

ORANGE COUNTY SUPERIOR COURT CASE NO: 10WF0918
PEOPLE VS. NGUYEN, TIEN DUC
CLERK'S TRANSCRIPT OF CHRONOLOGICAL INDEX

Date	Document Title	Page #
3/18/2010	MINUTES	1
4/28/2010	FELONY COMPLAINT	41
11/10/2010	FELONY COMPLAINT AMENDMENT 1	44
11/10/2010	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING DATED NOVEMBER 10, 2010 AND NOVEMBER 15, 2010	47
11/15/2010	INFORMATION	123
4/1/2011	DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES RE: EXCLUSION OF EVIDENCE	126
4/1/2011	DEFENDANT'S TRIAL BRIEF	128
4/4/2011	PEOPLE'S TRIAL BRIEF	131
4/4/2011	PEOPLE'S WITNESS LIST	138
4/4/2011	ADVISEMENT AND WAIVER OF RIGHTS FOR A FELONY GUILTY PLEA	139
4/7/2011	STIPULATION AND ORDER FOR RETURN OF EXHIBITS AND RECEIPT FOR RECORDS	144
4/7/2011	JURY INSTRUCTIONS - REFUSED	145
4/7/2011	JURY INSTRUCTIONS - WITHDRAWN	147
4/7/2011	JURY INSTRUCTIONS - GIVEN	149
4/7/2011	VERDICT FORMS	182
5/31/2011	PROBATION AND SENTENCING REPORT	190
8/15/2011	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL	255
9/2/2011	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR NEW TRIAL (P.C. SECTION 1181 (5) & (6).)	264
9/12/2011	SENTENCING BRIEF	276
10/14/2011	DEFENDANT'S REPLY TO PEOPLE'S OPPOSITION TO MOTION FOR NEW TRIAL	283
11/14/2011	LETTERS ON BEHALF OF DEFENDANT	285
11/14/2011	DEFENDANT'S SENTENCING BRIEF	289
11/16/2011	NOTICE OF APPEAL	292
11/29/2011	AMENDED NOTICE OF APPEAL	293
12/14/2011	ABSTRACT OF JUDGMENT	295
1/6/2012	PEOPLE'S EXHIBIT NO. 10	297

ORANGE COUNTY SUPERIOR COURT CASE NO: 10WF0918
 PEOPLE VS. NGUYEN, TIFN DUC
 CLERK'S TRANSCRIPT OF ALPHABETICAL INDEX

Date	Document Title	Page #
12/14/2011	ABSTRACT OF JUDGMENT	295
4/4/2011	ADVISEMENT AND WAIVER OF RIGHTS FOR A FELONY GUILTY PLEA	139
11/29/2011	AMENDED NOTICE OF APPEAL	293
10/14/2011	DEFENDANT'S REPLY TO PEOPLE'S OPPOSITION TO MOTION FOR NEW TRIAL	283
11/14/2011	DEFENDANT'S SENTENCING BRIEF	289
4/1/2011	DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES RE: EXCLUSION OF EVIDENCE	126
4/1/2011	DEFENDANT'S TRIAL BRIEF	128
4/28/2010	FELONY COMPLAINT	41
11/10/2010	FELONY COMPLAINT AMENDMENT 1	44
11/15/2010	INFORMATION	123
4/7/2011	JURY INSTRUCTIONS - GIVEN	149
4/7/2011	JURY INSTRUCTIONS - REFUSED	145
4/7/2011	JURY INSTRUCTIONS - WITHDRAWN	147
11/14/2011	LETTERS ON BEHALF OF DEFENDANT	285
8/15/2011	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL	255
9/2/2011	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR NEW TRIAL (P.C. SECTION 1181 (5) & (6).)	264
3/18/2010	MINUTES	1
11/16/2011	NOTICE OF APPEAL	292
1/6/2012	PEOPLE'S EXHIBIT NO 10	297
4/4/2011	PEOPLE'S TRIAL BRIEF	131
4/4/2011	PEOPLE'S WITNESS LIST	138
5/31/2011	PROBATION AND SENTENCING REPORT	190
11/10/2010	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING DATED NOVEMBER 10, 2010 AND NOVEMBER 15, 2010	47
9/12/2011	SENTENCING BRIEF	276
4/7/2011	STIPULATION AND ORDER FOR RETURN OF EXHIBITS AND RECEIPT FOR RECORDS	144
4/7/2011	VERDICT FORMS	182

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
03/18/10	1	FLDOC	Original Missing Complaint filed on 03/18/2010 by Buena Park Police Department.
	2	DFADD	Name recorded: Nguyen, Tien Duc
04/08/10	1	BBPST	Bail Bond Number 2010-CC-003459 posted in the amount of \$20000.00 by ANTHO of LNIC.
	2	FIBND	Surety Bond # 2010-CC-003459 filed.
	3	FITXT	Buena Park bail receipt # BP01311 filed.
	4	BLBDAT	Appearance date on Bond/Cash Bail receipt is 04/30/2010.
04/28/10	1	FLDOC	Original Complaint filed on 04/28/2010 by Orange County District Attorney.
	2	FLNAM	Name filed: Nguyen, Tien Duc
	3	FLCNT	FELONY charge of 12280(a)(1) PC filed as count 1. Date of violation: 03/17/2010.
	4	FLCNT	FELONY charge of 12280(b) PC filed as count 2. Date of violation: 03/17/2010.
	5	FLCNT	FELONY charge of 12021(a)(1) PC filed as count 3. Date of violation: 03/17/2010.
	6	FLCNT	FELONY charge of 12316(b)(1) PC filed as count 4. Date of violation: 03/17/2010.
	7	CLADD	Case calendared on 04/30/2010 at 08:30 AM in W15 for ARGN.
	8	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.
	9	DFDNARQ	Pursuant to Penal Code 296.1, defendant is required to provide DNA samples and thumb and palm prints.
04/30/10	1	HHELD	Hearing held on 04/30/2010 at 08:30:00 AM in Department W15 for Arraignment.
	2	OFJUD	Officiating Judge: Karen L. Robinson, Judge
	3	OFJA	Clerk: C. Pinc
	4	OFBAL	Bailiff: H. Vuong
	5	OFREP	Court Reporter: Denise Fish
	6	APSDA	Vickie Schneider made a special appearance for District Attorney Dan Hess.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/30/10	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	ADWRA	Defendant waives reading and advisements of legal and constitutional rights.
	9	WVRAA	Defendant waives reading and advisement of the Original Complaint.
	10	WVRAT	Defendant waives the right to be arraigned today.
	11	WWTIM	Defendant waives statutory time for Arraignment.
	12	CLCON	Arraignment continued to 05/14/2010 at 08:30 AM in Department W15 at request of Defense.
	13	PLCJN	Counsel joins in waivers.
	14	BLPBS	Present bail deemed sufficient and continued.
	15	FIFPC	Fingerprint card is received and filed.
	16	DFOTR	Defendant ordered to appear
4/10	1	HHELD	Hearing held on 05/14/2010 at 08:30:00 AM in Department W15 for Arraignment.
	2	OFJUD	Officiating Judge: Karen L. Robinson, Judge
	3	OFJA	Clerk: D. A. Pell
	4	OFBAL	Bailiff: H. Vuong
	5	OFREP	Court Reporter: Melissa Sokolow
	6	APSDA	Diana King made a special appearance for District Attorney Dan Hess.
	7	CLSET	Arraignment set on 05/28/2010 at 08:30 AM in Department W15.
	8	WVRAT	Defendant waives the right to be arraigned today.
	9	WWTIM	Defendant waives statutory time for Arraignment.
	10	PLCJN	Counsel joins in waivers.
	11	BLPBS	Present bail deemed sufficient and continued.
	12	DFOTR	Defendant ordered to appear
05/28/10	1	HHELD	Hearing held on 05/28/2010 at 08:30:00 AM in Department W15 for Arraignment.
	2	OFJUD	Officiating Judge: Karen L. Robinson, Judge
	3	OFJA	Clerk: P. E. Wear

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A

Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
05/28/10	4	OFBAL	Bailiff: H. Vuong
	5	OFREP	Court Reporter: Carol Dickinson
	6	APDDA	People represented by Dan Hess. Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	ADWRA	Defendant waives reading and advisements of legal and constitutional rights.
	9	WVRAA	Defendant waives reading and advisement of the Original Complaint.
	10	CPACK	Counsel acknowledges receipt of the complaint.
	11	PLNGA	To the Original Complaint defendant pleads NOT GUILTY to all counts.
	12	CLSET	Pre Trial set on 06/18/2010 at 08:30 AM in Department W15.
	13	CLSET	Preliminary Hearing set on 07/16/2010 at 08:30 AM in Department W15.
	14	WVTPH	Court finds the defendant understandingly, knowingly, and voluntarily waives the right to a Preliminary Hearing within 10 court days of arraignment.
	15	PLCJN	Counsel joins in waivers.
	16	BLPBS	Present bail deemed sufficient and continued.
	17	DFOTR	Defendant ordered to appear.
06/18/10	1	HHELD	Hearing held on 06/18/2010 at 08:30:00 AM in Department W15 for Pre Trial.
	2	OFJUD	Officiating Judge: Karen L. Robinson. Judge
	3	OFJA	Clerk: J. Morgan
	4	OFBAL	Bailiff: H. Vuong
	5	OFREP	Court Reporter: Melissa Sokolow
	6	APSDA	Diana King made a special appearance for District Attorney Dan Hess.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLPTP	Pretrial off calendar, Preliminary Hearing set on 07/16/2010 at 08:30 AM in W15 to remain.



SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
06/18/10	9	DFOTR	Defendant ordered to appear.
	10	BLPBS	Present bail deemed sufficient and continued.
07/16/10	1	HHELD	Hearing held on 07/16/2010 at 08:30:00 AM in Department W15 for Preliminary Hearing.
	2	OFJUD	Officiating Judge: Debra Carrillo, Judge
	3	OFJA	Clerk: R. Nagle
	4	OFBAL	Bailiff: D. A. Allevato
	5	OFREP	Court Reporter: Melissa Sokolow
	6	APDDA	People represented by Vickie Schneider, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLSET	Preliminary Hearing set on 09/09/2010 at 08:30 AM in Department W15.
	9	WVTPH	Court finds the defendant understandingly, knowingly, and voluntarily waives the right to a Preliminary Hearing within 60 calendar days of arraignment.
	10	PLCJN	Counsel joins in waivers.
	11	BLPBS	Present bail deemed sufficient and continued.
	12	DFOTR	Defendant ordered to appear.
09/09/10	1	HHELD	Hearing held on 09/09/2010 at 08:30:00 AM in Department W15 for Preliminary Hearing.
	2	OFJUD	Officiating Judge: John S. Adams, Judge
	3	OFJA	Clerk: A. Madison
	4	OFBAL	Bailiff: T. Ha
	5	OFREP	Court Reporter: Lisa De Los Reyes
	6	APDDA	People represented by Dan Hess, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLSET	Preliminary Hearing set on 10/06/2010 at 08:30 AM in Department W15.
	9	WVRTW	Defendant agrees to continue the preliminary hearing and have a preliminary hearing on that date or within a reasonable period of time from that date.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
09/09/10	10	PLCJN	Counsel joins in waivers.
	11	DFOTR	Defendant ordered to appear.
	12	BLPBS	Present bail deemed sufficient and continued.
10/06/10	1	HHELD	Hearing held on 10/06/2010 at 08:30:00 AM in Department W15 for Preliminary Hearing.
	2	OFJUD	Officiating Judge: Debra Carrillo, Judge
	3	OFJA	Clerk: Y. Hardeman
	4	OFBAL	Bailiff: D. A. Allevalo
	5	OFREP	Court Reporter: Melissa Sokolow
	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLSET	Pre Trial set on 10/14/2010 at 08:30 AM in Department W15.
	9	CLSET	Preliminary Hearing set on 10/26/2010 at 08:30 AM in Department W15.
	10	WVRTW	Defendant agrees to continue the preliminary hearing and have a preliminary hearing on that date or within a reasonable period of time from that date.
	11	PLCJN	Counsel joins in waivers.
	12	BLPBS	Present bail deemed sufficient and continued.
	13	DFOTR	Defendant ordered to appear.
10/14/10	1	HHELD	Hearing held on 10/14/2010 at 08:30:00 AM in Department W15 for Pre Trial.
	2	OFJUD	Officiating Judge: Debra Carrillo, Judge
	3	OFJA	Clerk: A. Madison
	4	OFBAL	Bailiff: D. A. Allevalo
	5	OFREP	Court Reporter: Lisa De Los Reyes
	6	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	7	APSDA	Diana King made a special appearance for District Attorney Renee Jones

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
10/14/10	8	CLSET	Pre Trial set on 10/21/2010 at 08:30 AM in Department W15.
	9	CLTRM	Preliminary Hearing for 10/26/2010 08:30 AM in W15 to remain.
	10	DFOTR	Defendant ordered to appear.
	11	BLPBS	Present bail deemed sufficient and continued.
10/17/10	1	PRLINK	Transferred from: Nguyen, Tien Duc
10/21/10	1	HHELD	Hearing held on 10/21/2010 at 08:30:00 AM in Department W15 for Pre Trial.
	2	OFJUD	Officiating Judge: Debra Carrillo, Judge
	3	OFJA	Clerk: C. Pinci
	4	OFBAL	Bailiff: D. A. Allevato
	6	OFREP	Court Reporter: Carol Dickinson
	7	APSDA	Vickie Schneider made a special appearance for District Attorney Renee Jones.
	8	CLPTP	Pretrial off calendar, Preliminary Hearing set on 10/26/2010 at 08:30 AM in W15 to remain.
	9	DFOTR	Defendant ordered to appear.
	10	BLPBS	Present bail deemed sufficient and continued.
10/26/10	1	HHELD	Hearing held on 10/26/2010 at 08:30:00 AM in Department W15 for Preliminary Hearing.
	2	OFJUD	Officiating Judge: Debra Carrillo, Judge
	3	OFJA	Clerk: Y. Hardeman
	4	OFBAL	Bailiff: D. A. Allevato
	5	OFREP	Court Reporter: Lisa De Los Reyes
	6	APSDA	Vicke Schneider made a special appearance for District Attorney Renee Jones.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLSET	Preliminary Hearing set on 11/10/2010 at 08:30 AM in Department W15.
	9	WVRTW	Defendant agrees to continue the preliminary hearing and have a preliminary hearing on that date or within a reasonable period of time from that date.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
10/26/10	10	PLCJN	Counsel joins in waivers.
	11	BLPBS	Present bail deemed sufficient and continued.
	12	DFOTR	Defendant ordered to appear.
11/10/10	1	CLTRAN	Calendar Line for PH transferred from W15 on 11/10/2010 at 08:30 AM to W18 on 11/10/2010 at 08:30 AM.
	2	HELD	Hearing held on 11/10/2010 at 08:30:00 AM in Department W18 for Preliminary Hearing.
	3	OFJUD	Officiating Judge: Gregg L. Prickett, Judge
	4	OFJA	Clerk: R. Peace
	5	OFBAL	Bailiff: S. Dalbey
	6	OFREP	Court Reporter: Denise Fish
	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney
	9	FIAMD	First Amended Complaint filed by Orange County District Attorney.
	10	CTADP	First Amended Complaint now charges to ADD PRIOR of 667(d)/(e)(1)& 170.12(b)/(c)(1) PC, FELONY, dated 08/11/1999.
	11	CPACK	Counsel acknowledges receipt of the complaint.
	12	WVRAA	Defendant waives reading and advisement of the First Amended Complaint.
	13	PLNGA	To the First Amended Complaint defendant pleads NOT GUILTY to all counts.
	14	DFDNP	Defendant denies all prior(s) as set forth.
	15	TRTXT	Court grants People's request to take judicial notice of court file #99WF1808.
	16	MOIOR	Motion by Defense to exclude all witnesses from the courtroom except Investigating Officer granted.
	17	TRWST	Witness, Brian Lee Chapman, Buena Park Police Officer, sworn and testified.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/10/10	18	TREXI	People's Exhibit # 1 Photo of weapon, 50 caliber DTC rifle marked for identification.
	19	TREXI	People's Exhibit # 12 Photo of ammunition, 3 different types marked for identification.
	20	TREXI	People's Exhibit # 3a Photo of UPS shipping label marked for identification.
	21	TREXI	People's Exhibit # 3b Photo of shipping label marked for identification.
	22	TRTXT	At 2:35 PM, Court stands in a brief recess at the request of both sides. At 2:41 PM, Court is again in session with all present, same as before.
	23	TRWRT	Brian Lee Chapman, Buena Park Police Officer, previously sworn, resumes testimony.
	24	TREXI	People's Exhibit # 3c Photo of two UPS packaging labels marked for identification.
	25	TREXI	People's Exhibit # 4a Photo of parts to rifle marked for identification.
	26	TREXI	People's Exhibit # 4b Photo of two sets of rifle parts: working AK47 below and above, parts from a box marked for identification.
	27	TREXI	People's Exhibit # 5a Photo of working rifle marked for identification.
	28	TREXI	People's Exhibit # 5b Photo of a lower receiver in the making marked for identification.
	29	TREXI	Defense Exhibit # A Black and white photo of a receiver marked for identification.
	30	TREXI	Defense Exhibit # B Two photos of rifle parts, showing receiver and rivets marked for identification.
	31	TREXI	Defense Exhibit # C Photo of working rifle marked for identification.
	32	TRWEX	Witness excused.
	33	TREXA	People's Exhibits # 1 through 5b received into evidence.
	34	TREXA	Defense Exhibits # A through C received into evidence.
	35	TRPRS	People rest.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/10/10	36	TRNAD	No affirmative defense.
	37	TRDRS	Defense rests.
	38	MOHTA	Motion by People that defendant be Held To Answer as charged in the complaint as to count(s) 1, 2, 3, 4.
	39	MOTION	Motion argued.
	40	WVCPH	Defendant waives his/her right to a continuous preliminary hearing.
	41	CLSET	Preliminary Hearing returned to 11/15/2010 at 09:30 AM in Department W18.
	42	DFOTR	Defendant ordered to return.
	43	TRWOR	Witness Brian Lee Chapman, Buena Park Police Officer ordered to return on 11/15/2010 at 09:30 AM in Department W18.
	44	BLPBS	Present bail deemed sufficient and continued.
5/10	1	HHELD	Hearing held on 11/15/2010 at 09:30:00 AM in Department W18 for Preliminary Hearing.
	2	OFJUD	Officiating Judge: Gregg L. Prickett, Judge
	3	OFJA	Clerk: R. Peace
	4	OFBAL	Bailiff: S. Dalbey
	5	OFREP	Court Reporter: Adriana Araneta
	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	8	TRIOC	In open court at 09:28 AM
	10	TRTXT	Further arguments heard on the People's bind over motion.
	11	MOGIP	Motion granted in part as follows: as to counts 3 and 4. Motion denied in part as follows: counts 1 and 2 but Court does find the lesser crime of attempt of counts 1 and 2.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/15/10	12	FDHTA	It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER on 11/24/2010 at 09:00 AM in Department C5 as to count(s) 3, 4. Defendant and Counsel ordered to appear.
	14	FDHAL	It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER on 11/24/2010 at 09:00 AM in Department C5 for 664(a)-12280(a)(1) PC, A LESSER INCLUDED OFFENSE necessarily included within the offense charged in count 1 of the complaint. Defendant and Counsel ordered to appear.
	16	FDHAL	It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER on 11/24/2010 at 09:00 AM in Department C5 for 664(a)-12280(b) PC. A LESSER INCLUDED OFFENSE necessarily included within the offense charged in count 2 of the complaint. Defendant and Counsel ordered to appear.
	18	TEXT	Parties stipulate to the returning of the preliminary hearing exhibits to the submitting party with the order that they not be destroy during the pendency of the case.
	19	BLPBS	Present bail deemed sufficient and continued.
	20	FLDOC	Original Information filed on 11/15/2010 by Orange County District Attorney.
	21	FLNAM	Name filed: Nguyen, Tien Duc
	22	FLCNT	FELONY charge of 664(a)-PC12280(a)(1) PC filed as count 1. Date of violation: 03/17/2010.
	23	FLCNT	FELONY charge of 664(a)-PC12280(b) PC filed as count 2. Date of violation: 03/17/2010.
	24	FLCNT	FELONY charge of 12021(a)(1) PC filed as count 3. Date of violation: 03/17/2010.
	25	FLCNT	FELONY charge of 12316(b)(1) PC filed as count 4. Date of violation: 03/17/2010.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/15/10	26	FLPRI	667(d)/(e)(1)&1170.12(b)/(c)(1) PC dated 08/11/1999, Case # 99WF1808 filed as prior # 1.
	27	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.
11/23/10	1	CPGTO	Certified Copy of complaint and docket report given to Serina Serrano, DA'S office.
11/24/10	1	HHELD	Hearing held on 11/24/2010 at 09:00:00 AM in Department C5 for Arraignment.
	2	OFJUD	Officiating Judge: Thomas Goethals, Judge
	3	OFJA	Clerk: M. Johnson
	4	OFBAL	Bailiff: Z. T. Hathaway
	5	OFREP	Court Reporter: Kim Kantor
	6	APSDA	Monique Elliott made a special appearance for District Attorney Renee Jones.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CPCDD	Copy of Original information given to defendant.
	9	WVRAA	Defendant waives reading and advisement of the Original Information.
	10	PLNGA	To the Original Information defendant pleads NOT GUILTY to all counts.
	11	DFDNP	Defendant denies all prior(s) as set forth.
	12	PLCJN	Counsel joins in waivers and plea.
	13	CLASN4	Case assigned to Department C5, Judge Thomas Goethals. Time estimate 3 days. Pre Trial re: Trial Setting Conference set on 12/15/2010 at 08:30 AM.
	14	DFOTR	Defendant ordered to return
	15	BLPBS	Present bail deemed sufficient and continued.
	16	OFMEC	Minutes entered by K. Ladisky.
11/29/10	1	FIRTF	Reporter's transcripts dated November 10, 2010 and November 15, 2010 received and filed.
	2	FITXT	Notice of Reporter's Transcripts received and filed.
12/09/10	1	CPGTO	Copy of Transcript of Preliminary Hearing given to Bonnie Atlas. District Attorneys' Office.

49

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
12/15/10	1	HHELD	Hearing held on 12/15/2010 at 08:30:00 AM in Department C5 for Pre-Trial Trial Setting Conference.
	2	OFJUD	Officiating Judge: Thomas Goethals, Judge
	3	OFJA	Clerk: M. Johnson
	4	OFBAL	Bailiff: Z. T. Hathaway
	5	OFREP	Court Reporter: Alice Wilbur
	6	APSDA	Monique Elliott made a special appearance for District Attorney Renee Jones.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	ADLCR	Defendant advised of legal and constitutional rights.
	9	CLSET	Pre Trial set on 01/26/2011 at 08:30 AM in Department C5.
	10	CLSET	Jury Trial set on 02/16/2011 at 08:30 AM in Department C5.
	11	WWTIM	Defendant waives statutory time for Jury Trial.
	12	PLCJN	Counsel joins in waivers.
	13	DFOTR	Defendant ordered to return.
	14	BLPBS	Present; bail deemed sufficient and continued.
	15	OFMEC	Minutes entered by K. Ladisky.
01/26/11	1	HHELD	Hearing held on 01/26/2011 at 08:30:00 AM in Department C5 for Pre-Trial.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: R. M. Hume
	4	OFBAL	Bailiff: D. Clifton
	5	OFREP	Court Reporter: Suzanne Costello
	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	CLADV	Case advanced on calendar to this date. Jury Trial on 02/16/2011 at 08:30 AM in C5 is vacated.
	9	ADLCR	Defendant advised of legal and constitutional rights.
	10	WWTIM	Defendant waives statutory time for Jury Trial.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
01/26/11	11	PLCJN	Counsel joins in waivers.
	12	CLSET	Pre Trial set on 02/16/2011 at 09:00 AM in Department C5.
	13	CLSET	Jury Trial set on 03/23/2011 at 09:00 AM in Department C5.
	14	DFOTR	Defendant ordered to return.
	15	BLPBS	Present bail deemed sufficient and continued.
	16	OFMEC	Minutes entered by J. Boyd.
02/16/11	1	HHELD	Hearing held on 02/16/2011 at 09:00:00 AM in Department C5 for Pre Trial.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: M. Johnson
	4	OFBAL	Bailiff: D. Clifton
	5	OFREP	Court Reporter: Annamaria Bartovich
	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	ADLCR	Defendant advised of legal and constitutional rights.
	9	WVTIM	Defendant waives statutory time for Jury Trial.
	10	CLSET	Jury Trial set on 03/30/2011 at 08:30 AM in Department C5.
	11	DFOTR	Defendant ordered to return.
	12	BLPBS	Present bail deemed sufficient and continued.
	13	CLVAC	Jury Trial vacated for 03/23/2011 at 09:00 AM in C5. (Entered NUNC_PRO_TUNC on 03/23/11)
03/23/11	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 02/16/2011.
03/30/11	1	HHELD	Hearing held on 03/30/2011 at 08:30:00 AM in Department C5 for Jury Trial.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: R. M. Hume
	4	OFBAL	Bailiff: D. Clifton
	5	OFREP	Court Reporter: Sandra Wingerd

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A

Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
03/30/11	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	TEXT	Notice provided to all parties pursuant to C.C.P. 170 1(a)(9)(A)-(D).
	9	CLASN	Case assigned for trial to Department W8, Judge Daphne Sykes Scott. Time estimate 3 days. Jury Trial set on 03/30/2011 at 01:30 PM.
	10	DFOTR	Defendant and Counsel ordered to appear.
	11	BLPBS	Present bail deemed sufficient and continued.
	12	HHELD	Hearing held on 03/30/2011 at 01:30:00 PM in Department W8 for Jury Trial.
	13	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	14	OFJA	Clerk: S. Miiewski
	15	OFBAL	Bailiff: T. Vandermarlierre
	16	OFREP	Court Reporter: Peggy Carabine
	17	TRSTR	This case came on regularly for trial.
	18	TRTXT	Counsel meet in chambers to discuss scheduling and case details and 402 motions
	19	TRIOC	In open court at 02:19 PM
	20	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	21	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	22	TRTXT	Defense counsel inquires if points and authorities may be e-mailed. No objection by the People. Clerk's e-mail given to both counsel this date. Counsel stipulate that date the clerk receives the e-mail is the date considered filed.

