
22 testimony, he was not in a position to rule on the reliability of Phinney's assurance that he had
23 told Diederich the truth. As we have explained, “whether an adequate foundation for
24 admission” of a statement under Evidence Code section 1237 has been established turns on
25 whether the declarant's “testimony that the statement was true was reliable,” and the trial
26 court who hears the declarant's testimony has “the best opportunity” to assess its credibility.
27 (*People v. Cummings*, supra, 4 Cal.4th at pp. 1293–1294.) But we have never held that the
28 judge who heard the declarant's testimony is the only judge who may assess its credibility,
particularly where, as here, that judge is no longer available. Here, Judge Felice read the
relevant portions of Phinney's testimony and entertained extensive argument regarding the
statement's trustworthiness. Based on Phinney's testimony that he had told Diederich the

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truth, Judge Felice ruled the statement would be admissible, but only assuming Diederich could testify that Phinney did not appear delusional or intoxicated at the time he made the statement. Diederich did so testify. Again, we cannot say that the trial court abused its discretion.

Defendant finally contends that admitting Phinney's statement to Diederich pursuant to Evidence Code section 1237 violated his rights to confront and cross-examine witnesses under the Sixth Amendment to the federal Constitution. As defendant acknowledges, we have in the past rejected this precise contention. (People v. Cummings, supra, 4 Cal.4th at p. 1292, fn. 32; see also People v. Miller, supra, 46 Cal.App.4th at p. 424.) Defendant urges us to reconsider Cummings in light of Crawford v. Washington, supra, 541 U.S. 36, but that case does not aid him. As the high court there explained, admitting a witness's testimonial hearsay statement does not violate the Sixth Amendment where, as here, the witness appears at trial and is subject to cross-examination about the statement. (Crawford, supra, at pp. 59–60, fn. 9; see also California v. Green (1970) 399 U.S. 149, 162.) Defendant contends there can be no constitutionally effective cross-examination when the witness cannot recall the facts related in the hearsay statement. (See People v. Simmons (1981) 123 Cal. App. 3d 677) [finding a confrontation clause violation due to witness's memory lapse]; but cf. California v. Green, supra, 399 U.S. at pp. 168–170 [leaving question open].) But the high court has squarely rejected that contention, concluding that “when a hearsay declarant is present at trial and subject to unrestricted cross-examination,” “the traditional protections of the oath, cross-examination, and opportunity for the jury to observe the witness'[s] demeanor satisfy the constitutional requirements,” notwithstanding the witness's claimed memory loss about the facts related in the hearsay statement. (United States v. Owens (1988) 484 U.S. 554, 559–560.) Nothing in Crawford casts doubt on the continuing vitality of Owens.

Here, as in Cummings, Phinney was cross-examined extensively about his drug use, mental illness, multiple motives to lie, and other factors potentially affecting his truthfulness at the time he made his 1984 statement. (Cf. People v. Cummings, supra, 4 Cal.4th at p. 1292, fn. 32.) The weight of these factors, and their effect on the statement's credibility, were [**1127] for the jury to decide. We find no constitutional violation.

People v. Cowan, 50 Cal. 4th 401, 465-468 (2010). Here, the statements sought to be admitted are those made to the police, ambulance and medical personnel on the day of the injury each of whom recorded the statement in writing. Assuming the victim testifies that she told the truth to these people, the statements should be admitted.

/// /// ///

1 Dated: July 31, 2013

Respectfully submitted,

2 OFFICE OF THE DISTRICT ATTORNEY
3 DEAN D. FLIPPO, DISTRICT ATTORNEY

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5 _____
6 BY: David Rabow, Deputy District Attorney

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MONTEREY**

9 PEOPLE OF THE STATE OF CALIFORNIA,
10
11 Plaintiff,
12 vs.
13 **PATRICIA CONKLIN**
14 Defendants.

COURT CASE NO: SS130600A
PEOPLE’S MOTION IN LIMINE # 12
Date: **August 5, 2013**
Time: 8:30 A.M.
Department: 2

15 **Impeachment of Defendant**

17 The People move this Court for an in limine order permitting the impeachment of defendant,
18 should she testify, with her prior moral turpitude conduct. Pursuant to Article I, Section 28(f) of the
19 California Constitution, People v. Castro (1985) 37 Cal.3d 301, People v. Wheeler (1992) 4 Cal.4th
20 284, the Court should admit this impeachment evidence without limitation.