14

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A

Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
03/30/11	23	TRTXT	<p>Court states for the record and in open court, the 402 issues discussed in chambers. They are:</p> <ol style="list-style-type: none"> 1. Preclude witnesses from opining whether it is legal to possess gun and ammunition or to question to elicit such an opinion. 2. Whether pleading guilty to counts 3 and 4 may be used by the People in an attempt to prove counts 1 and 2 and whether they may be severed at this point (timely?) 3. To limit People's expert to expertise only and no opinions of legality 4. To introduce a flowchart summary of assault weapons and law <p>Court takes these matters under submission and invites points and authorities to be e-mailed prior to hearing.</p>
	24	CLSET	Jury Trial trailed to 04/04/2011 at 08:30 AM in Department W8.
	25	BLPBS	Present bail deemed sufficient and continued.
	26	DFOTR	Defendant ordered to appear.
04/01/11	1	FITXT	Defense Trial Brief filed
	2	FITXT	Defendant's Supplemental Memorandum of Points and Authorities Re: Exclusion of Evidence filed.
04/04/11	1	HHELD	Hearing held on 04/04/2011 at 08:30:00 AM in Department W8 for Jury Trial.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: D. A. Peli
	4	OFBAL	Bailiff: T. Vandermarlierre
	5	OFREP	Court Reporter: Lori Parness
	6	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	7	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	8	FITXT	People's Trial Brief filed.
	9	FIWTL	People's witness list received and filed.
	10	FITXT	Proposed Jury Instructions filed.
	11	TRTXT	People, Defense Counsel and Defendant discuss plea off the record.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/04/11	12	TRTXT	60 prospective jurors ordered from the jury room for 1:30 p.m.
	13	TRIOC	In open court at 10:40 AM
	14	TRTXT	Tah! form submitted to the Court as to Counts 3 and 4 and prior
	15	PLWTH	Defendant's motion to WITHDRAW NOT GUILTY PLEA to count(s) 3, 4 granted.
	16	PLFWR	Court finds defendant intelligently and voluntarily waives legal and constitutional rights to jury trial, confront and examine witnesses, and to remain silent.
	17	PLGCT	To the Original Information defendant pleads GUILTY as to count(s) 3, 4.
	18	PLADP	Defendant admits prior of 667(d)(e)(1)&170.12(b)(c)(1) PC, sequence # 1, dated 08/11/1999.
	19	ADCRWG	The defendant has been advised of constitutional rights, waivers and consequences in writing pursuant to the guilty plea form. The defendant makes the plea with a full understanding of all the matters set forth in the charging document and in the guilty plea form, that defendant has read, understood and personally initialed each item herein. Defendant understands that the signing and filing of the guilty plea form is conclusive evidence that defendant has pleaded GUILTY to the charges set forth.
	20	FIWWR	Defendant's written waiver of legal and constitutional rights for guilty plea received and ordered filed.
	21	PLFBA	Court finds factual basis and accepts plea.
	22	ADCZS	Defendant advised of the possible consequences of plea affecting deportation and citizenship.
	23	ADMAX	Defendant advised of maximum possible sentence
	24	PLCPC	This constitutes a prior conviction
	25	ADCSQ	Defendant advised of consequences of violating probation and parole.
	26	PLCJN	Counsel joins in waivers, pleas, and admissions.
	27	WVTIM	Defendant waives statutory time for Sentencing.
	28	ADRAP	Defendant advised of right to appeal.
	29	TRTXT	Defendant waives right to appeal and Fourth Amendment rights during probation or parole

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/04/11	30	CLSET	Sentencing set on 05/31/2011 at 08:30 AM in Department W8.
	31	CLTXT	Case on calendar for sentencing as to Counts 3 and 4 and prior
	32	DFOTR	Defendant ordered to appear.
	33	TRTXT	Pretrial motions commence
	34	TRTXT	Court has read and considered Trial Briefs filed by the People and Defense
	35	TRTXT	Court has read and considered Defendant's Supplemental Memorandum of Points and Authorities Re: Exclusion of Evidence
	36	TRTXT	People and Defense agree they will not broach the subject of the officers searching Defendant's shop for an unrelated purpose
	37	MOTBY	Motion by Defense to preclude evidence of Counts 3 and 4 is denied
	38	MOTBY	Motion by Defense to exclude all evidence and testimony concerning the alleged insurance fraud investigation is granted
	39	MOTBY	Motion by Defense to exclude all references to the alleged firearm and firearm parts in Defendant's Possession as "Assault Weapons" or "Assault Rifles"
	40	MOTION	Motion granted.
	41	MOTBY	Motion by Defense to exclude evidence in underlying counts 3 and 4 is denied without prejudice.
	42	TRTXT	Court finds People's pretrial motion No.1 regarding advisory opinion from the Court on whether if he were to plead to Counts 3 and 4, is moot.
	43	MOTBY	Motion by People to admit evidence of possession of the completed .50 caliber bolt action rifle and ammunition if the defendant were to plead guilty to Counts 3 and 4
	44	MOTION	Motion granted.
	45	TRTXT	Court rules that gun flow chart will not be admitted without foundation or other evidence showing its relevance
	46	TRTXT	The People indicate Defense Counsel advised the People that there is an additional Defense Witness, Michael Penhall. The People request an offer of proof.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A

Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/04/11	47	TRTXT	Defense Counsel recites its offer of proof.
	48	TRTXT	Argument heard
	49	TRTXT	People request it be excluded or admonitions be given through jury instructions. People request any discovery by tomorrow morning.
	52	TRTXT	Court and counsel discuss proposed jury instructions
	53	TRTXT	Court indicates it will give the following jury instructions: CALCRIM 200, 201, 202, 220, 222, 223, 224, 225, 226, 251, 300, 301, 302, 332, 333, 358, 359, 370, 460, 2560, 2592, 3515, general pre-deliberation instructions, 3550, and alternates jury instructions.
	54	TRTXT	Court indicates it will give CALCRIM preinstruction 100 series
	55	TRTXT	The following proposed jury instructions are withdrawn: CALCRIM 250, 2511, 2592
	56	TRTXT	Court reserves ruling on the following jury instructions: CALCRIM 252, 306, 355. Court indicates it will revisit CALCRIM 361 based on the state of the evidence if the Defendant testifies.
	57	TRTXT	Court indicates it will give CALCRIM 362. Defense counsel requests the Court reserve its ruling.
	58	TRTXT	Argument heard
	59	TRTXT	Court indicates it will give CALCRIM 362.
	60	TRTXT	Court and counsel discuss and modify CALCRIM 2560
	61	TRTXT	Court declares recess to 1.30 p.m.
	62	TRIOC	In open court at 01:40 PM
	63	TRTXT	Court indicates it is in receipt of a letter dated 05-01-03 from Deputy Attorney General, Tim Rieger, to Mr. Chuck Michei. The Court indicates it will keep letter in file for reference.
	64	TRTXT	Court indicates it is not relying on anything contained in this letter.
	65	TRTXT	Court cites <i>Peo. v. Valentine</i> 1986 42 Cal. 3d, 170, 184 in regards to its ruling allowing the jury to hear Defendant's felon status.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/04/11	66	TRTXT	Defense Counsel indicates it will have discovery documents by tomorrow and will e-mail them to the People
	68	TRTXT	The Court declines to give CALCRIM 306 as it finds good cause under Penal Code Section 1054.7 for Defense's late discovery of its gun expert. Defense counsel has made an offer relative to the anticipated expert testimony. Defense counsel also informed the Court that as soon as he himself receives the expert's qualifications and statements, he will discover that information to the People. The Court not only finds the proffered testimony to be relevant, but also over the People's objection will allow the defense to call the expert in its case. The Court declines to give an admonishing instruction.
	69	TRTXT	Discussion held regarding expert witness's testimony
	70	TRTXT	Discussion held regarding Court's prior ruling allowing evidence of Defendant's prior
	71	TRTXT	Court indicates its ruling remains. Court finds it is relevant to intent as well as other issues.
	72	TRTXT	Court and counsel discuss jury voir dire procedures
	73	TRTXT	Court in recess
	74	TRIOC	In open court at 02:20 PM
	75	TRTXT	The Court amends its prior ruling regarding Defendant's felon status. Court finds it does not come in, but underlying conduct is relevant and other firearms and ammunition. The People are instructed to admonish its witnesses in this regard.
	76	TRTXT	Court in recess
	77	TRALP2	Again in open court at 02:40 PM, Defendant present with counsel. People duly represented
	78	TRTXT	65 prospective jurors ordered from the jury room now present
	79	TRJSE	Roll call having been taken, prospective jurors were sworn for examination.
	80	TRJEX	Prospective jurors were called by the clerk to fill the jury box.
	81	TRVDE	Voir Dire examination commenced.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/04/11	83	TRTXT	Pursuant to stipulation for cause, the Court excuses 6 prospective jurors.
	85	TRTXT	Juror No. 136 requests to speak to the Court in chambers. Conference held in chambers. Reporter present
	86	TRVDE	Voir Dire examination resumed.
	87	TRAPJ	At 03:30 PM, Court admonishes prospective jurors and declares a recess.
	88	TRALP	Again in open court at 03:34 PM, Defendant present with counsel. People duly represented. Prospective Jurors present in their proper places.
	89	TRVDE	Voir Dire examination resumed.
	90	TRJAP	Court read Original Information to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
	91	TRTXT	Court reads People's Witness List to the jury
	92	TRCBB	At 04:00 PM, Court and Counsel confer in chambers with court reporter present.
	93	TRTXT	Discussion held regarding legality or illegality of guns
	94	TRVDE	Voir Dire examination resumed.
	95	TRRTD	At 04:25 PM, Court admonished jurors and declared a recess to reconvene on 04/05/2011 at 09:00 AM in Department W8 for Jury Trial.
	96	TRTXT	Discussion held regarding CALCRIM 2550.
	97	TRTXT	Court indicates it is inclined to give definitions from California Code of Regulations. The Court will make its final decision at conclusion of the case.
	98	DFOTR	Defendant ordered to appear.
	99	BLPBS	Present bail deemed sufficient and continued
04/05/11	1	HHELD	Hearing held on 04/05/2011 at 09:00:00 AM in Department W8 for Jury Trial.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: T. Vandermarlierre
	5	OFREP	Court Reporter: Lori Parness
	6	TRTXT	This case came on regularly for jury trial continuation.



SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Case : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/05/11	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J Hennes, Retained Attorney.
	9	TRTXT	Chambers conference held were discussio held regarding defense witness. People have the Curriculum Vitae but no summary
	10	TRTXT	Discussion also had off the record, regarding defendant's expert witness and opining on what is legal vs. illegal.
	11	TRALP2	Again in open court at 09:30 AM, Defendant present with counsel. People duly represented.
	12	TRTXT	Chambers conference regarding defendant's expert witness is now placed on the record
	13	TRALP	Again in open court at 09:38 AM, Defendant present with counsel. People duly represented. Prospective Jurors present in their proper places.
	14	TRVDE	Voir Dire examination resumed.
	15	TRTXT	Both sides pass for challenges for cause.
	16	TRPEC	Peremptory challenge exercised by People.
	17	TRTXT	Court thanks and excuses #136
	18	TRPEC	Peremptory challenge exercised by Defense.
	19	TRTXT	Court thanks and excuses #115
	20	TRPEC	Peremptory challenge exercised by People.
	21	TRTXT	Court thanks and excuses #163
	22	TRPEC	Peremptory challenge exercised by Defense
	23	TRTXT	Court thanks and excuses #157
	24	TRJYA	People accepted the jury as presently constituted.
	25	TRPEC	Peremptory challenge exercised by Defense.
	26	TRTXT	Court thanks and excuses #159
	27	TRJYA	People accepted the jury as presently constituted
	28	TRPEC	Peremptory challenge exercised by Defense.
	29	TRTXT	Court thanks and excuses #128
	30	TRPEC	Peremptory challenge exercised by People.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A

ie : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/05/11	31	TRTXT	Court thanks and excuses #110
	32	TRJEX	Prospective jurors were called by the clerk to fill the jury box.
	33	TRVDE	Voir Dire examination resumed.
	34	TRTXT	sidebar conference held regarding challenges for cause
	35	MOTBY	Motion by People to excuse #145 and #137 for Cause
	36	MOTION	Motion argued.
	37	TRTXT	Motion argued as to #145. Counsel stipulate to #137
	38	MOTION	Motion granted.
	39	TRTXT	After argument, Defense stipulated for cause as to #145
	40	TRIOC	In open court at 10:32 AM
	41	TRTXT	Court thanks and excuses Prospective Jurors #145 and 137
	42	TRPEC	Peremptory challenge exercised by Defense.
	43	TRTXT	Court thanks and excuses #101
	44	TRPEC	Peremptory challenge exercised by People.
	45	TRTXT	Court thanks and excuses #103
	46	TRJYA	Both sides accepted the jury as presently constituted.
	47	TRJ12	Twelve jurors accepted and sworn.
	48	TRTXT	Jurors sworn to try this matter at 10:35am
	49	TRTXT	Sidebar conference held. No stipulation from attorneys as to remaining prospective jurors, so voir dire will continue
	50	TRIOC	In open court at 10:34 AM
	51	TRJEX	Prospective jurors were called by the clerk to fill the jury box.
	52	TRVDA	Voir Dire examination for alternates commences.
	53	TRTXT	At Sidebar, Counsel stipulate to alternate jurors
	54	TRTXT	Court thanks and excuses Prospective Alternate Jurors 107, 111, 114, 162
	55	TRAJA	Both sides accepts the alternate jurors.
	56	TRJCS	2 alternate Jurors were sworn by the clerk to hear this matter. Disposition of panel jurors is reported on the random list and included by reference.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/05/11	57	TRJGB	Court thanked and excused remaining prospective jurors to Jury Assembly Room.
	58	TRREC	At 10:50 AM, court admonished jurors and declared a recess.
	59	TRALP	Again in open court at 11:33 AM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	60	TRCRI	The Court read the instructions to the Jury
	61	TRREC	At 11:49 AM, court admonished jurors and declared a recess.
	62	TRALP2	Again in open court at 01:40 PM, Defendant present with counsel. People duly represented.
	63	TRTXT	Discussion held on the record regarding defense's objection regarding the words "legality", "assault weapon", and "implied" with regard to the police report
	64	TRTXT	Court will allow these statements, but cautions that this does not change earlier ruling regarding the legal vs illegal argument. Ruling stands regarding legal vs illegal
	65	TRALP	Again in open court at 02:20 PM. Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	66	TROSB	Opening statement by People given.
	67	TROSB	Opening statement by Defense reserved.
	68	TRWST	Witness, Detective B. L. Chapman, sworn and testified.
	70	TREX:	People's Exhibit # 1 Large black DTC marked for identification.
	71	TREXI	People's Exhibit # 2 Box with 50 rounds of ammunition marked for identification.
	72	TRTXT	People's 2a - single round of ammunition held up for identification purposes. not formally marked.
	73	TREXI	People's Exhibit # 3 Box with 120 rounds of Beowulf Ammunition marked for identification.
	74	TRTXT	People's 3a - single Beowulf round of ammunition to display, not formally marked
	76	TREXI	People's Exhibit # 4 Large empty box, rectangular in shape marked for identification.

MINUTES

Case : 10WF0918 F A

Case : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/05/11	77	TREXI	People's Exhibit # 5a through 5w components/parts for manufacturing a gun marked for identification.
	78	TRTXT	5a: Safety Lever 5b: Bolt Carrier Rails 5c: Receiver Cover 5d: Shoulder Stock 5e: Pistol Grip 5f: Shoulder Stock Take Down Assembly 5g: Trigger Guard & magazine Release 5h: Safety Lever Stop 5i: Guide Rod Spring 5j: Upper Hand Guard 5k: Barrel 5l: Rear Sight Assembly 5m: Lower Hand Guard band 5n: Front Sight 5o: Muzzle break 5p: Lower hand Guard with Pistol Grip 5q: Gas Port Block 5r: Receiver Pin Lock Spring 5s: Hammer & Hammer Spring 5t: Trigger Assembly 5u: Pins/Rivet Set/Misc. 5v: Bolt & Bolt carrier with Gas Piston 5w: Lower Receiver
	80	TREXI	People's Exhibit # 6 Bohica Arms Corporation Sales Receipt in the amount of \$1585 marked for identification.
	81	TREXI	People's Exhibit # 7 Large rectangular box with blue foam inside, with indentations for barrel marked for identification.
	83	TREXI	People's Exhibit # 9 Packaging Slip on white padded envelope in the name of 'tien nguyen' marked for identification.
	85	TREXI	People's Exhibit # 9 Half-slip of paper, found in People's 7, Bohica Arms Improved Bolt handle Installation Instructions marked for identification.
	86	TRREC	At 03:24 PM, court admonished jurors and declared a recess.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/05/11	87	TRALP	Again in open court at 03:26 PM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	88	TRWRT	Detective Chapman, previously sworn, resumes testimony.
	90	TREXI	People's Exhibit # 10 Transcript of Audio CD, of Interview with Defendant Tien Nguyen marked for identification.
	91	TREXI	People's Exhibit # 10a Audio CD of interview with Defendant marked for identification.
	92	TRTXT	Audio CD played in open Court
	93	TREXI	People's Exhibit # 11 Photograph of weapons components/parts of working AK 47 marked for identification.
	94	TREXI	People's Exhibit # 12 Photograph of lower receiver defendant had made marked for identification.
	95	TREXI	People's Exhibit # 13 Photograph comparison of lower receiver that defendant had made with lower receiver of working AK 47 marked for identification.
	96	TREXI	People's Exhibit # 14 Photograph comparison of ammunition, 50 DTC, 50 Beowulf ammunition and 40 Caliber Smith and Wesson Ammunition marked for identification.
	97	TRWER	Detective B.L. Chapman excused subject to recall.
	98	TRRTD	At 04:38 PM, Court admonished jurors and declared a recess to reconvene on 04/06/2011 at 09:00 AM in Department W8 for Jury Trial.
	99	BLPBS	Present bail deemed sufficient and continued.
	100	DFOTR	Defendant ordered to appear.
04/06/11	1	HHELD	Hearing held on 04/06/2011 at 09:00:00 AM in Department W8 for Jury Trial.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: T. Vandermarlierre
	5	OFREP	Court Reporter: Lori Parness
	6	TRTXT	This case came on regularly for trial



SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/06/11	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney
	9	TRTXT	Chambers conference held
	10	MOTBY	Motion by Defense for witness to bring in AK-47 and a build kit
	11	TRTXT	No objection by the People as long as an opportunity to have People's expert witness to examine the items
	12	MOTION	Motion granted.
	13	TRTXT	Counsel advised to work out logistics with Deputy Vandermaerle
	14	MOTBY	Motion by People to show video clip regarding demonstration of weapon
	15	TRTXT	Defense reserves the right to object until after video is seen.
	16	MOTION	Motion granted.
	17	MOTBY	Motion by Defense to have defense expert sit in courtroom while People's expert is testifying
	18	MOTION	Motion argued.
	19	MOTION	Motion taken under submission.
	20	MOXWG	Motion by People to exclude all witnesses from the courtroom granted.
	21	TRTXT	Motion excluding witnesses does not include Defense's expert witness at this time as that motion is still under submission
	22	TRALP	Again in open court at 09:30 AM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	23	TRWST	Witness, Sgt.G. Schuck, sworn and testified.
	24	TREXI	People's Exhibit # 15 Chinese Made AK-57 brought in by Sgt. Schuck marked for identification.
	25	TRTXT	Sidebar objection discussion held regarding defense's objection to People's 2 and 3 as to relevance. Defense requests an instruction to clarify what defendant is charged with. Objection overruled

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/06/11	26	TRREC	At 10.45 AM, court declared a recess.
	27	TRALP	Again in open court at 11:11 AM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	28	TRWRIT	Sgt. G. Schuck, previously sworn, resumes testimony.
	29	TREXI	People's Exhibit # 16 Diagram depicting AR 15 firearm marked for identification.
	30	TRTXT	Court advises jury that a legal issue has arisen that needs to be addressed outside of their presence
	31	TRREC	At 11:52 AM, court admonished jurors and declared a recess.
	32	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	33	TRTXT	Discussion held on the record regarding the the section charges and relevancy of ten-round magazine line of questioning.
	34	TRTXT	Court is in recess at 12:04pm
	35	TRALP2	Again in open court at 01.40 PM, Defendant present with counsel. People duly represented.
	36	TRTXT	Discussion held on the record regarding code section the Prosecution is proceeding under. In light of that, any additional evidence regarding firearm using more than 10 rounds is irrelevant.
	37	TRTXT	Court now hears 402 motion from People to exclude some of defense witness's testimony regarding "bullet buttons" and whether defendant had all parts to actually build an AK-47, what parts were missing or not. Discussion also had on the record regarding back-door, roundabout way to get into the legal vs illegal wording. Court precludes any mention of defense's expert witness referring to selling the type of weapons that are the subject of this trial.
	38	MOTBY	Motion by People to examine the firearm and the kid the defense expert has brought
	39	MOTION	Motion granted.
	40	TRALP	Again in open court at 01:59 PM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.

MINUTES

Case : 10WF0918 F A

ie : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/06/11	41	TRWRT	Sgt. G. Schuck, previously sworn, resumes testimony.
	42	TRTXT	Cross-examination continues
	43	TRWER	Sgt. G Schuck excused subject to recall.
	44	TREXI	People's Exhibit # 16 DVD depicting cycling action of the firearm marked for identification.
	45	TRPRS	People rest.
	46	MOTBY	Motion by People to have People's 1 through 16 that have been marked for identification, now be received into evidence
	47	TRTXT	At sidebar, Defense objects to People's 2, 2a, 3, 3a, and 14. Argument heard and objection is overruled
	48	MOTDD	Defense motion pursuant to Penal Code 1118.1 denied.
	49	MOTION	Motion granted.
	50	TRIOC	In open court at 02:04 PM
	51	TREXE	People's Exhibit # 1 received into evidence.
	52	TREXE	People's Exhibit # 2 and 2a received into evidence.
	53	TREXE	People's Exhibit # 3 and 3a received into evidence.
	54	TREXE	People's Exhibit # 4 received into evidence.
	55	TREXE	People's Exhibit # 5a through 5w received into evidence.
	56	TREXE	People's Exhibit # 6 received into evidence.
	57	TREXE	People's Exhibit # 7 received into evidence.
	58	TREXE	People's Exhibit # 8 received into evidence.
	59	TREXE	People's Exhibit # 9 received into evidence.
	60	TREXE	People's Exhibit # 10 received into evidence.
	61	TREXE	People's Exhibit # 11 received into evidence.
	62	TREXE	People's Exhibit # 12 received into evidence.
	63	TREXE	People's Exhibit # 13 received into evidence.
	64	TREXE	People's Exhibit # 14 received into evidence.
	65	TREXE	People's Exhibit # 15 received into evidence.
	66	TREXE	People's Exhibit # 16 received into evidence.
	67	TROSB	Opening statement by Defense given

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/06/11	68	TRWST	Witness, Mr. M. J. Penhall, sworn and testified.
	69	TREXI	Defense Exhibit # A Flat Receiver marked for identification.
	70	TREXI	Defense Exhibit # B Rifle case with an AK-style firearm semi-automatic rifle contained therein. marked for identification.
	71	TREXI	Defense Exhibit # C AK-47 building kit marked for identification.
	72	TREXI	Defense Exhibit # d Kidex wrap marked for identification.
	73	TRREC	At 03:08 PM, court declared a recess.
	74	TRALP	Again in open court at 03:19 PM, Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	75	TRTXT	Cross-examination begins at this time
	76	TRWRT	Mr. M. J. Penhall, previously sworn, resumes testimony.
	77	TRTXT	Sidebar held regarding serial number issue?
	78	TRTXT	Juror #11 submits the written question: "Is the magazine lock or release proprietary to the trigger guard or can they be changed?" Question will be asked by Defense Counsel of this witness and answer to question will be placed on the record.
	79	FITXT	Question from Juror #11 filed.
	80	TRWEX	Witness excused
	81	TRDRS	Defense rests.
	82	TRREC	At 03:51 PM, court admonished jurors and declared a recess.
	83	TRTXT	Court now voir dres defendant as to right/decision to not testify in Court
	84	WVRTF	- The right to testify in own defense.
	85	MOTBY	Motion by Defense to admit Defendant's A through D into evidence
	86	MOTION	Motion granted.
	87	TRTXT	Counsel state they are not yet ready to close.

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/06/11	88	TRALP	Again in open court at 03:54 PM. Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	89	TRRTD	At 03:55 PM, Court admonished jurors and declared a recess to reconvene on 04/07/2011 at 09:00 AM in Department W8 for Jury Trial.
	90	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	91	TRTXT	Discussion held on the record regarding disposition of weapons and when they will be picked up
	92	TRTXT	Discussion held on the record regarding redactions/amendments to definition/instruction sheet.
	93	BLPBS	Present bail deemed sufficient and continued.
	94	DFOTR	Defendant ordered to appear.
04/07/11	1	HHELD	Hearing held on 04/07/2011 at 09:00:00 AM in Department W8 for Jury Trial.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: T. Vandermarlierre
	5	OFREP	Court Reporter: Lori Parness
	6	TRTXT	This case came on regularly for jury trial continuation
	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	9	TRRJI	Court and Counsel review jury instructions with court reporter present.
	10	TRALP	Again in open court at 09:38 AM. Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	11	TRCLA	Closing argument presented on behalf of the People.
	12	TRCLA	Closing argument presented on behalf of the Defense.
	13	TRRBA	Rebuttal argument presented on behalf of the People.
	14	TRCRI	The Court read the Instructions to the Jury.

50

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
 re : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/07/11	15	TRJRT	At 12:09 PM, the Jury retired to the jury room to deliberate in charge of Deputy T. Vandermarlierre duly sworn for that purpose.
	16	TRJBR	At 12:15 AM, jurors left the jury room for lunch recess.
	17	TRAOC	Court admonishes alternate juror(s) and pursuant to stipulation of counsel releases the alternate(s) on one hour call.
	18	TRTXT	Stipulation that counsel and defendant does not need to be present for jury's breaks and recesses.
	19	TRJRD	At 01:32 PM, jurors returned to the jury room to resume deliberations.
	20	TRTXT	Jurors inform deputy that verdict has been reached 3:09pm
	21	TRJBR	At 01:32 PM, jurors left the jury room for break.
	22	TRALP	Again in open court at 03:33 PM. Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	23	TRTXT	court declares a recess at 3:34pm and jurors are returned to the deliberation room:
	24	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	25	TRTXT	Verdict reached, however unused verdict forms torn, new verdict forms provided and sent back to deliberation room
	26	TRWRS	At 03:48 PM the following written response was sent to the jury: We are giving you new verdict forms. Please complete the appropriate forms according to your verdicts(s) but leave the unsigned, unused verdict forms intact.
	27	TRALP	Again in open court at 03:53 PM. Defendant present with counsel. People duly represented. Sworn Jurors present in their proper places.
	28	FDJGC	VERDICT: We the jury in the above entitled action find the defendant GUILTY as to count 1 as charged in the Original Information. Juror # 161, Foreperson. Verdict read, filed, and incorporated herein by reference.
	29	FDJGC	VERDICT: We the jury in the above entitled action find the defendant GUILTY as to count 2 as charged in the Original Information. Juror # 161, Foreperson. Verdict read, filed, and incorporated herein by reference.