22 Under Wheeler, supra, misdemeanor conduct of moral turpitude may be used for
23 impeachment. There is, of course, a balancing of interests that the court must apply, but there is no
24 limit to the number of felony convictions or, for that matter, misdemeanor convictions, that may be
25 admitted under the court’s discretion. (See e.g., People v. Muldrow (1988) 202 Cal.App.3d 636.)

27 Defendant has the following possible impeachable conduct/offenses:

- 1 a. Elder financial abuse. Defendant spent an exorbitant amount of money using her mom's
2 account information.
- 3 b. Elder financial abuse. Defendant stole her mother's jewelry and sought to have her counsel
4 sell it for her benefit. See People's motion related to conflict filed separately in this case.
- 5 c. Elder neglect. Defendant left her mother alone in the home without food and heat.

6 It is the People's position that defendant's credibility will be an important issue for the jury to
7 determine in this trial. The defendant should not be permitted to testify with "a false aura of
8 veracity" on the issues. (See People v. Massey (1987) 192 Cal.App.3d 819.) Impeachment of
9 defendant by her misdemeanor conduct would simply be another factor for the jury to use in
10 assessing defendant's credibility. (See CALJIC 2.20)

11
12 Dated: July 31, 2013

Respectfully submitted,

13 OFFICE OF THE DISTRICT ATTORNEY
14 DEAN D. FLIPPO, DISTRICT ATTORNEY

15 _____
16 BY: David Rabow
17 Deputy District Attorney

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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11
12 Plaintiff,
13 vs.
14 **PATRICIA CONKLIN**
15 Defendants.

16 **COURT CASE NO: SS130600A**
17 **PEOPLE’S MOTION IN LIMINE # 13**
18 Date: **August 5, 2013**
19 Time: 8:30 A.M.
20 Department: 2

21 **OBJECTIONS REGARDING CONDITIONAL EXAMINATION TESTIMONY**

22 The People previously indicated in motion in limine # 10, that a review of the Conditional
23 Examination of RayleenPrakash would be done for any evidentiary objections. The following is a
24 list of suggested edits and objections. The page and line are taken from the official reporter’s
25 transcript.

- 26 1. On page 4line 11, through page 4 line 20, the People believe this portion should be stricken
27 as the it reveals the defendant is shackled and in custody.
- 28 2. On page 7line 7, through page 7line 10, the People believe this portion should be stricken as
the objection was properly overruled at the time of the hearing.
3. On page 8line 7, through page 8line 8, the People believe this portion should be stricken as
the objection was properly overruled at the time of the hearing.

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4. On page 18 line 17, through page 18 line 25, the People believe this portion should be stricken as the objection was properly overruled at the time of the hearing.
5. On page 19 line 1, through page 19line5, the People believe this portion should be stricken as it is the People’s legal argument and the court’s comment.
6. On page 19line20, through page 19 line 26, the People believe this portion should be stricken as the objection was properly overruled at the time of the hearing.
7. On page 20line17, through page 20 line 23, the People believe this portion should be stricken as the objection was properly overruled at the time of the hearing.
8. On page 21line24, through page 22 line 15, the People believe this portion should be stricken as the objection was properly overruled at the time of the hearing.
9. On page 24 line 3, through page 24 line 7, the People believe this portion should be stricken as the question calls for and the answer includes hearsay and the answer provided is not responsive to the question.
10. On page 25 line 10, through page 25 line 23, the People believe this portion should be stricken as the objection was properly sustained at the time of the hearing.
11. On page 27 line 9, through page 27 line 22, the People believe this portion should be stricken as the questions call for and the answers include hearsay.
12. On page 28 line 22, through page 28 line 25, the People believe this portion should be stricken as the objection was made and counsel clarified before the court ruled on Page 29 line 1 (which should also be stricken).
13. On page 32 line 12, through page 32 line 18, the People believe this portion should be stricken as the objection was sustained at the time of the hearing.