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
04/07/11	30	TRJPV	To the question, "Ladies and gentlemen of the jury are these your verdict(s)?" the jury answered in the affirmative. The jury was polled by the clerk. To the question: "Are these your verdict(s)?" each of the jurors answered individually in the affirmative. The clerk was ordered to record the verdict(s)
	31	TRTXT	Court read post verdict jury admonition instruction to the jury
	32	TRJIS	Pursuant to Code of Civil Procedure 237(a)(2) all juror identifying information is sealed and filed.
	33	TRACD	Actual days of trial: 3 days.
	34	TRAEX	Alternate juror(s) notified by telephone and excused
	35	ADTXT	Defendant advised of the following
	36	ADRTS	- The right to be sentenced no earlier than six hours nor later than five days after the plea of guilty or nolo contendere has been entered or after the finding of guilty by jury or court.
	37	PBRPO	Probation Department ordered to prepare a Probation & Sentencing report to be made available to court and counsel 5 days prior to Sentencing. Fees to be determined at sentencing.
	38	DFRPT2	Defendant ordered to report to Probation forthwith.
	39	BLPBS	Present bail deemed sufficient and continued.
	40	CLTRM	Sentencing for 05/31/2011 08:30 AM in W8 to remain.
	41	DFOTR	Defendant ordered to appear.
	42	TRTXT	Pursuant to previous stipulation, all firearms, build kids, and pieces to build kids to be substituted with pictures and the original items to be returned to the submitting party.
05/31/11	1	HHELD	Hearing held on 05/31/2011 at 08:30:00 AM in Department W8 for Sentencing.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: I. Vangermarlierre
	5	OFREP	Court Reporter: Carol Denevan
	6	TRTXT	This case came on regularly for jury trial sentencing



MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
05/31/11	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	9	MOTBY	Motion by Defense to continue the sentencing so motion for new trial may be prepared
	10	TRTXT	No objection from the People
	11	FITXT	Penal Code 1050 Motion to continue filed.
	12	MOTION	Motion granted.
	13	WVTIM	Defendant waives statutory time for Sentencing.
	14	PLCJN	Counsel joins in waivers.
	15	CLCON	Sentencing continued to 08/15/2011 at 08:30 AM in Department W2 at request of Defense.
	16	BLPBS	Present bail deemed sufficient and continued.
	17	DFOTR	Defendant ordered to appear.
	18	TEXT	Copy of sentencing report given to defense counsel on this date.
08/15/11	1	HHELD	Hearing held on 08/15/2011 at 08:30:00 AM in Department W2 for Sentencing.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: R. Mendoza, SSO
	5	OFREP	Court Reporter: Lisa De Los Reyes
	6	TRTXT	this case came on regularly for sentencing
	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	9	MOTBY	Motion by Defense to continue sentencing for opportunity to read motion for new trial filed on 8/12/2011
	10	TEXT	No objection by the People
	11	WVTIM	Defendant waives statutory time for Sentencing.



SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
08/15/11	12	CLSET	Sentencing set on 09/02/2011 at 08:30 AM in Department W2.
	13	BLPBS	Present bail deemed sufficient and continued.
	14	DFOTR	Defendant ordered to appear.
08/26/11	1	FITXT	Reporters Transcripts for April 4th, 5th, 6th filed.
09/02/11	1	HHELD	Hearing held on 09/02/2011 at 08:30:00 AM in Department W2 for Sentencing.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: R. Mendoza, SSO
	5	OFREP	Court Reporter: Linda Mayer
	6	TRTXT	This case came on regularly for motion for new trial.
	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWRA	Defendant present in Court with counsel Hennes, Christopher J., Retained Attorney.
	9	TRTXT	Counsel have stipulated, with the Court's permission, continue this motion.
	10	FITXT	People's Opposition to Defendant's Motion for New Trial filed.
	11	CLSET2	Motion re: New Trial set on 09/23/2011 at 08:30 AM in Department W2.
	12	WVTIM	Defendant waives statutory time for Sentencing.
	13	WVTIM	Defendant waives statutory time for Motion.
	14	BLPBS	Present bail deemed sufficient and continued.
	15	DFOTR	Defendant ordered to appear.
09/23/11	1	HHELD	Hearing held on 09/23/2011 at 08:30:00 AM in Department W2 for Motion New Trial.
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: R. Hoopii
	5	OFREP	Court Reporter: Lisa De Los Reyes
	6	TRTXT	This case came on regularly for motion for new trial.

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
09/23/11	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J Hennes, Retained Attorney.
	9	TEXT	Court requires additional time to prepare for this motion. Counsel have chosen a date, with permission of the court
	10	CLSET2	Motion re: New Trial set on 10/14/2011 at 01:30 PM in Department W2.
	11	WVTIM	Defendant waives statutory time for Sentencing.
	12	BLPBS	Present bail deemed sufficient and continued.
	13	DFOTR	Defendant ordered to appear.
10/14/11	1	HHELD	Hearing held on 10/14/2011 at 01:30:00 PM in Department W2 for Motion New Trial
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski
	4	OFBAL	Bailiff: R. Mendoza, SSO
	5	OFREP	Court Reporter: Janice Arnold
	6	TRTXT	This case came on regularly for motion for new trial
	7	APDDA	People represented by Renee Jones, Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney.
	9	MOTBY	Motion by Defense for new trial.
	10	MOTION	Motion argued.
	11	TEXT	Counsel advised written ruling would be given.
	12	MOTION	Motion taken under submission
	13	BLPBS	Present bail deemed sufficient and continued.
	14	DFOTR	Defendant ordered to appear.
11/14/11	1	HHELD	Hearing held on 11/14/2011 at 09:00:00 AM in Department W2 for Motion New Trial
	2	OFJUD	Judicial Officer: Daphne Sykes Scott, Judge
	3	OFJA	Clerk: S. Milewski

MINUTES

Case : 10WF0918 F A
 Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/14/11	4	OFBAL	Bailiff: H. Vuong
	5	OFREP	Court Reporter: Peggy Carabine
	6	TRTXT	This case came on regularly for motion for new trial/sentencing
	7	APDDA	People represented by Renee Jones. Deputy District Attorney, present.
	8	APDWC	Defendant present in Court with counsel Christopher J. Hennes, Retained Attorney
	9	TRTXT	Court had originally indicated that a written ruling would be given; however, Court now gives ruling orally
	10	MOTION...	Motion denied.....
	11	CORAC	Court read and considered Probation sentencing report, People's Sentencing Brief, Defendant's Sentencing Brief.
	12	FDTXT	Court finds Court finds that defendant is statutorily ineligible for Probation.
	13	TRTXT	Court invites argument as to Romero motion
	14	TRTXT	Mr. S. Spencer makes a statement in Open Court on behalf of the Defendant
	15	TRTXT	Ms. T. Nguyen makes a statement on behalf of the defendant.
	16	TRTXT	Ms. J. Tran makes a statement in Open Court on behalf of the Defendant
	17	TRTXT	District Attorney Jones makes a statment on behalf of the People of the State of California.
	18	TRTXT	Argument heard regarding defendant's gang contacts as listed in the Probation Report.
	19	TRTXT	Defense Counsel Hennes makes a statement in open Court on behalf of the Defendant.
	20	TRTXT	Defendant Tien Duc Nguyen makes a statement in Open Court
	21	SENLG	No legal cause why judgment should not be pronounced, defendant is sentenced as follows:

MINUTES

Case : 10WF0918 F A
 re : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/14/11	22	SPSP1	No legal cause why judgment should not be pronounced and defendant having been convicted of 664(a)-PC12280(a)(1) PC as charged in count 1, defendant is sentenced to STATE PRISON for Middle term of 3 Year(s) .
	23	FXSPNC	STATE PRISON sentence as to count(s) 1 entered in error. (Entered NUNC_PRO_TUNC on 12/14/11)
	24	SPSP2	No legal cause why judgment should not be pronounced and defendant having been convicted of 664(a)-PC12280(a)(1) PC as charged in count 1, defendant is sentenced to STATE PRISON for a term of 6 Year(s) which is double the Middle term pursuant to Penal Code 667(d)(e)(1) and Penal Code 1170.12(b) and (c)(1). (Entered NUNC_PRO_TUNC on 12/14/11)
	25	SESTA	Court stays sentence pursuant to Penal Code 654 on count(s) 2.
	26	SPAC2	Defendant has also Found Guilty by Jury to the additional charge of 12021(a)(1) PC in count 3 and is sentenced to STATE PRISON for a term of 4 Year(s) which is double the Middle pursuant to Penal Code 667(d)(e)(1) and Penal Code 1170.12(b) and (c)(1). Sentence imposed to be served concurrent to count 1.
	27	SPAC2	Defendant has also Found Guilty by Jury to the additional charge of 12316(b)(1) PC in count 4 and is sentenced to STATE PRISON for a term of 4 Year(s) which is double the Middle pursuant to Penal Code 667(d)(e)(1) and Penal Code 1170.12(b) and (c)(1). Sentence imposed to be served concurrent to count 1.
	28	SPTTP	Total term to be served in State Prison is 6 Year(s) .
	30	SPCTS	Credit for time served: 1 actual, 0 conduct, totaling 1 days pursuant to Penal Code 4019(b)(1) and (c)(1).
	31	SESRF	Pay \$200.00 Restitution Fine pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).
	32	SPRFS	Pay \$200.00 Parole Revocation Restitution Fine pursuant to Penal Code 1202.45. Parole Revocation Restitution Fine suspended unless parole is revoked.

MINUTES

Case : 10WF0918 F A

Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
11/14/11	33	SESEC	Pay \$40 Security Fee per convicted count pursuant to Penal Code 1465.8.
	34	SECCA	Pay Criminal Conviction Assessment Fee per convicted count of \$30.00 per misdemeanor/felony and \$35.00 per infraction pursuant to Government Code 70373(a)(1).
	35	SPFDC	Court orders all fees payable through the Department of Corrections.
	36	SPJUD	The reason Court pronounced judgment in this manner is as follows: the nature, seriousness, and circumstances of this crime as to the other instances of the same crime are aggravated and there are no mitigating factors regarding this crime.
	37	SEDNA	Defendant to provide a state DNA sample and prints for the State DNA Database pursuant to PC 296 and PC 296.1 unless collection agency verifies in any available databases that the DNA sample has been previously collected.
	38	MOTBY	Motion by Defense to have defendant remain out on bond pending appeal.
	39	MOTION	Motion denied.
	40	ADPRR	Defendant advised of parole rights.
	41	ADRAP	Defendant advised of right to appeal.
	42	DFREM	Defendant remanded to the custody of the Sheriff.
	43	SPSDD	Sheriff ordered to deliver the defendant to the custody of Department of Corrections forthwith.
	44	NTJAL	Notice to Sheriff issued.
	45	BLBXN	Court orders bail bond # 2010-CC-003459 exonerated.
	46	DOJABS	DOJ Initial Abstract sent.
11/15/11	1	CSCLS	Case closed.
11/16/11	1	FIAPPL	NOTICE OF APPEAL RECEIVED AND FILED.
	2	FITXT	Notice of Filing Notice of Appeal filed.
	3	FITXT	Notice of Filing Notice of Appeal and Notice re: Preparation of Transcripts filed.
	4	FITXT	Preliminary Information re: Appeal filed.
11/29/11	1	FITXT	Amended Notice of Appeal filed

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : 10WF0918 F A
Name : Nguyen, Tien Duc

Date of Action	Seq Nbr	Code	Text
12/14/11	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 11/14/2011.
	2	DOJABS	DOJ Correction Abstract sent.
12/15/11	1	FISPAJ	Original State Prison Abstract of Judgment - Prison Commitment, Determinate document filed and conformed copy forwarded to Orange County Sheriff's Department.
12/28/11	1	FITXT	Notice to Superior Court from Court of Appeal re: Attorney - Jason Davis - has been retained to represent the defendant on appeal filed

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
700 CIVIC CENTER DRIVE
POST OFFICE BOX 22024
SANTA ANA, CA 92702-2024
CRIMINAL OPERATIONS

FOR COURT USE ONLY

I

APR 2010 *col*

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT:

NGUYEN, TIEN

CASE NUMBER:

10 WF 0918

FINGERPRINT FORM

INSTRUCTIONS

Immediately following arraignment in superior court of a defendant charged with a felony or arraignment of a defendant by a municipal court judge sitting as a superior court judge, the court shall require the defendant to provide a right thumbprint on this form. In the event the defendant is convicted, this form shall be attached to the minute order reflecting the defendant's sentence and shall be permanently maintained in the court file. Please see Penal Code section 992 for further information, including when the defendant is physically unable to give a right thumbprint.

For a proper imprint and durable record, this form should be printed on paper that meets California Department of Justice specifications: a 99 pound white tab card or 100 pound white tab stock 0.0070 inch thick (0.0066 through 0.0074 inch is acceptable). Paper smoothness should be 100-140 sheffield units. The form should be printed with the grain left to right.

1. The box to the right contains the defendant's

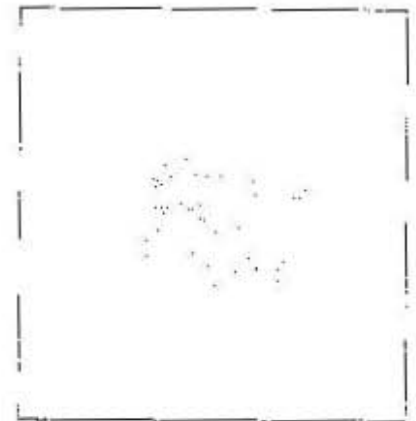
right thumbprint

other print (specify):

2. The print was taken on (date): *4/30/10*

3. The print was taken by

- a. Name: **H. Vuong**
- b. Position: **Deputy Sheriff**
- c. Badge or serial No.: **8064**





1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, WEST JUSTICE CENTER

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

01/26/2010
02:03 PM

ALAN CARLSON, Clerk of the Court
10WF0918

6	THE PEOPLE OF THE STATE OF CALIFORNIA,)	FELONY COMPLAINT
7)	
8	Plaintiff.)	
9)	
10	vs.)	No. 10WF0918
11	TIEN DUC NGUYEN)	OCAT 10-03-012
12	B3370423)	
13)	
	Defendant(s))	

14 The Orange County District Attorney charges that in Orange
15 County, California, the law was violated as follows:

16 COUNT 1: On or about March 17, 2010, in violation of Section
17 12280(a)(1) of the Penal Code (UNLAWFUL ASSAULT WEAPON
18 ACTIVITY), a FELONY, TIEN DUC NGUYEN did unlawfully
19 manufacture, caused to be manufactured, distribute, transport,
20 import into the State of California, keep for sale, offer and
expose for sale, give, and lend a AK-47, an assault weapon.

21 COUNT 2: On or about March 17, 2010, in violation of Section
22 12280(b) of the Penal Code (POSSESSION OF AN ASSAULT WEAPON), a
23 FELONY, TIEN DUC NGUYEN did unlawfully possess an assault
weapon as defined in Sections 12275 and 12276.1.

24 COUNT 3: On or about March 17, 2010, in violation of Section
25 12221(a)(1) of the Penal Code (POSSESSION OF FIREARM BY FELON),
26 a FELONY, TIEN DUC NGUYEN, who was previously convicted of a
27 felony, did unlawfully own, purchase, receive, possess, and
have custody and control of a firearm.

28 /
/
/

FELONY COMPLAINT E-FILED (DA CASE# 10F14005)
OC DNA NOT ON FILE: TIEN NGUYEN

1 TIEN DUC NGUYEN was previously convicted of a violation of
2 Section 12025(a)(1)/(b)(3) of the Penal Code on or about August
3 11, 1999 in the SUPERIOR (WEST) Court of the State of
4 California, in and for the County of ORANGE COUNTY, in case
5 99WF1808.

6 COUNT 4: On or about March 17, 2010, in violation of Section
7 12316(b)(1) of the Penal Code (POSSESSION OF AMMUNITION BY
8 PROHIBITED PERSON), a FELONY, TIEN DUC NGUYEN did unlawfully
9 own, possess, and have custody and control over ammunition and
10 reloaded ammunition, when the defendant was prohibited from
11 owning and possessing a firearm pursuant to Penal Code sections
12 12021 and 12021.1 and Welfare and Institutions Code sections
13 8100 and 8103.

14 I declare under penalty of perjury, on information and belief,
15 that the foregoing is true and correct.

16 Dated 04-28-2010 at Orange County, California.
17 RE/CS 10F14008

18 TONY RACKAUCKAS, DISTRICT ATTORNEY

19 by: /s/ RENEE JONES
20 RENEE JONES, Deputy District Attorney

21 RESTITUTION CLAIMED

- 22 [] None
- 23 [] \$ _____
- 24 [X] To be determined

25 BAIL RECOMMENDATION:

26 TIEN DUC NGUYEN - \$ 50,000.00

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NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Penal Code Section 296.1, defendant, TIEN DUC NGUYEN, is required to provide DNA samples and thumb and palm prints.



FILED
ORANGE COUNTY SUPERIOR COURT
NOV 10 2010

WILLA L. ...
By: [Signature]
K. ...

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, WEST JUSTICE CENTER
3
4
5

6	THE PEOPLE OF THE STATE OF CALIFORNIA,	)	FELONY COMPLAINT
7		)	AMENDMENT 1
8	Plaintiff,)	
9)	
10	vs.	)	No. <u>10WF0918</u>
11	TIEN DUC NGUYEN	)	OCAT 10-03-012
12	B3370423)	
13)	
	Defendant(s))	

14 The Orange County District Attorney charges that in Orange
15 County, California, the law was violated as follows:

16 COUNT 1: On or about March 17, 2010, in violation of Section
17 12280(a)(1) of the Penal Code (UNLAWFUL ASSAULT WEAPON
18 ACTIVITY), a FELONY, TIEN DUC NGUYEN did unlawfully
19 manufacture, caused to be manufactured, distribute, transport,
20 import into the State of California, keep for sale, offer and
expose for sale, give, and lend a AK-47, an assault weapon.

21 COUNT 2: On or about March 17, 2010, in violation of Section
22 12280(b) of the Penal Code (POSSESSION OF AN ASSAULT WEAPON), a
23 FELONY, TIEN DUC NGUYEN did unlawfully possess an assault
weapon as defined in Sections 12276 and 12276.1.

24 COUNT 3: On or about March 17, 2010, in violation of Section
25 12021(a)(1) of the Penal Code (POSSESSION OF FIREARM BY FELON),
26 a FELONY, TIEN DUC NGUYEN, who was previously convicted of a
27 felony, did unlawfully own, purchase, receive, possess, and
have custody and control of a firearm.

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/
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FELONY COMPLAINT (DA CASE# 10F14008)
OC DNA NOT ON FILE: TIEN NGUYEN

1 TIEN DUC NGUYEN was previously convicted of a violation of
2 Section 12025(a)(1)/(b)(3) of the Penal Code on or about August
3 11, 1999 in the SUPERIOR (WEST) Court of the State of
4 California, in and for the County of ORANGE COUNTY, in case
5 99WF1808.

6 COUNT 4: On or about March 17, 2010, in violation of Section
7 12316(b)(1) of the Penal Code (POSSESSION OF AMMUNITION BY
8 PROHIBITED PERSON), a FELONY, TIEN DUC NGUYEN did unlawfully
9 own, possess, and have custody and control over ammunition and
10 reloaded ammunition, when the defendant was prohibited from
11 owning and possessing a firearm pursuant to Penal Code sections
12 12021 and 12021.1 and Welfare and Institutions Code sections
13 8100 and 8103.

14 PRIOR CONVICTION(S)

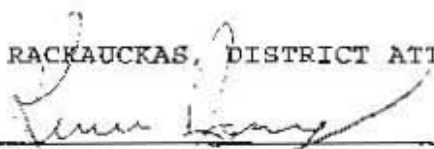
15 It is further alleged pursuant to Penal Code sections 667(d) and
16 (e)(1) and 1170.12(b) and (c)(1), that TIEN DUC NGUYEN was
17 previously convicted of a serious and violent felony:

18 TIEN DUC NGUYEN was previously convicted of a violation of
19 Section 12025(a)(1)/(b)(3) of the Penal Code on or about August
20 11, 1999 in the SUPERIOR Court of the State of California, in
21 and for the County of ORANGE, case number: 99WF1808.

22 I declare under penalty of perjury, on information and belief,
23 that the foregoing is true and correct.

24 Dated 10-18-2010 at Orange County, California.
25 RL/CS 10F14008

26 TONY RACKAUCKAS, DISTRICT ATTORNEY

27 by: 
28 Deputy District Attorney

29 RESTITUTION CLAIMED

- 30 [] None
- 31 [] \$ _____
- 32 [X] To be determined

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BAIL RECOMMENDATION:

TIEN DUC NGUYEN - \$ 50,000.00

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Penal Code Section 296.1, defendant, TIEN DUC NGUYEN, is required to provide DNA samples and thumb and palm prints.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ORANGE - WEST JUSTICE CENTER

3 DEPARTMENT 18

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ORIGINAL

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

TIEN DUC NGUYEN,

DEFENDANT.

CASE NO. 10WF0918

THE HONORABLE GREGG BRIDGEMAN, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 19, 2010

NOVEMBER 18, 2010

APPEARANCES OF COUNSEL:

FOR PLAINTIFF:

TONY RACKAUCKAS
DISTRICT ATTORNEY
BY: RENEE JONES
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT:

CHRISTOPHER HENNES
ATTORNEY AT LAW

DENISE FISH, CSR NO. 7569, OFFICIAL COURT REPORTER, PAGES 1
THROUGH 65

ADRIANA ARANETA, CSR NO. 3586, OFFICIAL COURT REPORTER,
PAGES 66 THROUGH 72.

EXHIBITS

PEOPLE'S EXHIBITS:

FOR IDENTIFICATION IN EVIDENCE

1 - PHOTOGRAPH	15	57
2 - PHOTOGRAPH	15	57
3A - 3B - PHOTO OF UPS LABEL	16	57
3C - PHOTOGRAPH	23	57
4A - 4B - PHOTOGRAPH	24	57
5A - 5B - PHOTOGRAPH	25	57

DEFENSE EXHIBITS:

FOR IDENTIFICATION IN EVIDENCE

A - PHOTOGRAPH	35	57
B - PHOTOGRAPH	37	57
C - PHOTOGRAPH	37	57

WESTMINSTER, CALIFORNIA - NOVEMBER 10, 2010

AFTERNOON SESSION

* * * * *

THE COURT: CALLING THE CASE OF THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS TIEN DUC NGUYEN. THIS IS 10WF0918. APPEARANCE ON BEHALF OF THE PEOPLE.

MS. JONES: RENEW JONES FOR THE PEOPLE, YOUR HONOR.

THE COURT: ON BEHALF OF MR. NGUYEN.

MR. HENNES: CHRISTOPHER HENNES, YOUR HONOR, FOR THE DEFENDANT.

THE COURT: THE MATTER IS HERE FOR A PRELIMINARY EXAMINATION. THE COURT HAS BEFORE IT, THE PEOPLE HAVE FILED A FIRST AMENDED COMPLAINT. SIR, DO YOU HAVE A COPY OF THAT COMPLAINT?

MR. HENNES: I DO.

THE COURT: WAIVE READING AND ADVISAMENT, ENTER A PLEA OF NOT GUILTY DENYING ALL SPECIAL ALLEGATIONS?

MR. HENNES: YES, YOUR HONOR.

THE COURT: THE FIRST AMENDED COMPLAINT ALLEGES COUNT 1 IS AN UNLAWFUL ASSAULT WEAPON ACTIVITY UNDER 12250(A)(1) OF THE PENAL CODE. COUNT 2 IS POSSESSION OF AN ASSAULT WEAPON UNDER 12280(B). COUNT 3 IS POSSESSION OF A FIREARM BY A FELON UNDER 12021(A)(1). WHEN THERE IS A PRIOR CONVICTION ALLEGATION, AND COUNT 4 IS POSSESSION OF AMMUNITION BY A PROHIBITED PERSON. THE PEOPLE HAVE ALSO

1 CHARGED A STRIKE ALLEGATION. IS THE COURT PROCEEDING UNDER
2 THE CORRECT CHARGING DOCUMENT?

3 MS. JONES: YES, YOUR HONOR.

4 MR. HENNES: YES, YOUR HONOR.

5 THE COURT: ARE THERE ANY PRELIMINARY MOTIONS?

6 MS. JONES: THE PEOPLE WOULD ASK THE COURT TO TAKE
7 JUDICIAL NOTICE OF ITS OWN RECORD FOR PURPOSES OF PROVING UP
8 THE PRIOR FELONY CONVICTION AS ALLEGED IN THE CHARGING
9 DOCUMENT.

10 THE COURT: YOU'RE REQUESTING THAT THE COURT TAKE
11 JUDICIAL NOTICE OF, I BELIEVE IT'S, 99WF1809; IS THAT
12 CORRECT?

13 MS. JONES: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: ANY OBJECTIONS?

15 MR. HENNES: NO, YOUR HONOR.

16 THE COURT: THE COURT WILL TAKE JUDICIAL NOTICE OF
17 ITS OWN FILE FOR THE PROOF OF THE PRIOR CONVICTION. ANY
18 OTHER PRELIMINARY ISSUES?

19 MR. HENNES: JUST MOTION TO EXCLUDE ALL WITNESSES,
20 OTHER THAN THE INVESTIGATING OFFICER. I DON'T SEE ANY IN
21 THE COURTROOM.

22 THE COURT: IN AN ABUNDANCE OF CAUTION, THE COURT
23 WILL GRANT THAT MOTION. ANYTHING FURTHER?

24 MS. JONES: NO.

25 THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

26 MS. JONES: THANK YOU. THE PEOPLE CALL DETECTIVE

1 BRIAN CHAPMAN.

2 THE CLERK: YOU DO SOLEMNLY STATE THAT THE EVIDENCE
3 YOU SHALL GIVE IN THIS MATTER SHALL BE THE TRUTH, THE WHOLE
4 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

5 THE WITNESS: I DO.

6 THE CLERK: PLEASE STATE YOUR NAME FOR US AND SPELL
7 YOUR LAST NAME.

8 THE WITNESS: BRIAN LEE CHAPMAN, C-H-A-P-M-A-N.

9 THE CLERK: THANK YOU. PLEASE BE SEATED.

10 THE COURT: GOOD AFTERNOON, SIR. THANK YOU FOR
11 COMING TO COURT TODAY. WE DO APPRECIATE YOUR PATIENCE. I
12 ASK YOU LISTEN TO THE QUESTIONS. DO NOT BEGIN TO ANSWER
13 THEM UNTIL THE LAWYERS ARE DONE COMPLETELY ASKING THE
14 QUESTIONS. IF YOU HEAR AN OBJECTION, PLEASE, ALLOW ME TO
15 RESPOND ON THE OBJECTION.

16 IF THE ANSWER YOU WISH TO GIVE IS YES OR NO,
17 PLEASE, TRY AND USE THOSE WORDS. WE ALL SOMETIMES FALL INTO
18 THE BAD HABIT OF SAYING OH-HUH OR HUH-UP OR NODDING OR
19 SHAKING OUR HEAD. IT'S VERY HARD FOR THAT YOUNG LADY IN
20 FRONT OF YOU TO TAKE DOWN WHAT'S BEING SAID WHEN YOU DO
21 THAT. IT'S IMPOSSIBLE TO TAKE DOWN WHAT'S BEING SAID WHEN
22 TWO PEOPLE TALK AT THE SAME TIME. AGAIN, THANK YOU FOR
23 COMING TODAY. YOU MAY INQUIRE.

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1 BRIN OR CHAPMAN,

2 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF, AND HAVING

3 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. JONES:

7 Q SIR, HOW ARE YOU EMPLOYED?

8 A I'M EMPLOYED BY THE CITY OF BURBA PARK AS A

9 POLICE OFFICER, AND I'M CURRENTLY ASSIGNED TO THE GRANGE

10 COUNTY AND THE TASK FORCE.

11 Q HOW LONG HAVE YOU BEEN A SWORN POLICE OFFICER

12 FOR APPROXIMATELY 16 YEARS.

13 Q CAN YOU BRIEFLY DESCRIBE YOUR TRAINING AND

14 EXPERIENCE WITH RESPECT TO ASSAULT WEAPONS, KNIVES, AND

15 OTHER VARIOUS ASSAULT WEAPONS?

16 A WELL, BEING A POLICE OFFICER FOR BURBA PARK

17 FOR SOME TIME, OBVIOUSLY, I'M FAMILIARIZED WITH DIFFERENT

18 TYPES OF WEAPONS, WE CARRY KATE-LIKE WEAPONS, AND WE HAVE

19 ACCESS TO THOSE IN BURBA. I SPENT MORE THAN TEN YEARS ON

20 OUR BURBA PARK POLICE DEPARTMENT SWAT TEAM. I'M ALSO A

21 RANGE MASTER AND IN 2005 WENT TO THE ARMY SCHOOL.

22 Q HAVE YOU EITHER ATTENDED AND SEMI-ATTENDED

23 WEAPONS?

24 A YES, I HAVE.

1 Q YOU'RE FAMILIAR WITH THE PARTS OF THOSE
2 WEAPONS?

3 A YES.

4 Q WERE YOU ON DUTY ON MARCH 17TH, 2010, AT
5 APPROXIMATELY 10:30 IN THE MORNING?

6 A YES.

7 Q AT THAT TIME DID YOU RESPOND TO 13040 HOOVER
8 STREET IN WESTMINSTER TO A BUSINESS AT THAT LOCATION?

9 A YES.

10 Q WAS THE BUSINESS YOU RESPONDED TO EXPORT AUTO
11 PROS?

12 A YES.

13 Q DID YOU MAKE CONTACT WITH THE OWNER WHO WAS
14 PRESENT THERE?

15 A YES.

16 Q DO YOU SEE THAT PERSON IN THE COURTROOM
17 TODAY?

18 A YES, I DO.

19 Q CAN YOU PLEASE POINT TO HIM AND TELL ME WHAT
20 HE'S WEARING?

21 A THAT WOULD BE TIEN NGUYEN, AND HE HAS WHAT
22 LOOKS LIKE A GRAY SUIT ON.

23 MS. JONES: THANK YOU. MAY THE RECORD REFLECT THE
24 WITNESS HAS IDENTIFIED THE DEFENDANT?

25 THE COURT: THE RECORD WILL SO REFLECT.

26 ///

1 BY MS. JONES:

2 Q WHEN AT THE DEFENDANT'S BUSINESS, DID HE
3 TELL YOU THAT HE HAD A RIFLE ON THE PREMISES?

4 A YES, HE DID.

5 Q AT SOME POINT DID YOU ACCOMPANY HIM TO AN
6 UPSIARS OFFICE WHERE THERE WAS A STORAGE-TYPE AREA?

7 A YES.

8 Q AT THAT LOCATION, DID HE LEAD YOU TO WHAT HE
9 DESCRIBED AS A RIFLE?

10 MR. HENNES: OBJECTION, YOUR HONOR, LEADING.
11 MOTION TO STRIKE.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES.

14 BY MS. JONES:

15 Q CAN YOU DESCRIBE THE RIFLE THAT HE LED YOU TO?

16 A WELL, FIRST OF ALL, THIS AREA WASN'T ACTUALLY
17 PART OF THE OFFICE. IT WAS KIND OF LIKE A LOFT ABOVE THE
18 OFFICE UPSTAIRS. I GUESS, YOU COULD CALL IT A STORAGE AREA.
19 DESCRIBING THE RIFLE, IT WAS AN EXTREMELY LARGE BOLT
20 ACTION-TYPE RIFLE THAT SHOTS VERY LARGE CALIBER AMMUNITION,
21 AND IT APPEARED TO BE COMPLETELY ASSEMBLED AND READY TO BE
22 USED.

23 Q WHEN YOU SAY IT WAS EXTREMELY LARGE,
24 APPROXIMATELY HOW LARGE WAS IT?

25 A WELL, IF I WOULD COMPARE, AGAIN, THE FIREARMS
26 OR RIFLES I'M MOST FAMILIAR WITH WOULD BE AN AR15-TYPE

1 RIFLE. THAT'S WHAT WE USE COMMONLY AT THE BUENA PARK POLICE
2 DEPARTMENT. JUST TO GIVE YOU A ROUGH ESTIMATION, THAT RIFLE
3 IS PROBABLY, I DON'T KNOW, AGAIN, GUESSING, THREE FEET LONG
4 AND PROBABLY WEIGHS LESS THAN TEN POUNDS, PROBABLY MORE LIKE
5 SEVEN POUNDS OR SOMETHING LIKE THAT. THE RIFLE UP THERE WAS
6 VERY HEAVY, AND I'M JUST GOING TO GUESS AND SAY IT WAS
7 PROBABLY LIKE --

8 Q I DON'T WANT YOU TO GUESS. IF YOU COULD
9 ESTIMATE.

10 A IF I WOULD ESTIMATE, I WOULD ESTIMATE MAYBE
11 30 POUNDS. IT'S PROBABLY ABOUT FOUR FEET LONG AND EXTREMELY
12 LONG, HEAVY BARREL ON IT AND A VERY LARGE BOLT FOR TAKING
13 LARGE CALIBER AMMUNITION.

14 Q APPROXIMATELY HOW LARGE CALIBER AMMUNITION
15 WOULD IT HOLD?

16 A IT WAS LATER DETERMINED THAT IT WAS DESIGNED
17 FOR THE .50 DTC CALIBER AMMUNITION WHICH IS VERY SIMILAR TO
18 A .50 CALIBER BMG WHICH IS A COMMON ROUND USED IN THE
19 MILITARY.

20 Q WHAT TYPES OF THINGS DOES THE MILITARY USE
21 SUCH A ROUND FOR?

22 MR. MENNET: OBJECTION, IRRELEVANT.

23 THE COURT: SUSTAINED.

24 BY MS. JONES:

25 Q DID MR. NOUYEN INDICATE TO YOU THAT THE RIFLE
26 WAS HIS?

1 A YES.

2 Q DID HE INDICATE THAT HE ACTUALLY COMPLETED
3 PUTTING THE RIFLE TOGETHER?

4 A YES.

5 Q WHAT DID HE DESCRIBE IN THAT REGARD?

6 A THE FIRST THING I ASKED HIM ABOUT WAS I
7 NOTICED THAT THE LOWER PORTION OF THE RIFLE DID NOT HAVE A
8 MANUFACTURER'S NAME OR SERIAL NUMBER ON IT, AND I ASKED HIM
9 TO EXPLAIN THAT TO ME, AND WHAT HE TOLD ME IS THAT HE
10 PURCHASED WHAT HE DESCRIBED AS AN 80 PERCENT LOWER RECEIVER,
11 AND THE LOWER RECEIVER IS THE -- KIND OF THE BODY OF THE
12 FIREARM WHERE THE TRIGGER MECHANISM AND WHERE A LOT OF THOSE
13 PARTS ARE HELD, AND THE WAY HE DESCRIBED IT TO ME IS THAT HE
14 BOUGHT THIS, AGAIN, AT 80 PERCENT LOWER OFF THE INTERNET;
15 AND BECAUSE IT WAS APPROXIMATELY 80 PERCENT COMPLETED, HE
16 DESCRIBED THAT HE DIDN'T HAVE TO REGISTER IT, DIDN'T HAVE TO
17 HAVE A SERIAL NUMBER ON IT BECAUSE IT WAS NOT A COMPLETED
18 CONTROLLED RECEIVER.

19 THEREFORE, HE COMPLETED THE -- HE TOLD ME HE
20 COMPLETED THE PROCESSING OR THE MILLING OF THE RECEIVER AND
21 THEN BOUGHT THE UPPER PORTION OF THE RIFLE AND ATTACHED IT
22 HIMSELF AND ALSO DESCRIBED THAT IT WAS READY TO BE USED.

23 Q DID YOU LATER TRY TO FIRE THAT RIFLE?

24 A YES, I DID.

25 Q WAS IT IN GOOD WORKING ORDER?

26 A IT APPEARED TO BE IN GOOD WORKING ORDER.

1 Q DID YOU ASK HIM ABOUT THE AMMUNITION?

2 A YES, I DID.

3 Q DID HE PRODUCE AMMUNITION TO THAT WEAPON?

4 A YES.

5 Q CAN YOU DESCRIBE THE AMMUNITION THAT HE
6 PRODUCED?

7 A WELL, THE .50 CALIBER DIC AMMUNITION, AGAIN,
8 IT'S EXTREMELY LARGE. IN THE REPORT I PUT SOME PICTURES IN
9 THERE SHOWING THE SIZE OF THAT TYPE OF AMMUNITION NEXT TO,
10 LIKE, THE .40 CALIBER HANDGUN ROUND WE CARRY WHICH IS MANY,
11 MANY TIMES THE SIZE, SO IT'S A BIG, HEAVY BULLET.

12 Q HOW MUCH OF THAT AMMUNITION DID HE HAVE?

13 A I BELIEVE, IT WAS 50 ROUNDS.

14 Q DID YOU FIND OTHER AMMUNITION IN HIS
15 POSSESSIONS?

16 A YES. HE ALSO PRODUCED MORE AMMUNITION, AND
17 THAT WAS .50 CALIBER BROWSE-TYPE AMMUNITION WHICH WAS
18 DIFFERENT.

19 Q WENT TO A DIFFERENT FIREARM?

20 A YES, THAT WOULD GO TO A DIFFERENT FIREARM.

21 Q DID YOU EVER LOCATE THAT FIREARM?

22 A NO.

23 Q DID HE INDICATE THAT HE ALSO HAD OTHER
24 WEAPONS ON THE PREMISES?

25 A YES.

26 Q WHAT TYPE OF WEAPON DID HE SAY HE HAD?

1 A WELL, AGAIN, HE DESCRIBED HE WAS PUTTING
2 TOGETHER OR MAKING AN AK47-TYPE RIFLE, AND HE PRODUCED A BOX
3 OF PARTS HE SAID THAT HE PURCHASED AS A KIT, AND HE ALSO
4 PRODUCED THE LOWER RECEIVER OF AN AK47-TYPE RIFLE, AGAIN,
5 WHICH WOULD NORMALLY BE THE PART THAT'S CONTROLLED WHEN YOU
6 REGISTER A FIREARM. THE LOWER RECEIVER ON A RIFLE WOULD
7 NORMALLY HAVE THE NAME, THE MANUFACTURER'S NAME, AND THE
8 MANUFACTURER'S SERIAL NUMBER.

9 HOWEVER, THIS ONE DID NOT HAVE THAT, AND
10 MR. NGUYEN WENT ON TO DESCRIBE THAT HE HAD PURCHASED THE
11 RECEIVER AS AN AK47 RECEIVER FLAT, BASICALLY, AGAIN,
12 DESCRIBING IT AS A FLAT PIECE OF METAL THAT HE PURCHASED OFF
13 THE INTERNET AND WENT ON TO DESCRIBE THAT HE SENT IT INTO
14 PLACE AND ALSO BOY IN RIVETS TO ATTACH PARTS TO IT IN ORDER
15 TO ASSEMBLE A COMPLETED AK47-TYPE RIFLE.

16 Q DID HE TELL YOU THAT HE PERSONALLY DID THIS?

17 A YES. HE ALSO --

18 MR. HENNES: OBJECTION, YOUR HONOR, NONRESPONSIVE.
19 NO QUESTION PENDING.

20 THE COURT: SUSTAINED.

21 BY MS. JONES:

22 Q DID HE TELL YOU HE DID ANYTHING ELSE WITH
23 RESPECT TO THAT RIFLE?

24 A WELL, HE AGAIN TOLD ME HE WAS MANUFACTURING
25 IT, THAT HE WAS PUTTING IT TOGETHER, THAT HE HAD PUT RIVETS
26 AND PARTS INTO THE RECEIVER, THAT HE HAD BENT IT INTO SHAPE

1 AND EVEN SHOWED US A WEBSITE WHERE HE CLAIMED HE PURCHASED
2 IT.

3 Q IT WASN'T ASSEMBLED AT THE TIME YOU OBSERVED
4 THE AK47-TYPE RIFLE; CORRECT?

5 A NO.

6 Q DID HE INDICATE TO YOU --

7 MR. HENNES: OBJECTION, YOUR HONOR, VAGUE, THE
8 RESPONSE. HE DIDN'T -- IT WAS A DOUBLE NEGATIVE IS WHAT
9 I'M --

10 THE COURT: THE OBJECTION IS OVERRULED.

11 BY MS. JONES:

12 Q DID MR. STEN -- EXCUSE ME, DID MR. NGUYEN
13 ADMIT TO YOU HE KNEW THAT HE WAS NOT -- THAT HE HAD A PRIOR
14 FELONY CONVICTION AND WAS NOT SUPPOSED TO POSSESS A FIREARM?

15 A YES.

16 Q DID HE ADMIT HE WAS NOT SUPPOSED TO HAVE
17 ASSAULT WEAPONS?

18 A HE TOLD ME THAT -- HE ADMITTED THAT HE KNEW
19 HAVING THE FIREARMS WAS WRONG AND, AGAIN, THAT HE WAS A
20 CONVICTED FELON.

21 MS. JONES: MAY I APPROACH, YOUR HONOR?

22 THE COURT: YES.

23 BY MS. JONES:

24 Q SHOWING YOU A SERIES OF PHOTOGRAPHS AND ASK
25 WHAT YOU IDENTIFY EACH ONE AS I SHOW THEM TO YOU, IF YOU
26 RECOGNIZE THEM.

1 SHOWING YOU WHAT I'D ASK TO BE MARKED FIRST
2 AS PEOPLE'S 1 WHICH IS A PHOTOGRAPH THAT APPEARS TO HAVE
3 SOME TYPE OF WEAPON IN IT, CAN YOU TELL US WHAT WE'RE
4 LOOKING AT THERE?

5 A THIS IS A PICTURE OF THE .50 CALIBER DTC
6 RIFLE THAT WAS IN THE, I GUESS, STORAGE AREA ABOVE THE
7 OFFICE THAT MR. NGUYEN INITIALLY LED US TO.

8 Q SHOWING YOU WHAT'S MARKED AS PEOPLE'S 2, DO
9 YOU RECOGNIZE THAT PHOTOGRAPH?

10 A YES, THIS IS A PICTURE OF THE AMMUNITION.
11 NOW, FROM THE LEFT, THAT WOULD BE ONE OF THE .50 DTC CALIBER
12 ROUNDS, IN THE CENTER IS ONE OF THE .50 CALIBER BROWNING
13 ROUNDS, AND TO THE RIGHT, AS A COMPARISON, IS A .40 CALIBER
14 SMITH AND WESSON ROUND WHICH IS THE DUTY ROUND I CARRY IN MY
15 HANDGUN.

16 Q SO MOVING FROM THE LEFT, THE FIRST TWO ROUNDS
17 THAT ARE PHOTOGRAPHED THERE ARE THE TWO TYPES OF AMMUNITION
18 YOU FOUND IN MR. NGUYEN'S POSSESSIONS?

19 A YES.

20 Q AND THE LAST WASN'T FOUND IN HIS POSSESSION
21 BUT IS USED SO YOU CAN RELATE THE SIZE; CORRECT?

22 A THAT'S CORRECT.

23 Q HOW MUCH AMMUNITION OF THE BROWNING TYPE?

24 A ONE HUNDRED AND TWENTY ROUNDS, IF I REMEMBER
25 RIGHT.

26 Q I'M GOING TO SHOW YOU WHAT APPEARS TO BE A

1 UPS LABEL. THAT'S ACTUALLY TWO PAGES, AND I'LL MARK THE FIRST
2 AS PEOPLE'S 3A AND THE SECOND AS PEOPLE'S 3B.

3 REFERRING BY NUMBER TO THOSE ITEMS, CAN YOU
4 TELL ME WHAT THEY ARE?

5 A THESE ARE PICTURES OF, I GUESS IT WOULD BE,
6 THE SHIPPING LABELS THAT WERE ALSO IN THE BOX, THE AK47
7 PARTS, AND PROBABLY SHOULD BE NOTED THAT IT LOOKS LIKE IT
8 CAME FROM AN BUILDER OR AN -- LET ME RACK UP HERE. IT SAYS
9 AN BUILDER, AN R. VET SET. THOSE ARE SOME OF THE PARTS THAT
10 MR. NGUYEN DESCRIBED AS PURCHASING OVER THE INTERNET.

11 Q THE RETURN ADDRESS ON THE UPS LABELS, IS THAT
12 ADDRESS IN WHAT STATE?

13 A MISSOURI.

14 Q THANK YOU. DID YOU AT SOME POINT ASK
15 MR. NGUYEN WHY HE OBTAINED THE WEAPONS IN THE MANNER THAT HE
16 DID?

17 A WE TALKED ABOUT THAT, AND HE ALSO DESCRIBED
18 AGAIN HOW HE DIDN'T HAVE TO REGISTER THEM IN THE MANNER IN
19 WHICH HE OBTAINED AND COMPLETED THE MANUFACTURING ON THE
20 RECEIVERS; BUT, UNEXACTLY, I ASKED HIM SPECIFICALLY AT ONE
21 POINT WHY ARE YOU DOING THIS, AND HIS RESPONSE WAS, "BECAUSE
22 I CAN."

23 Q YOU CONTACTED HIM ON TWO SEPARATE OCCASIONS;
24 CORRECT?

25 A YES.

26 Q THE FIRST TIME ON 3-17 AND AGAIN ON THE NEXT

1 DAY?

2 A YES.

3 Q WHEN YOU SPOKE TO HIM THE NEXT DAY, DID HE
4 CHANGE HIS STATEMENT IN ANY WAY WITH RESPECT TO THE PROCESS
5 OF COMPLETING THE AK47?

6 A YES.

7 Q HOW SO?

8 A INITIALLY, WHEN I ASKED HIM ABOUT HOW HE WAS
9 MAKING THE RECEIVER FOR THE AK47, HE DESCRIBED THAT HE
10 PURCHASED THESE PARTS OFF A WEBSITE, I BELIEVE IT WAS AK47
11 BUILDER.COX, AND WHEN I WENT TO THE SITE AND EXAMINED IT A
12 LITTLE FURTHER, IN FACT, HE PULLED UP THE SITE WHEN WE WERE
13 THERE; BUT WHEN I PULLED IT UP A LITTLE FURTHER AFTER THE
14 FACT, I SAW THAT YOU COULD PURCHASE AN AK47 FLAT BUILDER,
15 PROBABLY GET THE TERMINOLOGY A LITTLE WRONG, IT'S A DIE SET.

16 BASICALLY, WHAT IT IS IS A PRESS. WHEN YOU
17 BUY THIS AK47 RECEIVER FLAT, YOU CAN PUT IT IN THIS PRESS
18 AND IT PRESSES IT OR MOLDS IT INTO THE CORRECT SHAPE FOR
19 YOU. WHEN I CONTACTED MR. NGUYEN THE FOLLOWING DAY ON THE
20 18TH, I SPECIFICALLY ASKED HIM IF HE HAD ONE OF THESE
21 RECEIVER PRESSES AND IF THAT WAS THE WAY HE ACTUALLY
22 DESIGNED OR BENT THE RECEIVER INTO THE CORRECT SHAPE, AND HE
23 SAID, YES, HE DID USE THAT AND HAD ONE OF THOSE.

24 Q DID YOU LATER MEET WITH A FIREARMS EXAMINER
25 BY THE NAME OF ROCKY EDWARDS?

26 A YES.

1 Q DID HE EXAMINE THE .30 CALIBER DIC RIFLE?

2 A WELL, I BROUGHT THAT RIFLE, AND I BROUGHT THE
3 BOX OF AK47 PARTS AND THE RECEIVER FOR THAT, AND WE BRIEFLY
4 EXAMINED THE RIFLE. I DON'T KNOW IF HE WOULD TELL YOU IT
5 WAS A COMPLETE EXAMINATION. IN FACT, HE PROBABLY WOULD SAY
6 NO, BUT, YOU KNOW, WE WORKED THE ACTION ON IT, DRY FIRED IT,
7 AND THEN WE WENT THROUGH A LIST OF AK47 PARTS TOGETHER TO
8 SEE IF ALL THE PARTS WERE THERE TO ASSEMBLE A RIFLE; AND
9 AFTER THE EXAMINATION, IT APPEARED THAT THERE WAS, THE PARTS
10 WERE THERE TO ASSEMBLE AN AK47 TYPE RIFLE.

11 Q SO YOU BROUGHT BOTH OF THE FIREARMS OVER
12 THERE?

13 A YES.

14 Q AND HE LOOKED AT BOTH, AND WITH RESPECT TO
15 THE AK RIFLE, YOU BOTH AGREED THAT ALL THE PARTS WERE THERE?

16 A YES, IT APPEARS SO. HE MENTIONED TO REALLY
17 GIVE A THOROUGH EXAMINATION THAT, YOU KNOW, IF HE WERE TO
18 REALLY GO THROUGH IT HE WOULD PROBABLY PUT IT TOGETHER AND
19 ACTUALLY MAKE A RIFLE OUT OF IT, BUT THAT WOULD TAKE SOME
20 WORK AND SPECIFICALLY, LIKE, PUTTING THE BARREL IN AND
21 PUTTING ALL THESE PARTS ON, AND WE DIDN'T DO THAT.

22 Q OKAY.

23 A WE JUST WENT THROUGH, BASICALLY, THE PARTS
24 OFF THE PARTS LIST AND EXAMINED THE PARTS THAT WE HAD.

25 Q DID YOU THEN AT A LATER DATE MEET WITH A GREG
26 SCHUCH, S-C-H-U-C-H, SERGEANT SCHUCH, FROM THE ORANGE COUNTY

1 SHERIFFS DEPARTMENT?

2 A YES.

3 Q WHAT IS HIS OCCUPATION OR WHAT IS HIS
4 ASSIGNMENT??

5 A WELL, HE IS A SUPERVISOR, A SHERIFFS
6 SERGEANT, AND HE'S ASSIGNED TO THE ORANGE COUNTY SHERIFFS
7 DEPARTMENT SCHOOLING RANGE OFF OF KATELLA.

8 Q DID HE DO SOMETHING IN RELATIONSHIP TO THIS
9 CASE?

10 A YES, HE RETRIEVED WHAT HE DESCRIBED AS A
11 WORKING AK47-TYPE RIFLE THAT HE HAD FIRED PREVIOUSLY, AND HE
12 TOOK IT APART, AND WE EXAMINED THE PARTS AND THE WORKING
13 RIFLE; AND WE DIDN'T BREAK IT DOWN TO EVERY LAST LITTLE
14 PART, BUT WE BROKE DOWN QUITE A BIT OF IT TO EXAMINE THE
15 INTERNAL PARTS AND EXAMINED THOSE PARTS TO THE PARTS THAT
16 WERE IN THE BOX THAT WE HAD RECOVERED FROM MR. NGUYEN.

17 MR. HENNES: EXCUSE ME, YOUR HONOR. MAY I HAVE A
18 MOMENT WITH COUNSEL?

19 THE COURT: YES.

20 MS. JONES: YOUR HONOR, I APOLOGIZE. I WAS UNDER
21 THE IMPRESSION COUNSEL HAD THE REPORT THAT I'M REFERRING TO,
22 AND THERE IS SOME PHOTOGRAPHS WITH IT. IF WE COULD TAKE A
23 BRIEF BREAK SO HE COULD GET A COPY OF THOSE.

24 THE COURT: GRANTED.

25 MR. HENNES: THANK YOU, YOUR HONOR.

26 THE COURT: YOU'RE WELCOME.

1 (PHOSSE TAKKK.)

2 THE COURT: WE'RE BACK ON THE RECORD. YOU MAY
3 CONTINUE YOUR DIRECT EXAMINATION.

4 MS. JONES: THANK YOU.

5 BY MS. JONES:

6 Q OFFICER, I THINK BEFORE THE BREAK WE WERE
7 JUST TALKING ABOUT SERGLANT SCHUCH RETRIEVING A FULLY
8 FUNCTIONAL AK47 WHEN YOU MET WITH HIM; IS THAT CORRECT?

9 A YES. AK47 IS KIND OF A BROAD TERM. MY
10 UNDERSTANDING IS -- AND I'M NOT AN EXPERT ON AK47
11 SPECIFICALLY -- BUT THE AK47 WAS DESIGNED IN RUSSIA.
12 HOWEVER, THERE ARE MANY KNOCKOFFS THAT ARE VERY SIMILAR.
13 THAT ONE, I BELIEVE, WAS A NORINCO CHINESE VERSION OF THE
14 AK47, LOOKS VERY, VERY SIMILAR. I BELIEVE, THEY CALL IT A
15 TYPE 56, SO IT'S A DIFFERENT NAME FOR, BASICALLY, THE SAME
16 WEAPON.

17 Q THE SAME WEAPON AS YOU LOCATED IN THE
18 DEFENDANT'S POSSESSION?

19 A YES, VERY SIMILAR.

20 Q SO IT WOULD BE LIKE AN AK47-TYPE WEAPON?

21 A YES, THAT'S RIGHT.

22 Q WERE BOTH WEAPONS SEMI-AUTOMATIC CENTER FIRE
23 RIFLES?

24 A YES.

25 Q DID YOU DETERMINE THAT BOTH HAD THE -- OR THE
26 WEAPON IN MR. NGUYEN'S POSSESSION HAD THE CAPACITY TO ACCEPT

1 A DETACHABLE MAGAZINE?

2 A YES.

3 Q DID IT HAVE A PISTOL GRIP THAT PROTRUDES
4 CONSPICUOUSLY BENEATH THE ACTION OF THE WEAPON?

5 A YES, THAT WAS ONE OF THE PARTS.

6 Q DID IT HAVE A FORWARD PISTOL GRIP?

7 A YES.

8 Q THE COMPARISON RIFLE THAT SERGEANT SCHUCH
9 PRODUCED, THAT WAS A RIFLE THAT HAD ACTUALLY PREVIOUSLY BEEN
10 FIRED; IS THAT CORRECT?