- 1 14. On page 33 line 10, through page 33line19, the People believe this portion should be stricken
2 as the objectionswere properly sustained at the time of the hearing.
3
- 4 15. On page 34 line 15 after “I can’t judge her”, through page 34 line 18, the People believe this
5 portion should be stricken as the answer provided on line 15 to 18 is not responsive to the
6 question and introduces hearsay.
7
- 8 16. On Page 34 line 19, through page 34 line 26, the People believe this portion should be
9 stricken as the question calls for and the answer includes hearsay.
10
- 11 17. On Page 36 line 16 the People would be willing to stipulate that the transcript can be
12 amended to say “Kopp” as that is the name of the officer who responded.
13
- 14 18. On page 38 line 13, through page 38 line18, the People believe this portion should be stricken
15 as the objection was properly sustained at the time of the hearing.
16
- 17 19. On page 41 line 18, through page 41 line 22, the People believe this portion should be
18 stricken as the objection was properly sustained at the time of the hearing.
19
- 20 20. On page 42 line 23, through page 43line15, the People believe this portion should be stricken
21 as the objection was properly sustained at the time of the hearing.
22
- 23 21. On page 43 line 19, through page 43 line 27, the People believe this portion should be
24 stricken as the objection was properly sustained at the time of the hearing.
25
- 26 22. On page 45 line 5, through page 45 line 12, the People believe this portion should be stricken
27 as the objection was properly sustained at the time of the hearing.
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23. On page 45 line 19, through page 45 line 28, the People believe this portion should be
stricken as the initial question was not understood and then the objection was properly
sustained at the time of the hearing.

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- 24. On page 46 line 13, through page 46 line 19, the People believe this portion should be stricken as the objection was properly sustained at the time of the hearing.
- 25. On page 46 line 22, through page 46 line 28, the People believe this portion should be stricken as the objection was properly sustained at the time of the hearing.
- 26. On page 48 line 5, through page 48 line 10, the People believe this portion should be stricken as the objection was properly sustained at the time of the hearing.
- 27. On page 48 line 11, through page 49 line 7, the People believe this portion should be stricken as the objection was properly sustained at the time of the hearing.
- 28. On page 49 line 8, through page 50 line 3, the People believe this portion should be stricken as the questions call for and the answers include hearsay. The initial question was objected to and the People believe that objection should have been sustained but in any case the witness did not understand the question and the attempt to clarify demonstrates that counsel was asking a question which calls for hearsay and misstates the testimony of the witness. Each of the subsequent questions and answers are the statements of “nurse Emily”.
- 29. On page 50 line 11, through page 50 line 12, the People believe this portion should be stricken as the question calls for speculation and is not relevant.
- 30. On Page 51 line 15, through page 51 line 17, the People believe this portion should be stricken as the answer is not responsive to the question and includes inadmissible hearsay.
- 31. On Page 51 line 20 after the first sentence, through page 51 line 22, the People believe this portion should be stricken as the answer is not responsive to the question and includes inadmissible hearsay.

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32. On page 52 line 5 after “No.,” through the end of the transcript, the People believe this portion should be stricken as it is beyond the testimony of the witness.

The Court could choose to leave in some of the non speaking objections but the People attempted to bring each one to the court’s attention so that the transcript and video was approved prior to introduction.

Dated: July 31, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

By: _____
David Rabow
Deputy District Attorney

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2 **MONTEREY COUNTY DISTRICT ATTORNEY**
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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE # 14

Date: **August 5, 2013**

Time: 8:30 A.M.