11 A YES, THAT'S WHAT I WAS TOLD.

12 Q WHAT DID HE PROCEED TO DO WITH THAT RIFLE?

13 A TAKE IT APART AND -

14 Q IN YOUR PRESENCE?

15 A YES.

16 Q ONCE HE TOOK IT APART, DID BOTH OF YOU
17 COMPARE THE PARTS OF HIS RIFLE WITH THE RIFLE TAKEN FROM
18 MR. NGUYEN?

19 A YES, WE COMPARED THE PARTS OF EACH.

20 Q WHAT CONCLUSION DID YOU BOTH REACH?

21 A THAT IT APPEARS THAT ALL THE PARTS WERE
22 THERE IN THE BOX THAT I HAD RECEIVED FROM MR. NGUYEN TO
23 PRODUCE A FUNCTIONING AK47-TYPE RIFLE.

24 Q DID ALL OF THE WORK APPEAR TO BE COMPLETED ON
25 MR. NGUYEN'S RIFLE?

26 A NO.

1 Q WHAT WAS LEFT TO BE COMPLETED?

2 A WELL, WE WERE, AGAIN, OF THE OPINION THAT THE
3 PARTS WERE THERE, BUT AS FAR AS THE LOWER RECEIVER WAS
4 CONCERNED, MUCH OF THE WORK HAD BEEN DONE AS FAR AS BENDING
5 IT INTO SHAPE FROM THE FLAT PIECE OF METAL AND DRILLING
6 HOLES AND PUTTING IN RIVETS, ATTACHING PARTS; BUT IT
7 APPEARED, AT LEAST, ONE MORE RIVET HOLE NEEDED TO BE DRILLED
8 INTO THE LOWER RECEIVER IN ADDITION TO PUTTING THE PIECES
9 TOGETHER.

10 Q DID YOU ACTUALLY OBSERVE A DETACHABLE
11 MAGAZINE MECHANISM?

12 A YES.

13 Q DID YOU EVER FIND ANY PART FOR A FIXED
14 MAGAZINE?

15 A NOT THAT I COULD TELL.

16 Q DID YOU -- WHEN YOU FIRST -- BEFORE YOU SPoke
17 TO MR. EDWARDS AND TO SERGEANT SCHUCH, DID YOU ALSO SPEAK
18 BRIEFLY WITH A CAVALRY TEAGUE WHO WAS A FIREARMS INSTRUCTOR AT
19 THE SHERIFFS DEPARTMENT?

20 A YES.

21 Q DID HE LOOK AT THE AK47 IN MR. NGUYEN'S
22 POSSESSION?

23 A HE LOOKED AT THE BOX OF PARTS VERY BRIEFLY ON
24 THE BACK OF HIS TRUCK, AND HE STARTED OUT BY SAYING THAT HIS
25 EXPERIENCE WITH ASSAULT WEAPONS WAS IN THE MILITARY AND
26 THAT, BASICALLY, HIS CERTIFICATES HAD EXPIRED AND THAT TYPE

1 OF STUFF AND LOOKED THROUGH THE BOX OF PARTS BRIEFLY, AND HE
2 WAS OF THE OPINION THERE WERE SEVERAL PARTS MISSING.

3 Q WHAT SPECIFICALLY DID HE THINK WAS MISSING?

4 A HE SAID THAT HE DIDN'T SEE THE HAMMER OR THE
5 SEAR.

6 Q THOSE WERE THE TWO PARTS HE THOUGHT WERE
7 MISSING?

8 A YES, I BELIEVE SO.

9 Q AFTER YOU SPOKE WITH HIM, DID YOU MORE
10 THOROUGHLY EXAMINE THE AK47 IN MR. NGUYEN'S POSSESSION?

11 A YES.

12 Q DID YOU DETERMINE -- DID YOU FIND THOSE
13 PARTS?

14 A YES, I BELIEVE SO. I FOUND PARTS THAT LOOKED
15 JUST LIKE THE HAMMER AND THE SEARS DEPICTED IN THE RIFLES WE
16 TOOK APART AND ALSO THE PARTS LIST THAT I WENT THROUGH WITH
17 ROCKY.

18 MS. JONES: IF I MAY APPROACH ONCE MORE.

19 THE COURT: YES.

20 BY MS. JONES:

21 Q I FOUND A BROTHER PHOTOGRAPH OF PEOPLE'S 3A
22 AND B, SO I'D ASK THIS BE MARKED PEOPLE'S 3C. ARE THESE TWO
23 PHOTOS DEPICTING THE SAME UPS PACKAGING THAT WE TALKED ABOUT
24 EARLIER AS IN 3A AND 3B?

25 A YEAH, THE SHIPPING LABELS, SO TO SPEAK, FOR
26 LACK OF A BETTER TERM, YES.

1 Q THANK YOU. THEN WITH RESPECT TO YOUR
2 EXAMINATION AND COMPARISON OF THE TWO AK47-TYPE RIFLES WITH
3 MR. SCHUCH, CAN YOU TELL ME, LOOKING AT PEOPLE'S 4, I'LL
4 MARK THE TOP PHOTOGRAPH 4A AND THE BOTTOM PHOTOGRAPH 4B,
5 WHAT THOSE TWO PHOTOGRAPHS REFERRING TO THEM BY LETTER ARE
6 DEPICTING?

7 A WELL, I'D FEEL MUCH BETTER COMMENTING ON
8 PICTURE B BECAUSE THOSE ARE ALL LAID OUT. PICTURE A IS JUST
9 A PICTURE OF SOME OF THE PARTS, AND, I BELIEVE, THOSE
10 WERE -- I DON'T EVEN WANT TO SAY IF THEY WERE PARTS FROM ONE
11 RIFLE OR THE NEXT.

12 Q LET'S JUST STICK WITH 4B. IF YOU COULD
13 DESCRIBE WHAT WE'RE LOOKING AT THERE.

14 A IN 4B WHAT WE DID WAS WE HAD -- BELOW THE
15 GREEN SLING WHICH I USED AS A DIVIDER BETWEEN THE TWO SETS
16 OF PARTS, BELOW YOU HAVE THE AK47-TYPE RIFLE, THE
17 FUNCTIONING RIFLE THAT SERGEANT SCHUCH TOOK APART IN MY
18 PRESENCE. AGAIN, THAT'S A FUNCTIONING RIFLE, AND THAT'S A
19 PICTURE OF THE UPPER PORTION OF THE PARTS WE TOOK OFF.

20 UP ABOVE IS LAID OUT THE PARTS THAT WERE IN
21 THE BOXES THAT WE RECOVERED FROM MR. NGUYEN. WHAT IT IS IS
22 A COMPARISON SO THAT YOU COULD SEE THE PARTS THAT NGUYEN HAD
23 WHICH VERY, VERY CLOSELY RESEMBLED THE PARTS THAT WERE ON
24 THE WORKING RIFLE.

25 Q THAT PHOTOGRAPHS THE ANALYSIS YOU DID TO
26 DETERMINE ALL OF THE PARTS NECESSARY TO ASSEMBLE THE AK47

1 WERE POSSESSED BY MR. NGUYEN? CORRECT?

2 A YEAH, THAT'S PART OF THAT PROCESS, AND, OF
3 COURSE, WE HAVE SOME OTHER PICTURES THAT SHOW THE INNER
4 PARTS AND THE RECEIVER OF THE WORKING RIFLE ITSELF BECAUSE
5 WE DIDN'T TAKE OUT ALL THE PARTS, AS I MENTIONED BEFORE; BUT
6 WHAT WE DID DO IS COMPARE THE PARTS THAT WERE, AGAIN, IN THE
7 BOXES THAT WERE IN NGUYEN'S POSSESSION TO THE PARTS THAT
8 WERE ALREADY IN THE RECEIVER OF THE WORKING RIFLE, AND IT
9 APPEARED THEY WERE THE SAME.

10 Q THEN FINALLY MARKING THE NEXT TWO PHOTOS AS
11 PEOPLE'S 5A, THE TOP PHOTO, AND 5B, THE BOTTOM PHOTO, ON ONE
12 PIECE OF PAPER, CAN YOU TELL ME WHAT WE'RE LOOKING AT THERE?

13 A WELL, A IS THE PUT-TOGETHER WORKING RIFLE
14 THAT SERGEANT SCHUCH HAD PRODUCED, AND B IS A COMPARISON OF
15 THE LOWER RECEIVER THAT NGUYEN WAS PRODUCING OR MAKING, AND
16 YOU CAN SEE HOW VERY CLOSELY SIMILAR THEY ARE. THEY,
17 BASICALLY, LOOK THE SAME FOR THE MOST PART, SO IT'S JUST A
18 COMPARISON PICTURE.

19 Q IS THERE ANY WORK LEFT TO BE DONE ON PEOPLE'S
20 5B?

21 A WELL, AGAIN, YOU CAN SEE IN THE PICTURE THERE
22 IS, LIKE, A MARKING IN THE LOWER RECEIVER. IT LOOKS LIKE
23 THERE NEEDS TO BE ANOTHER PIN HOLE DRILLED THAT YOU CAN SEE
24 IN THE WORKING RIFLE. IT LOOKS LIKE IT'S IN THE SAME
25 POSITION. THERE WAS NOT A HOLE DRILLED THERE.

26 Q CAN YOU PUT AN A ON THE PART THAT YOU'RE

1 TALKING ABOUT?

2 A AN A?

3 Q YES.

4 A LIKE CIRCLE IT AND --

5 MR. HENNES: I JUST WANT TO KNOW WHAT PHOTOGRAPH
6 YOU'RE REFERRING TO, IF YOU COULD SHOW ME. THANK YOU.

7 THE WITNESS: HOW ABOUT A CIRCLE AND AN A AROUND
8 WHAT?

9 BY MS. JONES:

10 Q SURE.

11 A DO YOU WANT ME TO INITIAL OR ANYTHING?

12 Q NO, THAT'S FINE. NOTHING FURTHER.

13

14 CROSS-EXAMINATION

15

16 BY MR. HENNES:

17 Q DETECTIVE, COULD YOU DESCRIBE WHAT TRAINING
18 OR SCHOOLING YOU HAVE HAD IN THE AREA OF ASSEMBLING OR
19 DISASSEMBLING AK47'S OR SIMILAR WEAPONS?

20 A SPECIFICALLY TO AK47'S, I HAVEN'T RECEIVED
21 TRAINING ON THAT SPECIFIC RIFLE. HOWEVER, A SIMILAR ASSAULT
22 RIFLE I HAVE RECEIVED TRAINING ON IS AR15 OR M16. I WENT TO
23 A, I BELIEVE IT WAS, 24-HOUR AR15 ARMOR SCHOOL PUT ON BY
24 COM7.

25 MR. HENNES: OBJECTION, EXCUSE ME, YOUR HONOR,
26 NONRESPONSIVE. MOTION TO SURRE. I ASKED SPECIFICALLY

1 ABOUT AK47'S.

2 THE COURT: SUSTAINED.

3 BY MR. HENNES:

4 Q HAVE YOU EVER TAKEN APART AN AK47 PRIOR TO
5 THIS CASE?

6 A NO.

7 Q DO YOU REGARD YOURSELF AN EXPERT ON THE
8 MANUFACTURE AND -- JUST THE MANUFACTURE OF AK47'S?

9 MS. JONES: OBJECTION, RELEVANCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: NO.

12 BY MR. HENNES:

13 Q ARE YOU FAMILIAR WITH ALL OF THE WORKING
14 PARTS TO AN AK47 INCLUDING THOSE INSIDE THE RECEIVER?

15 A I'M SORRY. REPHRASE THE QUESTION.

16 Q ARE YOU FAMILIAR WITH THE INNER PARTS OF A
17 RECEIVER AS YOU TESTIFIED ARE NOT DOING ON DIRECT?

18 A SPECIFIC TO THE AK47, NO.

19 Q YOU TESTIFIED THE AK47 SO-CALLED THAT
20 MR. NGUYEN HAD AND YOU RECOVERED IN THE FORM OF PARTS COULD
21 BE PUT TOGETHER INTO A WORKING FIREARM; IS THAT CORRECT?

22 A WITH THE RECEIVER IN THE CONDITION IT WAS, IT
23 WAS NOT YET COMPLETED SO THAT IT COULD BE COMPLETELY
24 ASSEMBLED AT THAT POINT.

25 Q SO YOU WERE NOT ABLE TO ASSEMBLE A RIFLE FROM
26 THE PARTS THAT YOU RECOVERED FROM MR. NGUYEN; IS THAT

1 CORRECT?

2 A I BELIEVE, HE COULD ASSEMBLE THE RIFLE WITH
3 THE PARTS THAT WE RECOVERED. HOWEVER, LIKE I DESCRIBED, THE
4 RECEIVER NEEDED, AT LEAST, ONE MORE HOLE DRILLED IN IT FOR A
5 PIN TO GO IN THERE TO HOLD PARTS.

6 Q YOU INDICATED YOU FOUND A TRIGGER SEAR. ARE
7 THOSE THE SAME THINGS, A TRIGGER AND A SEAR, S-H-A-R, I
8 THINK?

9 A IT APPEARED IT WAS PART OF THE TRIGGER
10 MECHANISM, YES.

11 Q WHY DO YOU SAY IT APPEARED? IT EITHER WAS OR
12 IT WASN'T; CORRECT?

13 MS. JONES: OBJECTION, ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 BY MR. HENNES:

16 Q DO YOU KNOW WHETHER IT WAS OR WAS NOT?

17 A WHAT I KNOW IS THAT THE PARTS THAT MR. NGUYEN
18 HAD APPEARED THE SAME AS THE PARTS IN THE WORKING RIFLE.

19 Q THE PARTS THAT YOU EXAMINED FROM THE
20 FUNCTIONAL AK47 APPEARED TO HAVE MATCHED -- IF THAT'S YOUR
21 TESTIMONY -- APPEARED TO MATCH THE PARTS THAT MR. NGUYEN
22 HAD; IS THAT CORRECT?

23 A YES.

24 Q YOU DID NOT EXAMINE ANY OF THE PARTS THROUGH
25 THE WORKING AK47; IS THAT CORRECT?

26 A WE LOOKED AT THEM, BUT WE DIDN'T REMOVE EACH

1 PIECE FROM THAT RIFLE.

2 Q WHAT PARTS GO INSIDE THE RECEIVER TO AN AK47?
3 CAN YOU DESCRIBE WHAT PARTS ARE CONTAINED BY THE RECEIVER?

4 A WELL, CERTAINLY, THERE WOULD BE A TRIGGER
5 MECHANISM. IT'S KIND OF A BROAD TERM. YOU HAVE, BASICALLY,
6 A BOLT, YOU HAVE PINS, YOU HAVE LOTS OF THINGS THAT YOU HAVE
7 TO HOLD TOGETHER THERE. YOU HAVE RAILS FOR THE BOLT
8 MECHANISM TO WORK.

9 Q ANYTHING ELSE THAT IS REQUIRED?

10 A IF YOU'RE LOOKING FOR A PARTS LIST, I'M NOT
11 GOING TO REMEMBER EVERY SINGLE PART.

12 Q YOU TESTIFIED --

13 THE COURT: JUST A SECOND, SIR. HE HAD NOT
14 COMPLETED HIS ANSWER.

15 MR. HENNES: MY APOLOGIES.

16 THE COURT: PLEASE COMPLETE YOUR ANSWER.

17 THE WITNESS: I DON'T THINK I CAN TELL YOU EVERY
18 SINGLE PART BY NAME THAT GOES INSIDE OF AN AK47. AS I
19 TESTIFIED, I DON'T BELIEVE I'M AN EXPERT SPECIFIC TO THE
20 AK47 RIFLE. HOWEVER, YOU ASKED ABOUT SOME OF MY SIMILAR
21 TRAINING, AND THAT WAS WITH THE AP15-TYPE ASSAULT RIFLE.
22 BY MR. HENNES:

23 Q DID YOU TESTIFY ON DIRECT EXAMINATION THAT
24 ALL OF THE PIECES WERE THERE TO MAKE A WORKING RIFLE?

25 A I TESTIFIED THAT THAT'S MY OPINION, YES.

26 Q DO YOU STILL HAVE THAT OPINION?

1 A YES, THAT THE PARTS WERE THERE THAT WERE
2 NECESSARY.

3 Q YOU THINK ALL OF THE INNER PARTS TO THE
4 RECEIVER WERE ALSO THERE IN THE COLLECTION OF PARTS THAT YOU
5 COLLECTED OF MR. NGUYEN?

6 A I'M OF THE OPINION YOU HAVE ALL THE PARTS
7 NECESSARY, AND MR. NGUYEN WAS OF THAT SAME OPINION.

8 Q WHAT'S NOT THE QUESTION. DID YOU EXAMINE ALL
9 OF THE PARTS THAT WERE NECESSARY TO CONSTRUCT A WORKING
10 RIFLE?

11 A I THINK I ALREADY TESTIFIED.

12 MR. HENNES: OBJECTION, YOUR HONOR, NONRESPONSIVE.

13 THE COURT: SUSTAINED. PLEASE REASK THE QUESTION,
14 SIR.

15 MR. HENNES: I'LL TRY TO ASK IT DIFFERENTLY.

16 BY MR. HENNES:

17 Q YOU'VE TESTIFIED ON DIRECT EXAMINATION,
18 BASICALLY, MR. NGUYEN WAS IN POSSESSION OF, ESSENTIALLY, A
19 WORKING AK47, AND ALL IT HAD TO DO WAS BE PUT TOGETHER WITH
20 ANOTHER RIVET HOLE, AND I'M ASKING YOU TO DESCRIBE THE PARTS
21 THAT YOU EXAMINED THAT LED YOU TO THAT CONCLUSION IN DETAIL
22 BECAUSE THESE ARE VERY DETAILED MACHINES, ARE THEY NOT? ARE
23 YOU ABLE TO DO THAT?

24 MS. JONES: OBJECTION, VAGUE.

25 THE COURT: SUSTAINED. IT IS ALSO COMPOUND.

26 ///

1 BY MR. HENNES:

2 Q ARE YOU ABLE TO DESCRIBE IN DETAIL THE PARTS
3 IN THE POSSESSION OF MR. NGUYEN THAT YOU COLLECTED THAT
4 COMPRISED A WORKABLE RIFLE?

5 MS. JONES: I'M GOING TO OBJECT AGAIN AS VAGUE.

6 THE COURT: OVERRULED.

7 THE WITNESS: WELL, AGAIN, I DESCRIBED THAT THE
8 PARTS APPEARED TO BE SIMILAR. IF YOU WANT ME TO NAME EVERY
9 SINGLE PART IN THE RIFLE BY NAME, NO, I CAN'T DO THAT.

10 Q BUT YOU FEEL YOU'RE ABLE TO COME IN HERE
11 AND TESTIFY THAT HE HAD AN OPERATIONAL ASSAULT WEAPON
12 WITHOUT BEING ABLE TO NAME THE PARTS?

13 MS. JONES: OBJECTION, ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 BY MR. HENNES:

16 Q MOVING BACK TO THE INITIAL CONTACT WITH
17 MR. NGUYEN, WHAT WAS YOUR PURPOSE TO BE ON THE PREMISES ON
18 MARCH 17TH OF THIS YEAR?

19 MS. JONES: OBJECTION, RELEVANCE.

20 MR. HENNES: IT WAS ASKED ON DIRECT.

21 THE COURT: SUSTAINED.

22 BY MR. HENNES:

23 Q WERE YOU THERE TO CONDUCT A SEARCH FOR STOLEN
24 AUTO PARTS? IS THAT THE REASON YOU WERE AT MR. NGUYEN'S
25 SHOP?

26 MS. JONES: OBJECTION, RELEVANCE AND SCOPE.

1 THE COURT: SUSTAINED.

2 MR. HENNES: IF I MAY BE HEARD.

3 THE COURT: YES, SIR.

4 MR. HENNES: THE DETECTIVE HAS TESTIFIED THAT HE
5 WAS PART OF THE TASK FORCE THAT WAS INVESTIGATING STOLEN
6 VEHICLES, AND I THINK HE EVEN TESTIFIED THAT WAS THE REASON
7 FOR HIS VISIT TO THE SHOP, AND HE'S ALSO TESTIFIED THAT
8 THERE WAS A PRESS THAT MR. NGUYEN EVIDENTLY SAID THAT HE HAD
9 AND THAT HE COULDN'T FIND, AND I'D LIKE TO INQUIRE AS TO THE
10 THOROUGHNESS OF THE SEARCH OF THE SHOP.

11 THE COURT: HOW DOES THAT REFLECT ON ANY OF THE
12 CHARGES HERE?

13 MR. HENNES: WELL, BECAUSE, I BELIEVE, THAT THE
14 INSINUATION IS BEING MADE BY THIS TESTIMONY BECAUSE HE HAS
15 NO DIRECT, SPECIFIC KNOWLEDGE OF THE WORKING PARTS TO AN
16 AK47, THAT MR. NGUYEN SOMEHOW HAD THESE PARTS SECRETED
17 ELSEWHERE IN HIS SHOP, AND I WANT TO DISPEL THAT NOTION,
18 WHICH I CAN DO.

19 THE COURT: YOU'VE BEEN ASKING ABOUT THE PURPOSE OF
20 THE SEARCH, NOT THE SCOPE OF THE SEARCH, SO THAT'S WHY I WAS
21 SUSTAINING THE OBJECTION.

22 MR. HENNES: VERY WELL.

23 BY MR. HENNES:

24 Q WHEN YOU WERE ON THE PREMISES ON MARCH 17TH
25 OF THIS YEAR, WHAT PORTION OF MR. NGUYEN'S SHOP OR STORE DID
26 YOU SEARCH?

1 A WE SEARCHED THE MAJORITY OF THE SHOP FOR,
2 LIKE YOU SAID, STOLEN PARTS FOR -- WE WERE UP THERE BECAUSE
3 OF --

4 MS. JONES: OBJECTION, NONRESPONSIVE, BEYOND THE
5 SCOPE.

6 THE COURT: SUSTAINED.

7 BY MR. HENNES:

8 Q IS THERE A PART OF THE SHOP THAT YOU DID NOT
9 SEARCH THAT YOU CAN RECALL?

10 A I WASN'T THE ONLY PERSON THERE.

11 Q WELL, BASED ON THE INFORMATION PROVIDED TO
12 YOU BY OTHER OFFICERS THAT MAY HAVE BEEN PRESENT, IS IT YOUR
13 UNDERSTANDING THAT, ESSENTIALLY, ALL OF THE SHOP WAS
14 SEARCHED FOR WHATEVER YOU WERE LOOKING FOR?

15 A SO YOU'RE ASKING IF WE SEARCHED EVERY SINGLE
16 PORTION, PLACE, DRAWER? -- MEAN, CAN YOU BE MORE SPECIFIC?

17 Q YES. ANY PLACE THAT LOOKED LIKE IT MIGHT BE
18 CAPABLE OF CONCEALMENT OF STOLEN VEHICLE PARTS.

19 MS. JONES: OBJECTION, RELEVANCE.

20 THE COURT: OVERRULED. SIR, I DIDN'T ASK FOR
21 COMMENT. THE OBJECTION IS OVERRULED. YOU MAY ANSWER THE
22 QUESTION.

23 THE WITNESS: TO MY KNOWLEDGE, WE SEARCHED THE
24 BUSINESS THOROUGHLY FOR STOLEN PARTS.

25 BY MR. HENNES:

26 Q DID YOU FIND ANY STOLEN PARTS?

1 A NO.

2 Q DID MR. NGUYEN VOLUNTARILY TELL YOU THAT HE
3 HAD THESE GUN PARTS AND THE RIFLE?

4 A YES.

5 MS. JONES: I'M GOING TO OBJECT TO THE RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: THE ANSWER IS YES.

8 MR. HENNES: THANK YOU.

9 BY MR. HENNES:

10 Q DID YOU ALSO REQUEST TO SEARCH HIS HOME, HIS
11 RESIDENCE?

12 MS. JONES: OBJECTION, RELEVANCE, SCOPE.

13 THE COURT: SUSTAINED.

14 BY MR. HENNES:

15 Q DETECTIVE -- MAY I APPROACH, YOUR HONOR?

16 THE COURT: YES.

17 BY MR. HENNES:

18 Q DETECTIVE CHAPMAN, I'M SHOWING YOU A BLACK
19 AND WHITE REPRODUCTION OF A PHOTOGRAPH THAT I'D LIKE YOU TO
20 DESCRIBE, IF YOU RECOGNIZE IT.

21 A IT LOOKS LIKE THE RECEIVER THAT MR. NGUYEN
22 WAS MAKING.

23 Q DID YOU TAKE THE PHOTOGRAPH OR WERE YOU
24 PRESENT WHEN IT WAS TAKEN?

25 A I THINK, I TOOK THAT PHOTOGRAPH. I WOULDN'T
26 SAY I AM CERTAIN OF THAT.

1 Q DOES THAT PHOTOGRAPH -- LET ME MARK THIS AS
2 DEFENDANT'S A.

3 THE COURT: YES.

4 BY MR. HENNES:

5 Q THE PART DEPICTED IN THAT PHOTOGRAPH, IS THAT
6 WHAT IT APPEARED TO BE WHEN YOU RECOVERED THE PARTS FROM
7 MS. NGUYEN?

8 A IT LOOKS LIKE THE LOWER RECEIVER HE WAS
9 MAKING, YES.

10 Q IS IT YOUR UNDERSTANDING THAT MR. NGUYEN
11 MANAGED TO BEND THIS PIECE OF METAL? IS THAT WHAT HE DID?

12 A THE WAY HE DESCRIBED IT TO ME AND THE WAY IT
13 APPEARS ON THE WEBSITE HE REFERRED ME TO, YOU BUY A FLAT
14 PIECE OF METAL WITH MOST OF THE HOLES ALREADY CUT OUT, AND
15 YOU BEND IT INTO SHAPE. YOU STILL HAVE TO DRILL AND DO SOME
16 OF THE WORK TO IT. IT'S NOT A HUNDRED PERCENT COMPLETED
17 OTHER THAN THE BENDING, SO, AGAIN, THERE IS SOME WORK TO BE
18 DONE TO IT, AND IT'S ORIGINALLY FLAT WHEN YOU BUY IT OVER
19 THE INTERNET.

20 Q I DIRECT YOUR ATTENTION TO THE EXTREME
21 RIGHT-HAND SIDE OF WHAT YOU DESCRIBED AS A RECEIVER. DO YOU
22 SEE THOSE TWO OBJECTS STICKING DOWN BELOW?

23 A YES.

24 Q DO YOU KNOW WHAT THOSE ARE?

25 A THEY LOOK LIKE PENS OR RIVETS.

26 Q IS IT YOUR OPINION THAT THOSE WERE THE RIVETS

1 THAT MR. NGUYEN DESCRIBED AS TRYING TO INSTALL?

2 A YES.

3 Q IS THE JOB COMPLETE WITH RESPECT TO THOSE
4 RIVETS?

5 A IT DOESN'T LOOK COMPLETE UNLESS YOU WANT
6 TO -- WELL, IT LOOKS LIKE IT'S HOLDING THE PART IN THERE,
7 BUT I KNOW I WOULDN'T WANT A RECEIVER WITH THE PIN STICKING
8 OUT OF IT THAT I COULD HURT MYSELF ON.

9 Q WERE THERE ANY OTHER SIGNS OF RIVETING ON
10 THAT RECEIVER OTHER THAN WHAT WE JUST DESCRIBED?

11 A IT APPEARED THAT SEVERAL OF THE RIVETS HAVE
12 ALREADY BEEN PRESSED IN OR HAMMERED IN, HAD BEEN INSTALLED.

13 Q ARE YOU ABLE TO TELL FROM THIS PHOTOGRAPH
14 WHICH RIVETS THOSE ARE?

15 A I THINK WE HAVE OTHER PHOTOGRAPHS THAT WOULD
16 DEPICT THAT BETTER.

17 THE COURT: JUST A SECOND PLEASE. COUNSEL, WHEN
18 YOU TWO ARE TALKING BACK AND FORTH, THIS CASE NEEDS TO BE
19 TAKING THAT DOWN OR IS UNSURE OF WHERE WE ARE, SO THANK YOU.

20 MR. HENNES: MY APOLOGIES, YOUR HONOR. MAY I
21 APPROACH?

22 THE COURT: YES.

23 MR. HENNES: YOUR HONOR, I'M NOT SURE WHETHER THESE
24 HAVE BEEN MARKED AS PEOPLE'S EXHIBITS.

25 THE COURT: HAVE THEY?

26 MS. JONES: NO.

1 THE COURT: THEY HAVE NOI, SO DEFENSE B AND C.

2 MR. HENNES: DEFENSE B AND C, YES.

3 BY MR. HENNES:

4 Q I'M GOING TO SHOW YOU TWO PAGES WHICH APPEAR
5 TO HAVE TWO PRINTS EACH ON THEM, AND I'D ASK IF YOU CAN
6 DESCRIBE WHAT'S DEPICTED IN THOSE, DEFENDANT'S B AND C, JUST
7 GENERALLY?

8 A IT LOOKS LIKE PARTS ACTUALLY FROM BOTH RIFLES
9 THAT I DESCRIBED EARLIER.

10 Q WAS THIS PART OF THE SESSION WITH SCHUCH?

11 A YES. YOU WERE ASKING ABOUT THE RIVETS?

12 Q CORRECT.

13 A DO YOU WANT ME TO ELABORATE MORE ON THAT?

14 Q WHETHER ANY PHOTOGRAPH ON THOSE, YEAH, TWO
15 EXHIBITS, B AND C, DEPICT THE RIVETS THAT HAD BEEN DONE.

16 A WELL, ON B, THE LOWER PHOTO -- ACTUALLY, IN
17 THE UPPER PHOTO, TOO, THIS IS THE RECEIVER THAT MR. NGUYEN
18 HAD BEEN WORKING ON. IT APPEARS THAT OTHER RIVETS HAD BEEN
19 PLACED NOT ONLY THE FRONT TO HOLD THIS PIECE HERE WHERE THE
20 BARREL IS ATTACHED, BUT, I BELIEVE, THERE WAS -- THOSE ARE
21 PROBABLY THE ONES ON THE BACK, I'M ASSUMING, BUT, AGAIN,
22 THERE IS A FEW RIVETS THAT HAVE ALREADY BEEN INSTALLED WITH
23 THESE OTHER PARTS TO HOLD THEM INTO PLACE ON THE RECEIVER.

24 Q DIRECTING YOUR ATTENTION TO THE BOTTOM
25 PHOTOGRAPH ON B, IS THAT A PHOTOGRAPH OF MR. NGUYEN'S PARTS
26 OR IS THAT THE WORKING AREA THAT YOU AND MR. SCHUCH TOOK

1 APART?

2 A THIS IS THE WORKING AK THAT'S THE PICTURE
3 LOOKING DOWN INTO IT. YOU CAN SEE WHAT LOOKS LIKE THE
4 HAMMER AND THE OTHER WORKING PARTS, FOR INSTANCE, THE PIN TO
5 HOLD ON THE STOCK AND SPRINGS, AND, AGAIN, JUST LOOKING
6 STRAIGHT DOWN INTO THE WORKING RIFLE. THAT'S JUST A
7 COMPARISON THERE WITH THE RECEIVER THAT NGUYEN HAD.

8 Q AGAIN, I ASK YOU IF YOU CAN LOOK AT THE
9 WORKING RIFLE IN THE LOWER PORTION OF B AND TESTIFY OR
10 DESCRIBE WHICH OF THOSE PARTS WERE ALSO IN THE COLLECTION OF
11 PARIS THAT YOU RECOVERED FROM MR. NGUYEN. THIS IS INSIDE
12 THE RECEIVER; IS THAT CORRECT?

13 A YES.

14 Q DID YOU UNDERSTAND MY QUESTION?

15 A AGAIN, IF YOU'RE ASKING ME TO NAME EVERY ONE
16 OF THE PARTS, I'M NOT GOING TO BE ABLE TO DO THAT.

17 Q NO, I'M NOT. I'M ASKING YOU IF ALL THE
18 PARTS, WHETHER YOU KNOW THEIR NAMES OR NOT, ALL THOSE
19 INDIVIDUAL PARTS THAT ARE DEPICTED INSIDE THE RECEIVER OF
20 THE FUNCTIONAL AK WERE AMONG THE PARTS THAT YOU RECOVERED
21 FROM MR. NGUYEN, THE SAME PARTS.

22 A YES, THEY APPEARED THE SAME OR EXTREMELY
23 SIMILAR.

24 Q ARE YOU ABLE TO DESCRIBE WHAT THE MOST
25 SIGNIFICANT PARTS ARE OF THE INNER WORKINGS OF THE AK?

26 MS. JONES: OBJECTION, VAGUE.

1 THE COURT: OVERRULED.

2 THE WITNESS: AGAIN, WE SEEM TO KEEP GOING BACK AND
3 FORWARDS. DO YOU WANT ME TO NAME ALL THE PARTS? I CAN NAME A
4 COUPLE, IF YOU WANT.

5 BY MR. HENNES:

6 Q I DON'T WANT YOU TO JUST NAME THE ONES YOU
7 KNOW, AND THE ONES YOU DON'T KNOW ARE -- I MEAN, IF YOU
8 DON'T KNOW THEM ALL, THEN IT'S NOT HIS FAULT, AND THEN
9 DON'T --

10 THE COURT: SIR, WHAT'S YOUR QUESTION? ARE YOU
11 ASKING HIM TO NAME THEM?

12 MR. HENNES: I'M ASKING IF HE CAN NAME THEM.

13 THE COURT: IT CALLS FOR A YES OR NO ANSWER, SIR.

14 THE WITNESS: THE ANSWER IS NO.

15 BY MR. HENNES:

16 Q YOU'VE INDICATED THAT THE RECEIVER -- AND
17 I'LL SHOW YOU FROM HERE -- THAT MR. NGUYEN HAD IS CAPABLE OF
18 ACCEPTING A DETACHABLE MAGAZINE. CAN YOU ELABORATE ON THAT
19 AND DESCRIBE HOW A DETACHABLE MAGAZINE IS ABLE TO BE
20 CONNECTED TO THIS EMPTY RECEIVER?

21 A IT MIGHT BE HELPFUL IF I WENT THROUGH MY
22 PHOTOGRAPHS AND SHOWED YOU BY THE PHOTOGRAPH.

23 Q OKAY.

24 A CAN I LOOK AT MY REPORT TO DO THAT?

25 Q WITH THE COURT'S PERMISSION.

26 THE COURT: YES, YOU MAY.

1 THE WITNESS: WHENEVER YOU'RE READY, I HAVE SOME
2 PICTURES I TOOK WITH SERGIANT SCHUCH OVER AT THE SHERIFFS
3 RANGE.

4 BY MR. HENNES:

5 Q YES.

6 A WHAT THIS PICTURE SHOWS HERE IS THE MECHANISM
7 UNDERNEATH THE WORKING AR47-TYPE RIFLE. THIS SWITCH, FOR
8 LACK OF A BETTER TERM, ASSISTS IN HOLDING IN THE MAGAZINE.
9 YOU CAN SEE IT LOOKS LIKE PART OF THE TRIGGER HOUSING OR
10 TRIGGER GUARD, AND THE SWITCH IS IN THE FRONT. THE MAGAZINE
11 GOES UP FROM THE BOTTOM RIGHT HERE.

12 Q DO YOU HAVE A PHOTOGRAPH -- EXCUSE ME.
13 YOU'RE NOT DONE. ARE YOU DONE?

14 A IN THIS NEXT PICTURE, AGAIN, WHEN WE WERE
15 COMPARING WITH THE SLING BETWEEN THE TWO SETS OF THE WORKING
16 RIFLE ON THE BOTTOM AND THE SET OF PARTS THAT WAS IN
17 NGUYEN'S POSSESSION, YOU SEE THIS TRIGGER GUARD THAT IS
18 PLACED IN THE SAME LOCATION UP UNDERNEATH THE RECEIVER, THIS
19 TRIGGER GUARD WITH THAT SAME TYPE OF SWITCH OR ASSEMBLY SO
20 THAT THE MAGAZINE CAN BE DROPPED.

21 Q THE TRIGGER HOUSING WAS NOT ATTACHED TO THE
22 RECEIVER BELONGING TO MR. NGUYEN; IS THAT CORRECT?

23 A NO, IT WAS NOT.

24 Q APPROXIMATELY HOW MANY RIVETS IN YOUR
25 ESTIMATION WOULD BE REQUIRED IN ORDER TO MAKE THAT RECEIVER
26 FUNCTIONAL SO THAT IT COULD BE ASSEMBLED WITH THE RIFLE TO

1 OPERATE?

2 A I'M NOT SURE.

3 Q DO YOU HAVE AN ESTIMATE?

4 A WELL, IF I LOOK AT THE RIVETS ON THE WORKING
5 RIFLE AND I LOOK AT THE HOLES ON, AGAIN, AT LEAST, ONE OF
6 WHICH IS NOT YET DRILLED ON THE RECEIVER THAT MR. NGUYEN WAS
7 MAKING, AGAIN, IT'S JUST A GUESS; AND IT SHOULD ALSO BE
8 NOTED THAT ON THE RIVET KIT THAT WAS FOUND IN NGUYEN'S BOX
9 OF PARTS, IT SAID THAT IT WAS -- IT INDICATED THAT IT WAS
10 ROMANTAN OR ROMANIAN-TYPE RIFLE. THE AK47, THE WORKING
11 RIFLE WE TOOK APART OVER AT THE SHERIFFS ACADEMY WITH
12 SERGEANT SCHUCH, SAYS THAT IT HAD THE NAME WHICH LOOKED LIKE
13 A NORINCO AND ALSO SAID MADE IN CHINA, SO YOU HAVE TWO
14 DIFFERENT COMPANIES OR TWO DIFFERENT COUNTRIES MAKING THIS
15 TYPE OF A RIFLE.

16 I WAS TOLD THAT THERE IS MANY VARIATIONS TO
17 THE AK47 RIFLE, DIFFERENT COUNTRIES MAKE THEM SLIGHTLY
18 DIFFERENTLY, SO IT'S POSSIBLE THAT ONE COUNTRY MAY HAVE
19 EIGHT RIVETS AND THE OTHER COUNTRY MAY HAVE SEVEN. I'M JUST
20 GUESSING. I'M NOT AN EXPERT.

21 Q YOU DON'T KNOW HOW MANY RIVETS WOULD BE LEFT
22 TO DO ON THE RECEIVER THAT MR. NGUYEN HAD; IS THAT CORRECT?

23 A I DON'T KNOW FOR SURE. I SAW A MARKING. IT
24 LOOKS LIKE THE RECEIVER IS MARKED AS TO WHERE TO DRILL IT.
25 THERE IS, AT LEAST, ONE MARKING ON THERE THAT LOOKS LIKE IT
26 HADN'T BEEN DRILLED OUT YET OR THERE LOOKS LIKE THERE SHOULD

1 BE A RIVET WHEN YOU COMPARE IT TO THE OTHER RIFLE.

2 Q YOU SAID THERE WAS A RIVET SET THAT WAS
3 RECOVERED AMONG THE PARIS THAT YOU GOT FROM MR. NGUYEN; IS
4 THAT CORRECT?

5 A YES.

6 Q DID THAT CONTAIN ACTUAL RIVETS INSIDE IT?

7 A YES, ASPHALT PIECES OF METAL THAT LOOKED LIKE
8 RIVETS.

9 Q DO YOU RECALL HOW MANY DIFFERENT RIVETS WERE
10 IN THE PACKAGE AND NOT USED?

11 A I HAVE A PICTURE OF IT HERE, BUT IT'S TOO FAR
12 AWAY TO TELL YOU HOW MANY RIVETS ARE IN IT OR PINS.

13 Q DID YOU EXAMINE THE PACKAGE AT SOME POINT
14 AFTER YOU RECOVERED IT?

15 A YES.

16 Q DO YOU RECALL GENERALLY OR APPROXIMATELY HOW
17 MANY RIVETS WERE IN THERE?

18 A I DON'T KNOW FOR SURE. I DON'T WANT TO GIVE
19 YOU A NUMBER BECAUSE I DON'T KNOW.

20 Q COULD YOU SAY - AND IF YOU CAN'T, THAT'S
21 FINE -- BUT WOULD YOU BE ABLE TO ESTIMATE WHETHER THERE WERE
22 FEWER OR MORE THAN 12 RIVETS?

23 A AGAIN, I HAVE A PICTURE OF IT HERE. I'M NOT
24 SURE IF I EVER ACTUALLY TOOK THEM OUT AND COUNTED THEM. I
25 DON'T THINK I DID, SO TO TELL YOU THEY WERE 6 OR 12, I DON'T
26 KNOW.

1 Q IS IT SAFE TO SAY THERE WERE SEVERAL RIVETS
2 IN THE PACKAGE, AT LEAST?

3 A YES.

4 Q YOU INDICATED THAT ON THE RECEIVER THAT YOU
5 RECOVERED FROM MR. NGUYEN, WE NOTED THAT THERE WERE TWO
6 RIVETS THAT WERE STICKING OUT, AND THEY WEREN'T DONE. YOU
7 ALSO MENTIONED SOME OTHER COMPLETED RIVETS DONE ON THE OTHER
8 SIDE OF THE RECEIVER ON THE OTHER END OF IT. DID THAT
9 APPEAR TO HAVE BEEN HOMEWORK OR DID IT APPEAR TO BE PART OF
10 THE RECEIVER AS IT WAS RECEIVED OR CAN YOU TELL?

11 A I WOULD BE OF THE OPINION THAT, AGAIN, SINCE
12 THE RECEIVER CAME AS A FLAT PIECE OF METAL AND WAS BENT INTO
13 POSITION, THOSE RIVETS APPEARED TO BE HOLDING A PART INSIDE
14 OF THERE, AND IT DOESN'T LOOK LIKE IT WAS MANUFACTURED
15 EITHER, SO I'M OF THE OPINION THAT MR. NGUYEN DID THAT.

16 Q DID YOU FIND A MAGAZINE AMONG THE PARTS YOU
17 RECOVERED FROM MR. NGUYEN?

18 A NO, I DID NOT.

19 Q DID YOU TESTIFY TO WHETHER OR NOT YOU FOUND A
20 TRIGGER OR DO YOU KNOW SPECIFICALLY?

21 A I REMEMBER THERE BEING A TRIGGER MECHANISM.

22 Q DO YOU KNOW OF ANY PHOTOGRAPH THAT DEPICTS
23 THE TRIGGER MECHANISM, AND PLEASE DESCRIBE WHAT THAT IS.

24 A CAN I REFER TO MY REPORT?

25 Q WITH THE COURT'S PERMISSION.

26 THE COURT: YOU MAY, SIR.

1 THE WITNESS: IF I REMEMBER RIGHT, THE QUESTION WAS
2 WHETHER OR NOT THERE WAS A TRIGGER MECHANISM IN THE PARTS?
3 BY MR. HENNES:

4 Q YES.

5 A THE ANSWER IS YES. I HAVE SEVERAL PICTURES
6 SHOWING THAT.

7 Q CAN YOU JUST POINT OUT ONE THAT'S BEEN
8 IDENTIFIED?

9 A ON THE ORIGINAL REPORT I HAVE A PHOTOGRAPH OF
10 THE PARTS OR OF MANY OF THE PARTS WHICH SHOWS THE TRIGGER
11 MECHANISM IN IT.

12 Q LET'S MOVE ON TO ANOTHER PART. WAS THERE A
13 HAMMER THAT YOU RECOVERED AMONG THE PARTS THAT YOU OBTAINED
14 FROM MR. NGUYEN?

15 A YES, I RECOVERED WHAT APPEARED TO BE A
16 HAMMER.

17 Q DO YOU KNOW WHETHER THERE IS A PHOTOGRAPH
18 THAT DEPICTS THE HAMMER?

19 A YES, THE SAME PHOTOGRAPHS I WAS JUST LOOKING
20 AT.

21 Q COULD YOU PLEASE POINT TO THE HAMMER? I
22 CAN SEE FROM HERE ON THE PHOTO.

23 A THIS PICTURE IS FROM THE REPORT, THE
24 SUPPLEMENTAL REPORT WHEN I MET WITH SERGEANT SCHUCH.

25 MR. HENNES: MAY I APPROACH, YOUR HONOR?

26 THE COURT: YES.

1 THE WITNESS: THAT APPEARS TO BE THE HAMMER RIGHT
2 THERE. THIS IS IN THE ORIGINAL REPORT WHICH --
3 BY MR. HENNES:

4 Q YOU'RE REFERRING TO DEFENDANT'S B?

5 A OH-YEH.

6 Q THAT'S THE HAMMER THAT YOU'VE INDICATED.
7 WOULD YOU PLEASE, PERHAPS, PUT A CIRCLE -- CIRCLE THE PART
8 YOU REFER TO AS THE HAMMER AND PUT AN H IN IT OR AROUND IT.

9 A IT APPEARS THIS WOULD BE IT. IT LOOKS
10 SIMILAR TO WHAT WAS IN THE OTHER ONE THERE.

11 Q SO YOU'VE MADE A CIRCLE ON EXHIBIT -- LOWER
12 PORTION OF EXHIBIT B AND PUT AN H REPRESENTING THE HAMMER.
13 DID YOU TALK TO DAVID TEAGUE, I BELIEVE, YOU TESTIFIED YOU
14 HAD, WHO WAS WITH THE ORANGE COUNTY SHERIFFS DEPARTMENT?

15 A YES.

16 Q DID YOU REQUEST MR. TEAGUE TO EXAMINE THE
17 PARTS TO THE AK47 YOU RECOVERED?

18 A I GUESS, THAT'S FAIR TO SAY.

19 Q WAS MR. TEAGUE FAMILIAR WITH THE PROCESS OF
20 BUYING AK47 RECEIVER FLATS AND PARTS KITS?

21 A HE SAID THAT HE WAS.

22 Q DID MR. TEAGUE INDICATE TO YOU WHETHER THE
23 RECEIVER WAS COMPLETE AS FAR AS HAVING A FUNCTIONAL CAPACITY
24 IN THE CONDITION THAT YOU SHOWED HIM?

25 A HE WAS OF THE OPINION IT WAS NOT TOTALLY
26 COMPLETE.

1 Q WHAT ELSE NEEDED TO BE DONE IN MR. TEAGUE'S
2 OPINION?

3 A IF I REMEMBER RIGHT, HE ALSO POINTED OUT THAT
4 HE NEEDED TO DRILL, AT LEAST, ONE MORE HOLE, A RIVET HOLE OR
5 PIN HOLE.

6 Q MR. TEAGUE IS THE FIREARMS INSTRUCTOR FOR THE
7 SHERIFFS DEPARTMENT OF ORANGE COUNTY; IS THAT CORRECT?

8 A YES.

9 Q DID MR. TEAGUE LOOK OVER THE OTHER PARTS THAT
10 YOU HAD RECOVERED FROM MR. NGUYEN?

11 A YES, BRIEFLY.

12 Q DID HE INDICATE WHETHER THERE WAS A HAMMER OR
13 A SEAR AMONG THE PARTS THAT HE EXAMINED?

14 A WHEN HE WENT THROUGH THE PARTS, HE THOUGHT
15 THAT THEY WEREN'T THERE.

16 Q DID YOU ALSO SPEAK TO FEDERAL AGENT --
17 ALCOHOL, TOBACCO, FIREARM AGENT SCOTT BRAHIN (PHONETIC)
18 REGARDING THIS CASE?

19 A YES.

20 Q DID YOU MEET WITH MR. BRAHIN AT SOME POINT?

21 A YES.

22 Q DID YOU SHOW MR. BRAHIN THE .50 CALIBER RIFLE
23 AND THE AK PARTS?

24 A I KNOW I SHOWED HIM THE AK PARTS AND
25 DESCRIBED THAT TO HIM. I BELIEVE, I SHOWED HIM THE .50 AS
26 WELL, BUT I WOULDN'T TESTIFY TO THAT.

1 Q WOULD LOOKING AT YOUR REPORT REFRESH YOUR
2 RECOLLECTION?

3 A POSSIBLY.

4 MR. HENNES: MAY HE REFER TO HIS REPORT, YOUR
5 HONOR?

6 THE COURT: YES, HE MAY. WHAT PAGE?

7 MR. HENNES: THAT WOULD BE PAGE SIX, RIGHT IN THE
8 MIDDLE OF THE PAGE.

9 BY MR. HENNES:

10 Q DOES THAT REFRESH YOUR RECOLLECTION,
11 DETECTIVE?

12 A I THINK SO. I GUESS, I DID SHOW HIM THE .50.
13 HE WASN'T VERY INTERESTED IN THIS CASE AND EXPRESSED THAT
14 LATER.

15 Q YOU SHOWED HIM BOTH THE .50 AND THE AK
16 PARTS?

17 A YES.

18 Q WHAT WAS YOUR PURPOSE IN CONTACTING BRAHIN?

19 A TO SEE IF THERE WERE ANY FEDERAL CHARGES THAT
20 THEY WOULD BE WILLING TO PURSUE.

21 Q WOULD THAT BE AGAINST MR. NGUYEN OR AGAINST
22 THE OUT-OF-STATE DISTRIBUTOR AK47 BUILDER?

23 MS. JONES: OBJECTION, RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. HENNES:

26 Q DID MR. BRAHIN INDICATE TO YOU WHETHER HE

1 FELT THERE WERE FEDERAL CRIMERS INVOLVED IN THIS MATTER?

2 MS. JONES: OBJECTION, IRRELEVANCE.

3 THE COURT: SUSTAINED.

4 BY MR. HENNES:

5 Q YOU INDICATED THAT MR. BRASHIN DID NOT SEEM
6 INTERESTED. WHAT DO YOU MEAN BY THAT?

7 MS. JONES: OBJECTION, IRRELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. HENNES:

10 Q GETTING BACK TO THE LUC RIFLE, YOU INDICATED
11 YOU DRY FIRED IT; IS THAT CORRECT?

12 A YES.

13 Q DID YOU EVER FIRE A LIVE ROUND?

14 A NO, I DIDN'T.

15 Q BASED UPON YOUR EXPERIENCE AND KNOWLEDGE, DID
16 THAT RIFLE EVER APPEAR TO HAVE BEEN FIRED BEFORE YOU DRY
17 FIRED IT?

18 MS. JONES: OBJECTION, IRRELEVANCE.

19 THE COURT: OVERRULED.

20 THE WITNESS: I COULDN'T TELL THAT THE WEAPON HAD
21 BEEN FIRED. IT APPEARED CLEAN. IT SEEMED TO BE IN GOOD
22 WORKING ORDER, BUT I DON'T REMEMBER SEEING ANY EVIDENCE THAT
23 IT HAD RECENTLY BEEN FIRED.

24 BY MR. HENNES:

25 Q OR FIRED AT ALL; IS THAT RIGHT?

26 A YEAH, I COULDN'T COME TO THAT CONCLUSION.

1 Q IN YOUR OPINION, WAS THAT RIFLE ILLEGAL TO BE
2 POSSESSED BY A NONFELON IN THE STATE OF CALIFORNIA?

3 MS. JONES: OBJECTION, IRRELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: I'M OF THE OPINION THAT IF A NONFELON
6 WAS IN POSSESSION OF THAT, THAT WOULD BE LEGAL.

7 BY MR. HENNES:

8 Q REGARDING THE BOX OF PARTS TO THE AK47, IN
9 YOUR OPINION, IF A NONFELON HAD POSSESSED THOSE SAME PARTS,
10 WOULD THAT BE ILLEGAL TO POSSESS?

11 A JUST THE BOX OF PARTS AND NOT THE RECEIVER?

12 Q EVERYTHING YOU RECOVERED.

13 A I'M OF THE OPINION THAT IF A NONFELON WAS IN
14 POSSESSION OF THAT AND MANUFACTURING THE RECEIVER HIMSELF,
15 THEN THAT'S STILL MANUFACTURING OF AN ASSAULT WEAPON.

16 Q DID MR. NGUYEN ACTUALLY USE THE TERM
17 MANUFACTURE TO YOU? DID HE SAY I'M MANUFACTURING AN AK47?

18 A I DON'T REMEMBER IF HE USED THAT SPECIFIC
19 TERM, BUT HE USED TERMS SIMILAR TO THAT TO SAY HE WAS
20 PUTTING IT TOGETHER OR ALTERING IT OR BENDING IT OR PUTTING
21 IT TOGETHER HIMSELF, TERMS LIKE THAT.

22 Q SO WHEN YOU TESTIFIED ON DIRECT EXAMINATION
23 THAT MR. NGUYEN ADMITTED TO MANUFACTURING THE AK47, THAT WAS
24 JUST YOUR INTERPRETATION OF WHAT HE SAID? HE DIDN'T
25 ACTUALLY USE THAT SPECIFIC TERM?