Department: 2

15 **PEOPLE’S REPLY TO DEFENDANT’S TRIAL BRIEF AND MOTIONS**

16 **WITNESS LIST**

17 The People have no witness statements from any of the witnesses listed as potential witnesses
18 except Tara Robinson and Manuel Alaracon. The People object to any witness being called without
19 providing discovery. Since the defendant has listed them as potential witnesses she must reasonably
20 anticipate calling them and must provide statements whether they have been reduced to writing or
21 not. The People are unclear what relevance witnesses Montgomery, Cramer and Suzan Kelly have to
22 this proceeding. The People request this be addressed considering the defendant has stipulated to the
23 People’s request for reciprocal discovery, Motion in limine # 4.

24 /// /// ///

1 VOIR DIRE

2 The People object to proposed Voir Dire questions 4, 5, 6, 11 and 12 as not going to
3 challenges for cause.

4 EXHIBITS

5 The People object to the following proposed Exhibits of the defense:

- 6
- 7 1. Photos of defendant and victim. The People do not believe these are relevant.
 - 8 2. Photos of jewelry (case in chief). The People do not believe these are relevant.
 - 9 3. The People are unclear what investigation reports being referred to but they are NOT
10 exhibits and the People do not have any other than the two mentioned above, regarding
11 Robinson and Alarcon.
12

13 MOTIONS

14 1. Destruction of evidence. The People believe that the June 10 subpoena is not valid as the
15 court date this was issued for was vacated and the subpoena does not survive the continuance. If
16 counsel believed there was a violation of the subpoena the time to address it was then. The People
17 believe that this is not a proper motion in limine and that the jurisdiction for this request is with the
18 probate court. With that said, the People believe the Public Guardian is prepared to provide a list of
19 the items which they took possession of for safe keeping. The defendant's attorney seems to
20 complaining about the action which according to him, he initiated. He asked the Public Guardian to
21 assist with the protection of the assets and now is complaining about it. The Public Guardian was
22 not acting in any way as an agent of the District Attorney or law enforcement or really in anyway
23 related to the criminal case.
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1 The People believe some of these items were then removed pursuant to a search warrant. The
2 Search Warrant was issued in the financial abuse case which is under investigation.

3 In any case there is no evidence that evidence has been destroyed nor that such evidence is
4 relevant (relevant to whether defendant intentionally pushed her mother causing the injury or
5 whether she endangered her mother's health by removing her from the facility and taking her home)
6 to any issue in this trial.
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9 # 2.Impeachment of Chris Campbell. Defendant proposes to question the witness about an
10 email sent by Ms. Zelada's caregiver, Meg Camara to Ms. Campbell. All persons who have had
11 contact with Ms. Zelada post surgery agree that she has deteriorated mentally and is confused about
12 present events and circumstances. The circumstances of the accusation of theft though are really not
13 relevant since there is no theft. The jewelry which Ms. Zelada was accusing Ms. Campbell of having
14 taken was in fact returned to Ms. Zelada courtesy of defense counsel. If nothing was stolen, one
15 cannot be questioned about stealing it.
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18 As for stealing money, Ms. Campbell was court appointed in late September and the letters of
19 temporary conservatorship were issued October 5, 2012. She did not know Ms. Zelada before this
20 appointment. The public guardian had control over Ms. Zelada's money at that point, other than
21 some social security income the defendant illegally diverted, and it would be impossible for Ms.
22 Campbell to steal her money. One must also keep in mind that the defendant, who did steal money
23 from her mother, who stood to lose the most by having her mother conserved and who was living
24 with her mother, was likely telling her mother that others were stealing her money.
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1 It is ironic that defendant objects to the testimony of Ms. Zelada as “incompetent” but thinks
2 it provides the good faith basis needed to impeach a well respected attorney.