26 A I THINK THAT'S FAIR TO SAY.

1 EXCUSE ME? Q

2 A I THINK THAT'S FAIR TO SAY.

3 Q CAN YOU DESCRIBE THE SPECIFIC POSITION OF THE

4 RECEIVER THAT YOU BELIEVE MAKES POSSESSION OF THAT RECEIVER

5 IN CONNECTION WITH THE OTHER BANKS ILLEGAL FOR A PERSON IN

6 CALIFORNIA TO POSSESS?

7 THE COURT: THAT IS AN OBVIOUS, NOT HIS. WHEN YOU

8 WERE ASKING HIS OPINION, THAT'S CLEARLY, BUT NOW YOU'RE

9 JUST ASKING HIM SPECIFICALLY TO DEFINE --

10 MR. HENNESS: THAT'S ENOUGH.

11 BY MR. HENNESS:

12 Q IS IT POSSIBLE, IN YOUR OPINION, TO CONSTRUCT

13 A RIFLE FROM THE AR PARTS THAT MR. NAYVEN HAD AND CONSTRUCT

14 IT SO THAT IT IS A LEGAL ITEM FOR A NONLAWYER TO POSSESS?

15 MS. CONNOR: OBJECTION, CALLS FOR A LEGAL

16 CONCLUSION.

17 THE COURT: IT'S ALSO IRRELEVANT. I GUESS, YOU

18 COULD SAY, YEAH, IF HE PUT TOGETHER IN THE MARKET, IF HE

19 SANDED OFF -- I MEAN, THERE'S SO MANY THINGS THAT ARE

20 POSSIBLE THAT THIS ISN'T HELPFUL FOR THE COURT IN

21 DETERMINING PROBABLE CAUSE.

22 BY MR. HENNESS:

23 Q HAVE YOU EVER HEARD OF A RIFLEMAN BELONGING IN

24 CONNECTION WITH AN ARMY?

25 A I'VE HEARD OF THAT AS FAR AS MY WIFE IS

26 CONCERNED.

1 Q WHAT'S YOUR KNOWLEDGE OF THAT?

2 THE COURT: IS THERE AN OFFER OF PROOF AS TO THAT
3 ISSUE?

4 MR. HENNES: THAT'S THE ITEM THAT WOULD MAKE
5 POSSESSION OF AN AK47 LEGAL, THAT YOU HAVE TO HAVE A
6 MECHANISM TO PREVENT THE HASTY REMOVAL, ATTACHMENT, OF THE
7 MAGAZINE, AND THAT'S --

8 THE COURT: WAS ONE OF THOSE FOUND HERE?

9 MR. HENNES: NO.

10 THE COURT: OKAY. THEN I'LL SUSTAIN MY OWN
11 OBJECTION.

12 MR. HENNES: VERY WELL.

13 BY MR. HENNES:

14 Q HAVE YOU EVER ATTEMPTED TO ASSEMBLE AN AK47
15 OR SIMILAR RIFLE, AN AR15, FOR EXAMPLE?

16 A YES, AS I TESTIFIED, I WENT TO ARMS ARMOR
17 SCHOOL. WE BROKE DOWN, ASSEMBLED THE RIFLE MANY TIMES.

18 Q IT WAS COMPLETELY WHEN YOU GOT IT, IS THAT
19 CORRECT, WHEN YOU DID IT ON THOSE OCCASIONS?

20 A YOU MEAN BEFORE I STARTED, WHEN THEY GAVE IT
21 TO ME INITIALLY OR --

22 Q YES.

23 A YES, I THINK, THAT'S FAIR TO SAY.

24 Q NO MACHINE WORK WAS REQUIRED FOR YOU TO
25 REASSEMBLE IT; IS THAT CORRECT?

26 A NO.

1 Q NO RIVETING WOULD BE NECESSARY TO REASSEMBLE
2 YOUR ARMS?

3 A NO.

4 Q ALL THE PARTS WERE, OBVIOUSLY, THERE FOR YOUR
5 REASSEMBLY, IS THAT CORRECT, WHEN YOU BROKE IT DOWN AND PUT
6 IT BACK TOGETHER?

7 A YES.

8 Q DO YOU HAVE ANY ESTIMATE OF THE NUMBER OF MAN
9 HOURS IT WOULD TAKE FOR A NONEXPERT IN GUN ASSEMBLY TO PUT
10 TOGETHER THE PARTS THAT MR. NGUYEN HAD?

11 MS. JONES: OBJECTION, RELEVANCE.

12 THE COURT: I CAN SEE SOME RELEVANCE, SO I'LL ALLOW
13 THE ANSWER.

14 THE WITNESS: THAT'S A VERY GENERAL QUESTION. WE
15 ALL HAVE DIFFERENT ABILITIES OF MECHANICAL SAVVY OR
16 ABILITIES. MY WIFE MAY NOT EVER BE ABLE TO PUT IT TOGETHER.
17 BY MR. HENNES:

18 Q RIGHT. LET'S SAY SOMEONE WITH YOUR KNOWLEDGE
19 AND EXPERIENCE IN FIREARMS.

20 A SO IF I UNDERSTAND THE QUESTION CORRECTLY,
21 HOW LONG WOULD IT TAKE TO PUT IT TOGETHER IF IT WAS IN A BIG
22 BOX OF PARTS?

23 Q IF YOU HAD MR. NGUYEN'S PARTS IN FRONT OF YOU
24 AND YOU WERE TOLD TO PUT TOGETHER A RIFLE AND YOU HAD ACCESS
25 TO WHATEVER MACHINERY OR TOOLS YOU NEEDED, HOW LONG DO YOU
26 THINK IT WOULD TAKE, IF YOU CAN ESTIMATE?

1 A IN HIS CASE IT LOOKED LIKE THE -- I BELIEVE,
2 THE BARREL HAS TO BE PRESSED IN. YOU CAN'T DO THAT WITH
3 JUST YOUR HANDS, I DON'T THINK, UNLESS YOU'RE REALLY STRONG,
4 SO, AGAIN, YOU'D NEED SOME TOOLS. I'M JUST SHOOTING IN THE
5 DARK AND SAYING, I DON'T KNOW, MAYBE AN HOUR OR TWO IF YOU
6 KNEW WHAT YOU WERE DOING.

7 Q THAT WOULD REQUIRE KNOWLEDGE OF HOW THE
8 MACHINE, THE BARREL, AND SO ALL OF THE WELDING AND RIVETING?

9 A AGAIN, LIKE I'VE TESTIFIED, I'M NOT AN EXPERT
10 WITH AK47 SPECIFICALLY. I'M JUST GUESSING THAT IT KIND OF
11 LOOKS LIKE YOU MAY HAVE TO PRESS THE BARREL IN, SO, I GUESS,
12 THE SHORT ANSWER IS I DON'T KNOW.

13 Q WHEN YOU SAY PRESS, DOES THAT MEAN A MACHINE
14 THAT HAS SUCH POWER THAT IT HAS THE FORCE TO PHYSICALLY MOVE
15 THE BARREL INSIDE OF THE RECEIVER, I GUESS? IS THAT RIGHT?

16 A I'M OF THE OPINION THAT WOULD BE THE CASE.

17 Q REGARDING THE AMMUNITION THAT YOU RECOVERED,
18 WAS ANY OF THE AMMUNITION YOU RECOVERED, EITHER WHAT YOU
19 DESCRIBED AS .50 CALIBER AND THE BROWNING AMMUNITION, WAS ANY
20 OF IT ILLEGAL FOR A NONFELLOW TO POSSESS IN CALIFORNIA?

21 MS. JONES: OBJECTION, RELEVANCE.

22 THE COURT: SUSTAINED.

23 MR. HENNES: I HAVE NOTHING FURTHER. THANK YOU.

24 THE COURT: REDIRECT?

25 MS. JONES: YES, THANK YOU.

26 ///

REDIRECT EXAMINATION

1
2
3 BY MS. JONES:

4 Q WHEN YOU SPOKE TO MR. NGUYEN, DID HE VERIFY
5 TO YOU THAT HE PURCHASED THE ITEMS AS A KIT INCLUDING
6 EVERYTHING EXCEPT THE RECEIVER?

7 MR. HENNES: OBJECTION, YOUR HONOR, BEYOND THE
8 SCOPE OF CROSS-EXAMINATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MS. JONES:

12 Q DID HE TELL YOU THE ONLY THING HE NEEDED AND
13 THAT HE THEREAFTER PURCHASED IN ORDER TO COMPLETE THE GUN
14 WAS THE RECEIVER?

15 A YES.

16 Q DID HE ALSO TELL YOU THAT HE, IN FACT,
17 COMPLETED THE PROCESS OF BENDING THE FLAT MILLED MATERIALS
18 TO MAKE THE RIFLE?

19 A YES, THAT'S WHAT TO SAY.

20 Q WHAT DID HE TELL YOU WAS THE ONLY THING LEFT
21 HE HAD TO DO?

22 MR. HENNES: OBJECTION, LEADING.

23 THE COURT: OVERRULED.

24 THE WITNESS: I'M NOT SURE.

25 BY MS. JONES:

26 Q DID HE INDICATE WHETHER OR NOT HE HAD PUT THE

1 RIFLE TOGETHER YET?

2 A NO.

3 Q NO, HE HADN'T PUT IT TOGETHER OR NO, HE
4 DIDN'T SAY?

5 A HE IMPLIED HE HAD NOT PUT IT ALL TOGETHER
6 YET.

7 Q DID HE MENTION THAT HE HAD ANYTHING ELSE LEFT
8 TO DO BESIDES PUT IT TOGETHER?

9 A I DON'T RECALL.

10 Q YOU INDICATED THAT MR. TEAGUE, DAVID TEAGUE,
11 THOUGHT THAT THERE WAS STILL, AT LEAST, ONE MORE DRILL HOLE
12 TO MAKE: IS THAT CORRECT?

13 A YES.

14 Q DID HE TELL YOU THAT IT SEEMED THAT THE
15 RECEIVER HAD BEEN BENT AND THAT SOME OF THE RIVETS AND PINS
16 HAD BEEN DRILLED?

17 A YOU DON'T DRILL THE RIVETS THEMSELVES. YOU
18 DRILL THE RECEIVER, AND THE RIVETS HOLD PARTS INTO THE
19 RECEIVER. HE INDICATED THAT SOME OF THE HOLES HAD BEEN
20 DRILLED AND THAT PARTS HAD BEEN PLACED INTO IT AND RIVETS
21 HAD BEEN INSTALLED.

22 Q YOU DO HAVE TRAINING AND EXPERIENCE IN
23 ASSEMBLING AND DISASSEMBLING ASSAULT WEAPONS, AND BY THAT I
24 MEAN SEMI-AUTOMATIC CENTER FIRESS: CORRECT?

25 A YES.

26 MS. JONES: NOTHING FURTHER.

1 THE COURT: RECORDED?

2
3 RECROSS-EXAMINATION

4
5 BY MR. HENNES:

6 Q WERE ANY OF YOUR INTERVIEWS WITH MR. NGUYEN
7 RECORDED BY VIDEO OR AUDIO?

8 A YES.

9 Q WHICH ONES OR WHICH ONE?

10 A I RECORDED BOTH. HOWEVER, THE INITIAL
11 CONTACT, FOR WHATEVER REASON, WAS LOST. IT SEEMED IT
12 WOULDN'T DOWNLOAD FOR WHATEVER REASON, SO WHEN I CONTACTED
13 HIM AGAIN THE NEXT DAY WHEN HE WAS ARRESTED, I RECORDED THAT
14 ONE.

15 Q BY WHAT MEANS DID YOU RECORD THE SECOND
16 INTERVIEW WHEN HE WAS ARRESTED?

17 A WITH AN AUDIO RECORDER.

18 Q VIDEO AND AUDIO?

19 A JUST AUDIO.

20 Q THAT IS IN EVIDENCE SOMEWHERE?

21 MS. JONES: OBJECTION, IRRELEVANCE.

22 THE COURT: SUSTAINED.

23 BY MR. HENNES:

24 Q DO YOU HAVE ANY IDEA WHY THE INITIAL
25 INTERVIEW WAS MALFUNCTIONING?

26 A I HAVE NO IDEA.

1 MS. JONES: OBJECTION, IRRELEVANCE.

2 MR. HENNES: NOTHING FURTHER.

3 THE COURT: YOUR OBJECTION IS OVERRULED. THE
4 ANSWER, "I DO NOT KNOW, I HAVE NO IDEA," REMAINS. NOTHING
5 FURTHER?

6 MS. JONES: NOTHING FURTHER.

7 THE COURT: THANK YOU. MAY THIS WITNESS BE
8 EXCUSED?

9 MR. HENNES: YES.

10 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

11 THE WITNESS: THANK YOU.

12 THE COURT: ANY ADDITIONAL WITNESSES ON BEHALF OF
13 THE PEOPLE?

14 MS. JONES: NO, YOUR HONOR. PEOPLE WOULD ASK THE
15 EXHIBITS BE ADMITTED INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. HENNES: NO.

18 THE COURT: THE DEFENSE MARKED EXHIBITS, ANY
19 OBJECTION TO THE COURT RECEIVING THOSE EXHIBITS.

20 MS. JONES: NO, YOUR HONOR.

21 THE COURT: THE COURT WILL RECEIVE ALL OF THOSE
22 EXHIBITS. ANY ADDITIONAL WITNESSES ON BEHALF OF THE PEOPLE?

23 MS. JONES: NO, THANK YOU, YOUR HONOR.

24 THE COURT: ANY AFFIRMATIVE DEFENSE ON BEHALF OF
25 THE DEFENDANT?

26 MR. HENNES: NO EVIDENCE, YOUR HONOR.

1 THE COURT: IS THERE A MOTION?

2 MR. JONES: TO HOLD THE DEFENDANT TO ANSWER ON ALL
3 COUNTS.

4 THE COURT: DISPENSE.

5 MR. HENNES: I WOULD RESTRICT MY COMMENTS ONLY TO
6 COUNTS 1 AND 2. REGARDING COUNT 1 WHICH IS VIOLATION OF --

7 THE COURT: 12000(A).

8 MR. HENNES: CORRECT, WHICH PROHIBITS MANUFACTURE,
9 DISTRIBUTION, TRANSPORT, IMPORTATION, INTO THE STATE OF
10 CALIFORNIA OF AN AK47 ASSAULT WEAPON, ADDITIONALLY, ONE CAN
11 NOT KEEP SUCH A WEAPON -OR SALE OR OFFER, EXPOSE IT FOR SALE
12 OR GIVE OR LEND IT. WE DO NOT HAVE A COMPLETED AK47 BY ANY
13 STRETCH OF THE IMAGINATION BASED UPON LAY TESTIMONY, REALLY,
14 THAT WE HEARD TODAY; AND THE STATUTE SEEMS INTENDED, JUST
15 FROM THE READING OF IT, TO BE DIRECTED AT, GENERALLY, THE
16 DISTRIBUTION OF SUCH A WEAPON OR AN INTENT TO DISTRIBUTE
17 SUCH A WEAPON TO OTHERS.

18 THE MANUFACTURE OF AN ASSAULT WEAPON WHEN IT
19 IS COMBINED WITH THE OTHER TERMS AS I MENTIONED, DISTRIBUTE,
20 TRANSPORT, ET CETERA, CLEARLY IS DIRECTED AT SOMEONE WHO IS
21 MAKING THESE PARTS, MACHINING THESE PARTS, NOT FOR THE
22 ULTIMATE CONSUMER WHO MAY PUT IT TOGETHER. IN THIS CASE THE
23 ASSEMBLY WAS HARDLY EVEN STARTED. HE SAID A RECEIVER. ALL
24 THAT WAS WAS A BUNCH OF METAL THAT DIDN'T HAVE ANY OF
25 THE MECHANISMS INSIDE OF IT. THAT DOES NOT CONSTITUTE
26 MANUFACTURING.

1 THE STATUTE DOES NOT DISCUSS OR PROHIBIT AN
2 ATTEMPT TO MANUFACTURE. IT SAYS THE MANUFACTURE, SO WHAT
3 CONSTITUTES MANUFACTURE, IF, INDEED, THIS IS THE PEOPLE'S
4 THEORY? A COUPLE OF CROOKED B. VETS DOES NOT. A RECEIVER
5 DOES NOT CONSTITUTE MANUFACTURING. THERE IS NO EVIDENCE,
6 ANY COMPETENT EVIDENCE, THAT THIS COLLECTION OF PARTS WAS IN
7 ANY WAY, SHAPE OR FORM ABLE TO BE ASSEMBLED QUICKLY FOR
8 IMMEDIATE USE AS A WEAPON, AND CONSEQUENTLY --

9 THE COURT: IS THERE ANYTHING IN THE STATUTE THAT
10 REQUIRES THAT THE MANUFACTURING PROCESS HAS TO BE DONE
11 QUICKLY?

12 MR. HENNER: I BELIEVE THE U.S. SUPREME COURT CASE
13 OF U.S. VERSUS THOMSON SUBMACHINE GUN COMPANY WHICH
14 CITATION IS 304 U.S. 398 SPEAKS TO THAT ISSUE, AT LEAST, BY
15 ANALOGY IN THAT CASE, THE THOMPSON CASE, THERE IS AN ISSUE
16 AS TO WHETHER A COLLECTION OF PARTS, A GUN KIT, THAT COULD
17 BE ASSEMBLED EITHER TWO WAYS, ONE WITH A SHORT BARREL WHICH
18 WOULD MAKE IT, ESSENTIALLY, A MACHINE GUN OR WITH A LONG BARREL
19 WHICH WOULD MAKE IT LEGAL, AND THE KIT WAS CAPABLE OF BOTH;
20 AND THE COURT HELD THAT THAT KIT ITSELF DID NOT CONSTITUTE A
21 WEAPON, AND THE DEFENDANT IN THAT CASE DID NOT MAKE OR
22 MANUFACTURE AN ASSAULT WEAPON OR A RIFLE THAT WAS REGULATED
23 BY FEDERAL GOVERNMENT; AND MY ARGUMENT IS THAT IN THE CASE
24 WE HAVE HERE, A COLLECTION OF PARTS, THERE IS NO --

25 THE COURT: ISN'T THIS MORE THAN JUST A COLLECTION
26 OF PARTS? HASN'T THE PROCESS STARTED? I UNDERSTAND YOUR

1 POINT WOULD BE IF A GUY JUST HAS A BOX WITH THE PARTS IN IT
2 AND IT'S UP ON A SHELF AND THOSE PARTS -- AND THE SUPREME
3 COURT WAS CONFRONTED WITH, WELL, THE PARTS COULD BE USED
4 LAWFULLY OR COULD BE USED ILLEGALLY, WE DON'T KNOW; SO,
5 HENCE, THIS KIT DOESN'T FALL WITHIN. AREN'T WE IN A
6 DIFFERENT POINT IN THESE FACTS?

7 MR. HENNES: NO, BECAUSE THESE KITS ARE -- THEY'RE
8 LAWFULLY SHIPPED TO CALIFORNIA. I MEAN, THE FEDERAL
9 GOVERNMENT WASN'T CONCERNED ABOUT IT, AND THEY WOULDN'T BE
10 SHIPPING THESE THINGS TO CALIFORNIA IF IT WERE ILLEGAL TO
11 POSSESS. IF THEY WERE ASSEMBLED, AND THERE IS NOTHING THAT
12 MR. NGUYEN DID TO ALTER THE CHARACTER OF THE PARTS THAT HE
13 GOT THAT WOULD NECESSARILY RESULT IN AN ILLEGAL WEAPON. YOU
14 HAVE TO HAVE A RECEIVER THAT IS CAPABLE OF ACCEPTING A
15 DETACHED MAGAZINE. WHAT WE HAVE HERE IS A PIECE OF BRASS
16 METAL.

17 THE COURT: WHAT ABOUT THE DEFENDANT'S OWN WORDS
18 ABOUT, WELL, LET ME SHOW YOU WHERE ON THE INTERNET I CAN GO
19 AND FIND THIS STUFF? DOESN'T THAT SHOW HE HAS THE KNOWLEDGE
20 AND, HENCE, INFERENTIALLY, THE INTENT TO DO THIS?

21 MR. HENNES: TO BUY THOSE PARTS, ABSOLUTELY. DOES
22 THAT MAKE IT ILLEGAL? NO. POSSESSION OF THESE KITS IS NOT
23 ILLEGAL.

24 THE COURT: YOU'RE NOT FOLLOWING ME, COUNSEL. WHAT
25 I'M SAYING IS HE'S NOT CHARGED WITH POSSESSING A KIT. HE'S
26 CHARGED WITH MANUFACTURE, SO MY QUESTION IS -- EXPLAIN TO ME

1 WHY, IN LIGHT OF ALL THE EVIDENCE THAT I HAVE WHAT HAS
2 OCCURRED WITH THESE PARTS ALREADY THAT ARE IN EVIDENCE, HOW
3 THAT IS NOT THE BEGINNING OF THE MANUFACTURING PROCESS.

4 MR. KENNEDY: I WOULD SAY IF IT HAD BEEN COMPLETED
5 AND IT HAD A DETACHABLE MAGAZINE AND THE OTHER ELEMENTS THAT
6 MAKE SUCH A WEAPON ILLEGAL, THEN, YES, HE WOULD HAVE
7 ARGUABLY MANUFACTURED A WEAPON THAT IS BANNED BY THE CODE
8 SECTION, BUT THAT IS NOT AT ALL WHAT HE DID, AND WHAT HE DID
9 IS NOT NECESSARILY CONSISTENT WITH CONSTRUCTING AN ILLEGAL
10 WEAPON.

11 AS A MATTER OF FACT, YOUR HONOR, IN COUNT 2,
12 I BELIEVE, THE PEOPLE ARE ALLEGING THAT THE POSSESSION OF
13 THESE PARTS AND THE RECEIVER CONSTITUTES POSSESSION OF AN
14 ASSAULT WEAPON. ACTUALLY, MY ARGUMENT DOES SPEAK TO THAT.

15 THE COURT: OKAY.

16 MR. KENNEDY: SO, ANYWAY, I DON'T BELIEVE THAT THERE
17 IS ANY EVIDENCE THAT NECESSARILY INVOLVES ILLEGALITY OTHER
18 THAN HE'S A FELON AND SHOULDN'T HAVE HAD IT, ALTHOUGH EVEN
19 THAT MAY NOT COVER THE AR47 PARTS, SO THE REAL QUESTION IS
20 DOES POSSESSION OF THESE SAME PARTS BY A NONFELON
21 CONSTITUTE -- NUMBER ONE, DOES IT CONSTITUTE POSSESSION OF
22 AN ASSAULT WEAPON AS IN COUNT 2, AND THEN THE SECOND POINT
23 WHICH IS COUNT 1, DOES THE ACTIVITY OF MR. NGUYEN, INCLUDING
24 SOME REWORKS AND BENDING SOME METAL, DOES IT MAKE HIM GUILTY
25 OF MANUFACTURING AN ASSAULT WEAPON; AND I ARGUE IT'S NOT
26 EVEN CLOSE.

1 THE COURT: PEOPLE.

2 MS. JONES: THANK YOU, YOUR HONOR. I BELIEVE THAT
3 THE FACTS SHOW THAT THE PROCESS OF MANUFACTURING AN ILLEGAL
4 ASSAULT WEAPON WAS NOT ONLY BEGUN, BUT IT WAS SUBSTANTIALLY
5 COMPLETED IN ALL THAT WAS LEFT WAS TO DRILL, PERHAPS, A HOLE
6 OR TWO. THE CRITICAL THING IS THAT THIS IS A FIREARM THAT
7 HAS THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE. THE
8 WITNESS TESTIFIED THAT THE MECHANISM TO ACCEPT THE
9 DETACHABLE MAGAZINE WAS PRESENT.

10 THERE WAS NO MECHANISM PRESENT FOR A FIXED
11 MAGAZINE, SO THE ONLY PURPOSE IS FOR AN ILLEGAL WEAPON, AND
12 HE SUBSTANTIALLY COMPLETED THE PROCESS. ALL THAT'S LEFT IS
13 FOR THE MINOR DETAIL THAT I DESCRIBED AND THEN TO ASSEMBLE
14 IT TO MAKE IT OPERABLE WHICH HE ADMITS TO THE OFFICER, SO

15 THE COURT: WHAT ABOUT COUNSEL'S ARGUMENT REGARDING
16 COUNT 2?

17 MS. JONES: I WOULD AGREE THAT IT IS NOT ASSEMBLED,
18 SO --

19 THE COURT: WOULD AN ATTEMPT BE APPROPRIATE?

20 MS. JONES: YES.

21 THE COURT: I UNDERSTAND. IN LIGHT OF HER
22 ARGUMENT, I'M GOING TO GIVE YOU THE LAST WORD, EVEN THOUGH
23 THAT'S DIFFERENT THAN NORMAL, BUT I WILL GIVE IT IN THIS
24 CASE.

25 MR. HENNES: THANK YOU, YOUR HONOR. ONE OTHER
26 POINT I WANTED TO MAKE IS THAT IN THE THOMSON CASE THAT I

1 CITED, THE COURT SPEAKS OF THE PRINCIPLE OF LENIENCY. IN THIS
2 CASE MANUFACTURER IS NOWHERE DEFINED IN THE STATUTE OR,
3 FRANKLY, ANYWHERE I COULD FIND.

4 THE COURT: SHOULDN'T WE GIVE IT THE COMMON
5 SENSE --

6 MR. HENNES: NOT THAT EASY.

7 THE COURT: LET'S TAKE AN AUTOMOBILE MANUFACTURER
8 FOR A MOMENT. IF I'VE GOT A CHASSIS, I'VE GOT AN ENGINE,
9 I'VE GOT A TRANSMISSION, AND I'VE GOT FOUR TIRES AND THEY'RE
10 ALL LINED UP IN MY BACK YARD AND I'M STARTING TO ATTACH
11 BOLTS TO THE CHASSIS, WOULD THAT -- DOESN'T THAT SOUND LIKE
12 I'VE STARTED THE MANUFACTURING PROCESS?

13 MR. HENNES: THAT'S NOT THE ISSUE. THE ISSUE IS
14 WHETHER HE HAS MANUFACTURED A WEAPON.

15 THE COURT: MANUFACTURING, NOT MANUFACTURED.

16 MR. HENNES: CORRECT, AND WHETHER MANUFACTURING
17 RISES TO THE LEVEL OF WHAT'S PRESUMED BY THE STATUTE IS, I
18 THINK, A DICY ISSUE BECAUSE I KNOW LOTS OF PEOPLE THAT HAVE
19 A WHOLE COLLECTION OF AUTO PARTS IN THEIR BACK YARDS, AND
20 THEY'RE NOT GOING TO DO ANYTHING WITH THOSE PARTS. THEY MAY
21 START IT AND STOP.