3 # 3.The People do not understand the alternative objection but believe the hearsay objection
4 was covered in the People’s motions in limine # 3, 5, 8, and 11.
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6 #4.The People have already outlined the theory of admissibility for the proposed statements
7 of the victim. The People would note that the People’s motion in limine # 5 did not spend much
8 time on the question of time elapsed from the event until the statements since this did not seem to be
9 at issue but for the sake of a complete record note the following. During the 911 call, defendant says
10 her mother fell ten minutes ago. The dispatch log shows a call being received at 1241. Officers are
11 on scene within minutes and by 1248 the scene is secure and clear for medical personnel to come in
12 who were already staged at the scene.
13

14 The People now provide the guiding principal on this issue as stated in the case cited
15 previously in Motion in Limine # 5:

16 “It is undisputed that Angie related defendant's threat many hours after it was made.
17 However, the amount of time that passes between a startling event and subsequent declaration is not
18 dispositive, but will be scrutinized, along with other factors, to determine if the speaker's mental
19 state remains excited.” People v. Clark, (2011) 52 Cal. 4th 856, 926 (quotations and citations
20 omitted).The victim was clearly still under the stress of the event as she was still laying on the floor
21 in pain and yelling to the dispatcher, immediately told the police and the ambulance personnel
22 (Myles Routh).
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25 Defendant than objects to the statements being received pursuant to Evidence Code section
26 1237. The People will rely upon their previous argument but must correct the factual inaccuracy that
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1 Dr. Reidy found Ms. Zelada “incompetent”. Dr. Reidy found she lacked capacity to care for herself
2 and was not addressing her competency. Defendant’s reliance upon Cowan is unclear and while it is
3 true that an argument made by the defendant in that case was that the court abused its discretion, that
4 argument, and all others related to the EC 1237 ruling, were rejected. People v. Cowan, (2010) 50
5 Cal. 4th 401, 467-468.
6

7 # . Finally Defendant, in an unnumbered motion, indicates his intention to call the People’s
8 assigned Deputy District Attorney as a witness. The People believe the issue of whether follow up
9 investigation was requested is irrelevant to any issue in this trial and deny the factual claims. The
10 People are unsure how the court wishes to handle this but should the court require testimony from
11 DDA Rabow, an additional representative of the People will need to be present to conduct any
12 examination or cross examination.
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14
15 Dated: August 4, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

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17 By:

David Rabow
Deputy District Attorney

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7 Attorneys For Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 **PATRICIA CONKLIN**

14 Defendants.

COURT CASE NO: SS130600A

PEOPLE’S MOTION IN LIMINE # 15

Date: **August 6, 2013**

Time: 8:30 A.M.

Department: 2

15 **SUPPORT PERSON FOR VICTIM**

16 The victim in this case is an elderly woman, whose mental faculties have declined and who is
17 taking anti anxiety and anti psychotic medication. She is currently conserved and the Public
18 Guardian has been appointed to represent her. Deputy Public Guardian Jennifer Empasis requests on
19 the victim’s behalf that a support person be allowed to sit with her during her testimony. She
20 recently had a visitor question her about her finances and later became quite upset. The care provider
21 Meg Camara spends hours and hours with Ms. Zelada and it is believed she will provide comfort to
22 her as she testifies. Penal Code section 868.5 specifically allows for this:
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24

25 (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of
26 Section 187, 203, 205, 207, 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266, 266a,
27 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5,
28 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6,

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311.10, 311.11, or 647.6, former Section 277 or 647a, subdivision (1) of Section 314, or subdivision (b), (d), or (e) of Section 368 when the prosecuting witness is the elder or dependent adult, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

Based on the above statute the People will not call Margaret Camara as a witness but instead ask that she be allowed to accompany Ms. Zelada during her testimony.

Dated: August 6, 2013

Respectfully submitted,

DEAN D. FLIPPO, DISTRICT ATTORNEY

By: _____
David Rabow
Deputy District Attorney