22 THE COURT: LET'S ASSUME THAT THEY EVEN COME AND
23 ASK ME, AND I SAY, YOU KNOW WHAT, YOU'RE RIGHT, I AM GOING
24 TO MANUFACTURE THIS CAR, I'M PUTTING IT TOGETHER, IN FACT,
25 HERE, LET ME SHOW YOU. I HAVE BEEN GOING ON THE INTERNET,
26 AND I'VE FOUND PLANS TO SHOW ME HOW TO BUILD THIS '02 CHEVY

1 TOGETHER, WOULDN'T THAT THEN FILL IN THOSE GAPS?

2 MR. HENNES: TO MY MIND, NO, BECAUSE I THINK WE'VE
3 GOT A TERM OF ART, MANUFACTURE VERSUS PUTTING TOGETHER.

4 THE COURT: FAIR ENOUGH.

5 MR. HENNES: I DON'T KNOW IF THE COURT'S
6 NECESSARILY DEFINED THAT IN THIS WEAPONS CONTEXT.

7 THE COURT: I WOULD LIKE TO READ YOUR CITATION. I
8 WOULD IMPOSE UPON COUNSEL CAN WE RETURN NEXT MONDAY FOR MY
9 RULING?

10 MR. HENNES: YES.

11 THE COURT: MAY I TAKE A WAIVER OF CONTINUOUS
12 PRELIM FROM YOUR CLIENT?

13 MR. HENNES: YES. YOU HAVE THE RIGHT TO A
14 CONTINUOUS PRELIM WITHOUT ANY INTERRUPTION, MR. NGUYEN. BY
15 CONTINUING THIS MATTER FOR THE COURT TO REVIEW THE LEGAL
16 AUTHORITIES, YOU ARE GIVING UP THAT RIGHT UNTIL MONDAY. DO
17 YOU AGREE AND WAIVE YOUR RIGHT TO A CONTINUOUS PRELIM?

18 THE DEFENDANT: YES.

19 MR. HENNES: COUNSEL JOINS.

20 THE COURT: THANK YOU, MR. NGUYEN. THANK YOU.
21 WOULD 9:30 WORK FOR EVERYONE?

22 MR. HENNES: YES.

23 THE COURT: MR. NGUYEN, YOU'RE ORDERED TO RETURN
24 BACK TO MY COURT 9:30 MONDAY MORNING WITHOUT FURTHER ORDER
25 OF THIS COURT. THANK YOU ALL VERY MUCH. INTERESTING ISSUE.

26 MR. HENNES: YOUR HONOR, IF I MAY BE ABLE TO FIND

1 SOME AUTHORITIES, AND TO SHARE IT WITH COUNSEL AND THE
2 COURT **

3 THE COURT: FEEL FREE TO DO SO.

4
5 (END OF PROCEEDINGS.)

6 *****

7 *****

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEPARTMENT 19

THE PEOPLE OF THE STATE OF,
CALIFORNIA,

PLAINTIFF,

VS.

TIEN DUC NGUYEN,

DEFENDANT.

) TRANSCRIPT OF
) PRELIMINARY
) EXAMINATION

) CASE NO. 10WF0918

)
) HON. GREGG L. BRICKFORD
) JUDGE PRESIDING

NOVEMBER 18, 2010

APPEARANCES OF COUNSEL:

FENEE JONES, DEPUTY DISTRICT ATTORNEY, APPEARED
AS COUNSEL FOR THE PEOPLE.

CHRISTOPHER HENNES, APPEARED AS COUNSEL FOR THE
DEFENDANT.

ADRIANA A. ARANEA, RFR, DSR 49666
OFFICIAL COURT REPORTER

1 WESTMINSTER, CALIFORNIA - MONDAY, NOVEMBER 15, 2010

2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

5
6 THE COURT: CALLING THE CASE OF THE PEOPLE OF THE
7 STATE OF CALIFORNIA VS. TIEN DUC NGUYEN, LOWF0918.

8 THIS IS A RESUMPTION OF THE PRELIMINARY
9 EXAMINATION. BOTH COUNSEL ARE PRESENT. THE DEFENDANT IS
10 PRESENT. THE COURT ASKED TO HAVE TIME TO READ THE CASE
11 OFFERED BY DEFENSE COUNSEL.

12 DID THE PEOPLE WISH TO BE HEARD FURTHER?

13 MR. JONES: NO, YOUR HONOR.

14 THE COURT: DID THE DEFENSE WISH TO BE HEARD FURTHER?

15 MR. HENNES: YES, YOUR HONOR.

16 THE COURT: YOU MAY.

17 MR. HENNES: I'VE BEEN DOING A LITTLE BIT MORE
18 RESEARCH. OF COURSE, I DIDN'T PLACE A CALL TO YOUR
19 CHAMBERS UNTIL FRIDAY AT 4:00.

20 YOUR HONOR, THERE IS A SUMMARY OF -- VERY GOOD
21 SUMMARY OF THE LAW, IF THE COURT WOULD -- DOWNLOADED FROM
22 THE WEBSITE, IF THE COURT WOULD CONSIDER THAT IN THE FORM
23 OF A BRIEF. IT HAS A LITTLE --

24 THE COURT: HAND IT TO MY BAILIFF.

25 MR. HENNES: IT'S HELPFUL TO PUT THE FACTS OF THIS
26 CASE INTO CONTEXT.

1 THE ONLY ISSUE --

2 THE COURT: JUST A SECOND. THIS ISN'T A GOVERNMENT
3 PRINTOUT.

4 MR. HENNES: NO.

5 THE COURT: THIS IS A GUN ADVOCACY.

6 MR. HENNES: IT'S SAFE TO SAY THAT IT IS. I ONLY
7 OFFER IT --

8 THE COURT: I'M GOING TO TELL YOU I'M NOT GOING TO
9 CONSIDER IT.

10 MR. HENNES: IT'S A GOOD SUMMARY OF THE LAW, THOUGH.

11 ALL RIGHT. GETTING -- WE DISCUSSED THE ISSUE OF
12 WHETHER THE ACTS OF MR. NGUYEN CONSTITUTED MANUFACTURING,
13 AND I THINK ONE POINT I WOULD LIKE TO MAKE AGAIN IS HE DID
14 NOT HAVE A COMPLETE SET. THERE WERE SOME KEY PIECES
15 MISSING. AND SO THAT'S ONE.

16 THE COURT: SORRY, SIR?

17 MR. HENNES: THERE WAS --

18 THE COURT: WHAT POINTS DO YOU THINK -- THERE WERE
19 STEPS TO THE PROCESS THAT HAD NOT BEEN COMPLETED, IS THAT
20 WHAT YOU'RE REFERRING TO?

21 MR. HENNES: NO, HE DID NOT HAVE ALL THE PARTS
22 NECESSARY TO ASSEMBLE IT.

23 THE COURT: WHAT PARTS DID YOU THINK WERE NECESSARY
24 THAT WE DID NOT HEAR TESTIMONY ABOUT?

25 MR. HENNES: THE MAGNETIC, FOR ONE.

26 THE COURT: OKAY. ARE YOU OF THE OPINION THAT IT ONLY

1 QUALIFIES AS AN ASSAULT RIFLE UNDER IT, IN FACT, HAS THIS
2 MAGAZINE?

3 MR. HENNES: YES.

4 THE COURT: OKAY. SO WHEN I READ THE STATUTE THAT
5 APPEARS TO BE IN THE CONJUNCTIVE -- EXCUSE ME, IN THE
6 DISJUNCTIVE, NOT THE CONJUNCTIVE, SO -- I MEAN, FOR
7 EXAMPLE, IF I HAVE AN AK47, LET'S SAY STRAIGHT OUT FROM THE
8 PLANT AK47, I DON'T HAVE THE MAGAZINE, AM I POSSESSING AN
9 ASSAULT RIFLE?

10 MR. HENNES: YES, YOU ARE. THAT IS A COMPLETED AK47,
11 HAS THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE, IT IS AN
12 ASSAULT WEAPON WHETHER IT HAS A MAGAZINE OR NOT.

13 THE COURT: I WANTED TO MAKE SURE I UNDERSTOOD YOU
14 FROM THAT STANDPOINT.

15 MR. HENNES: FIRST OF ALL, THIS IS NOT AN AK47. IT'S
16 NOT LISTED IN 12276. SO IT IS NOT ONE OF THE LISTED
17 ASSAULT WEAPONS.

18 SO THE ONLY WAY IT WILL QUALIFY AS AN ASSAULT
19 WEAPON IS IF IT -- IS IT IF IT MEETS THE CRITERIA 12276.1.

20 THE COURT: WHAT'S THE ONLY REASONABLE INFERENCE AS TO
21 WHAT HE'S DOING?

22 MR. HENNES: IT IS POSSIBLE -- WE DON'T KNOW. IT IS
23 POSSIBLE TO -- IN FACT, THOUSANDS OF PEOPLE OWN A
24 SIMILAR --

25 THE COURT: I'VE HAD NO TESTIMONY TO HEAR, SIR. SO I
26 YEAH I'M NOT A GUN OWNER, SO THIS CAN'T BE COMMON

1 KNOWLEDGE. RIGHT NOW ALL WE'RE DEALING WITH IS WHAT I HAD
2 TESTIMONY ON. I DIDN'T HAVE ANY TESTIMONY ABOUT THOUSANDS
3 OF PEOPLE. I DID HAVE TESTIMONY ABOUT THE INTERNET, HOW HE
4 ACQUIRED IT BASED ON HIS STATEMENTS, THINGS LIKE THAT.

5 MY QUESTION TO YOU IS, IS IT -- LET ME REVERSE
6 THAT THEN. WOULD IT BE AN UNREASONABLE INFERENCE BASED ON
7 THE STATE OF THE EVIDENCE NOW TO SAY THAT THIS PERSON WAS
8 MANUFACTURING OR ATTEMPTING TO MANUFACTURE AN ASSAULT
9 RIFLE? WOULD THAT BE AN UNREASONABLE INFERENCE?

10 MR. HENNES: YES.

11 THE COURT: WHY.

12 MR. HENNES: BECAUSE WE DON'T KNOW WHAT HIS INTENT WAS
13 WHEN HE WAS --

14 THE COURT: LET'S ASSUME THAT THE INTENT IS NOT THE
15 ISSUE HERE. I'M PREPARED TO SAY WHATEVER HE WAS DOING HAD
16 THE INTENT TO ALTER THIS RIFLE TOWARDS THAT.

17 MR. HENNES: THAT'S WHAT -- WELL, IF YOU'RE ASSUMING
18 INTENT, THEN YOU'RE ASSUMING --

19 THE COURT: I DIDN'T SAY ASSAULT TO THE WEAPON. I SAY
20 HE'S ALTERING IT. THERE'S NO DOUBT THAT WHATEVER THAT KIT
21 CONSTITUTES, HE HAS THE INTENT TO CHANGE THIS GUN FROM WHAT
22 IT ORIGINALLY WAS TO WHAT THIS KIT WILL DO.

23 MR. HENNES: OH, I DON'T KNOW THAT THERE'S EVIDENCE.
24 I WOULD DISAGREE TO THE COURT THERE'S EVIDENCE TO THAT
25 EFFECT. HE'S NOT ALTERING. HE WAS FOLLOWING THE
26 INSTRUCTIONS.

1 THE COURT: OKAY. FOLLOWING THE INSTRUCTIONS, WHICH
2 ALTERS THE GUN FROM ONE STATE THE WAY IT ORIGINALLY WAS TO
3 WHAT THE KII WILL THEN HAVE THE GUN BECOME. TO ME THAT'S
4 ALTERING.

5 MR. HENNES: I CAN SEE THE -- WHAT THE ISSUE IS, AND
6 IT'S BASED UPON, I THINK, THE INSUFFICIENT KNOWLEDGE OF THE
7 AREA OF THE TESTIFYING OFFICER WHO ADMITTED HE WASN'T AN
8 EXPERT. I ASKED HIM WHAT A BULLET BUTTON WAS. HE
9 DIDN'T -- I DON'T THINK HE KNEW -- OR HE KNEW WHAT IT WAS
10 ON AN AR15. WHAT IT IS IS A TOOL.

11 THE COURT: DID I HEAR TESTIMONY ABOUT WHAT A BULLET
12 BUTTON WAS?

13 MR. HENNES: HE MADE A REFERENCE TO IT. I DON'T THINK
14 HE DESCRIBED IT.

15 THE COURT: NOW YOU'RE ABOUT TO GIVE THE TESTIMONY
16 TRYING TO EXPLAIN WHAT IT IS. I DIDN'T HEAR TESTIMONY TO
17 THAT.

18 MR. HENNES: AGAIN, I BELIEVE THAT THE THOMPSON CASE,
19 U.S. VS. THOMPSON CASE, DOES CONTROL THE ISSUE AS TO
20 WHETHER THE DEFENDANT CAN BE HELD TO KNOW -- OR HAVE A
21 REASONABLE UNDERSTANDING OF WHAT IS PRESCRIBED BY THE
22 STATUTE. THAT -- YOU HAVE TO ASSUME THAT THESE WEAPONS CAN
23 BE MADE LEGALLY.

24 THE COURT: WHY DO I HAVE TO ASSUME THAT?

25 MR. HENNES: WELL, TO ACCEPT MY ARGUMENT YOU HAVE TO.

26 THE COURT: UNDERSTOOD THEN.

1 MR. HENNES: PERHAPS AT A PRELIMINARY HEARING IT'S,
2 YOU KNOW, NOT BEST PLACE TO PRESENT THAT ARGUMENT. WE WILL
3 PRESENT IT --

4 THE COURT: OKAY. THANK YOU. PROCEED?

5 MR. JONES: SUBMITTED, YOUR HONOR.

6 THE COURT: IT APPEARS TO BE THE COURT THE OFFENSES
7 NAMED IN COUNTS 3 AND 4 HAVE BEEN COMMITTED AND THE LESSER
8 OFFENSE OF ATTEMPTED 1206(A) (1) HAS BEEN COMMITTED.

9 THE COURT IS NOT BINDING THE DEFENDANT OVER AS TO
10 COUNT 2 AS THERE IS NO PROOF OF THE COMPLETED -- THAT THE
11 GUN DID, IN FACT, QUALIFY AS AN ASSAULT WEAPON.

12 SO IT IS OK COUNT 1 I AM FINDING AN ATTEMPT, NOT
13 THE COMPLETED CRIME, AND WHEN COUNTS 3 AND 4 THE COURT IS
14 FINDING THAT THOSE, IN FACT, HAVE BEEN SHOWN.

15 DO EITHER COUNSEL WISH CLARIFICATION ON MY
16 RULING?

17 MR. JONES: YES, YOUR HONOR, IF IT PLEASURES THE COURT.

18 THE COURT: YES.

19 MR. JONES: I'M CONCERNED ABOUT HOW IT COULD NOT BE AN
20 ATTEMPTED POSSESSION OF AN ASSAULT WEAPON COUNT 2.

21 THE COURT: HOW IT COULD BE NOT AN ATTEMPTED. THAT'S
22 AN INTERESTING ARGUMENT. I HAD NOT CONSIDERED THAT ASPECT.
23 IF IT'S AN ATTEMPTED MANUFACTURING, THEN IT'S ALSO AN
24 ATTEMPTED POSSESSION. IS THAT -- THAT'S YOUR ARGUMENT?

25 MR. JONES: YES.

26 THE COURT: I WAS GOING STRICTLY FROM THAT. I THOUGHT

1 YOU WERE ALMOST CONCERNING THAT COUNT. I NOW SEE WHAT
2 YOU'RE SAYING, THAT IT COULD BE A LESSER TO THAT. IT WOULD
3 BE ATTEMPTED POSSESSION.

4 DID YOU WISH TO BE HEARD FURTHER ON THAT?

5 MR. HENNES: NO. SUBMIT.

6 THE COURT: I BELIEVE THAT ARGUMENT IS PERSUASIVE
7 ALSO. THE COURT WOULD ALSO FIND TO COUNT 2 THE LESSER OF
8 ATTEMPTED POSSESSION FOR BOTH OF THOSE.

9 IT APPEARS TO THE COURT THERE'S PROBABLE CAUSE TO
10 BELIEVE THOSE OFFENSES HAVE BEEN COMMITTED. THE COURT
11 HOLDS THE DEFENDANT TO ANSWER AND ORDERS THAT HE APPEAR IN
12 DEPARTMENT C5 OF THE ORANGE COUNTY SUPERIOR COURT ON --

13 THE CLERK: NOVEMBER 24TH.

14 THE COURT: THE DEFENDANT AND DEFENSE COUNSEL ARE
15 ORDERED TO BE PRESENT IN DEPARTMENT C5 IN SANTA ANA ON THAT
16 DATE, 9:00 A.M., WITHOUT FURTHER ORDER OF THIS COURT.
17 THANK YOU VERY MUCH.

18 MR. JONES: THANK YOU. WOULD THE COURT PREFER A
19 STIPULATION FOR THE EXHIBITS?

20 THE COURT: IS THERE A STIPULATION THAT THE EXHIBITS
21 MAY BE RETURNED TO THE OFFERING PARTY WITH THE
22 CORRESPONDING ORDER THEY'RE NOT TO DESTROY THEM DURING THE
23 PENDENCY OF THIS CASE?

24 MR. HENNES: YES.

25 THE COURT: SO ORDERED. THANK YOU VERY MUCH.

26 (END OF PROCEEDING.)

1 STATE OF CALIFORNIA)


2)
3 COUNTY OF ORANGE)
4
5

6 REPORTER'S CERTIFICATE

7
8 I, ADRIANA ARANETA, CERTIFIED SHORTHAND REPORTER
9 9666, DO HEREBY CERTIFY THAT PAGES 66 THROUGH 72 OF THE
10 WITHIN AND FOREGOING TRANSCRIPT IS A FULL, TRUE AND CORRECT
11 TRANSCRIPT OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE
12 AND CORRECT.

13
14 11-16-18

15 DATED: _____
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23 
24 _____
ADRIANA ARANETA, RPR, CRR, CSR #9666
25 OFFICIAL COURT REPORTER
26



1 TONY RACKAUCKAS, DISTRICT ATTORNEY
 2 COUNTY OF ORANGE, STATE OF CALIFORNIA
 3 P.O. BOX 808 SANTA ANA, CALIFORNIA 92702
 4 TELEPHONE: (714) 834-3600

ELECTRONICALLY FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE

11/15/2010
 12:33 PM

ALAN CARLSON, Clerk of the Court
 10WF0918

5 Felony Arraignment set on 11-24-2010

7 SUPERIOR COURT OF CALIFORNIA
 8 COUNTY OF ORANGE

9 _____
 10 THE PEOPLE OF THE STATE OF CALIFORNIA,) No.10WF0918
 11)
 12 Plaintiff,)
 13)
 14 vs.) INFORMATION
 15)
 16 TIEN DUC NGUYEN 07/03/75)
 B3370423)
)
 Defendant(s))

17 THE DISTRICT ATTORNEY OF ORANGE COUNTY hereby accuses the
 18 aforcnamed defendant(s) of violating the law at and within the
 19 County of Orange as follows:

20 COUNT 1: On or about March 17, 2010, in violation of Section 664
 21 (a)-12280(a)(1) of the Penal Code (ATTEMPT- UNLAWFUL ASSAULT
 22 WEAPON ACTIVITY), a FELONY, TIEN DUC NGUYEN did unlawfully
 23 attempt to manufacture, caused to be manufactured, distribute,
 24 transport, import into the State of California, keep for sale,
 offer and expose for sale, give, and lend a AK-47, an assault
 weapon.

25 COUNT 2: On or about March 17, 2010, in violation of Section 664
 26 (a)-12280(b) of the Penal Code (ATTEMPT-POSSESSION OF AN ASSAULT
 27 WEAPON), a FELONY, TIEN DUC NGUYEN did unlawfully attempt to
 28 possess an assault weapon as defined in Sections 12276 and
 12276.1.

1 COUNT 3: On or about March 17, 2010, in violation of Section
2 12021(a)(1) of the Penal Code (POSSESSION OF FIREARM BY FELON),
3 a FELONY, TIEN DUC NGUYEN, who was previously convicted of a
4 felony, did unlawfully own, purchase, receive, possess, and
5 have custody and control of a firearm.

6 TIEN DUC NGUYEN was previously convicted of a violation of
7 Section 12025(a)(1)/(b)(3) of the Penal Code on or about August
8 11, 1999 in the SUPERIOR (WEST) Court of the State of
9 California, in and for the County of ORANGE COUNTY, in case
10 99WF1808.

11 COUNT 4: On or about March 17, 2010, in violation of Section
12 12316(b)(1) of the Penal Code (POSSESSION OF AMMUNITION BY
13 PROHIBITED PERSON), a FELONY, TIEN DUC NGUYEN did unlawfully
14 own, possess, and have custody and control over ammunition and
15 reloaded ammunition, when the defendant was prohibited from
16 owning and possessing a firearm pursuant to Penal Code sections
17 12021 and 12021.1 and Welfare and Institutions Code sections
18 8100 and 8103.

19 PRIOR CONVICTION(S)

20 It is further alleged pursuant to Penal Code sections 667(d) and
21 (e)(1) and 1170.12(b) and (c)(1), that TIEN DUC NGUYEN was
22 previously convicted of a serious and violent felony:

23 TIEN DUC NGUYEN was previously convicted of a violation of
24 Section 12025(a)(1)/(b)(3) of the Penal Code on or about August
25 11, 1999 in the SUPERIOR Court of the State of California, in
26 and for the County of ORANGE, case number: 99WF1808.

27 DATED: 11-15-2010

28 TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

BY: /s/RENEE JONES
RENEE JONES, Deputy District Attorney

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NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Penal Code Section 296.1, defendant, TIEN DUC NGUYEN, is required to provide DNA samples and thumb and palm prints.

1 **CHRISTOPHER J. HENNES** (Bar No. 71176)
2 **Attorney at Law**
3 2130 Main Street, Suite 200
4 Huntington Beach, CA 92648
5 Ph: (714) 536-6023
6 Fax: (714) 536-6073

7 **Attorney for Defendant**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
APR 01 2011
ALAN LARLSON, Clerk of the Court
BY DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, WEST JUSTICE CENTER

10 PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,
12 vs.
13 TIEN DUC NGUYEN,
14 Defendant.

Case No. 10WF0918

DEFENDANT'S SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES RE: EXCLUSION
OF EVIDENCE

15
16 Defendant TIEN DUC NGUYEN submits the following supplemental brief in support of
17 his objections to certain additional evidence sought to be introduced People at trial:

18 Introduction

19 Defendant submitted his trial brief to the Court and counsel via email on Friday, April 1,
20 2011 as requested by the Court. The brief focused on what appeared to be the primary
21 evidentiary issue, i.e., the admissibility of the .50-caliber DTC rifle and ammunition to prove
22 defendant's intent to assemble an assault weapon. The prosecution's brief was received and read
23 on Sunday, April 3, 2011. It appears from their brief that the People intend to proffer additional
24 evidence and testimony to which defendant objects as follows:

25 1. The Court Should Exclude All Evidence and Testimony Concerning the Alleged
26 Insurance Fraud Investigation. *gamer*

27 The reason for the officers' visit is irrelevant to the weapons offenses with which
28 defendant is charged. Testimony concerning the purported "insurance fraud investigation" would

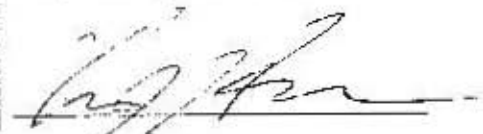
1 be improper character evidence that implies defendant has a is a dishonest person. In fact,
2 defendant has not been arrested for or charged with any insurance fraud crime. The investigation
3 has been "pending" for more than a year, yet no charges have been brought against the alleged
4 "chop shop" operator, Duan Ho, who was claimed by police to have "numerous" stolen cars and
5 parts. The prosecutor's claim that the parts invoices seized by police were "inflated" is not
6 supported by fact and is simply untrue. (Defendant provided proof long ago to the People that
7 defendant's prices were actually *lower* than other vendors' for the same items.)

8 Lastly, the police told defendant that they had authority under Vehicle Code section 2805
9 to conduct a search of his business. Section 2805 permits warrantless administrative searches of
10 repair shops, wrecking yards, leasing agencies, and similar businesses to look for stolen vehicles
11 and auto parts. The statute does not authorize inspections of a parts dealer for the purpose of
12 detecting insurance fraud. Statements made by defendant to police were therefore induced by the
13 assertion of authority that did not exist.

14 **2. The Court Should Exclude Defendant's Recorded Statements That Were Not**
15 **Provided to Defendant's Attorney Prior to Trial.** The People's brief contains purported
16 statements made by defendant that were undisclosed, despite defendant's repeated prior requests,
17 literally until the eve of trial.

18 **3. The Court Should Exclude All References to the Alleged Firearm and Firearm**
19 **Parts in Defendant's Possession as "Assault Weapons" or "Assault Rifles."** The .50-caliber
20 DTC is not an "assault weapon" under any statutory definition. The unassembled gun parts do
21 not meet the definition of "assault weapon" in sections 12276 and 12276.1 of the Penal Code.

22
23 Respectfully submitted,

24 

25
26 Christopher J. Hennes
27 Attorney for Defendant

28

See P.S. Flood (1998) 18 Cal. 4th

470, 482

leading to jury - it had to prove
2 were peace officers as elements of
employee
crime - judge could not do
instrument

* Advise you with

1 **CHRISTOPHER J. HENNES** (Bar No. 71176)

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7 Attorney for Defendant

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

APR 01 2011

ALAN CARLSON, Clerk of the Court

BY: D. PELL DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, WEST JUSTICE CENTER

10 PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 10WF0918

11 Plaintiff,

DEFENDANT'S TRIAL BRIEF

12 vs.

13 TIEN DUC NGUYEN,

14 Defendant.

15
16 Defendant TIEN DUC NGUYEN submits the following trial brief on the issues of law
17 and evidence raised by the parties pursuant to Evidence Code section 402:

18 **I. STATEMENT OF THE CASE** *denied*

19 On March 17, 2010, Defendant was charged in the amended complaint with:
20 manufacturing an assault weapon (Pen. Code §12280(a)(1)), possession of an assault weapon
21 (Pen. Code §12280(b)), possession of a firearm by a felon (Pen. Code §12021(a)(1)), and
22 possession of ammunition by a prohibited person (Pen. Code §12316(a)(1)). Following a
23 preliminary hearing, defendant was held to answer for attempted manufacture of an assault
24 weapon and attempted possession of an assault weapon, as well as the counts for prohibited
25 possession of a firearm and ammunition. The information alleges the foregoing offenses and a
26 "strike" enhancement based on defendant's prior felony conviction.
27

II. RELEVANT FACTS

1
2 Defendant is the owner of Import Auto Pros in Westminster, a business engaged in selling
3 new and used automobile parts to the public. On March 17, 2010, six law enforcement officers
4 with the interagency "Orange County Auto Theft Task Force" appeared at defendant's business
5 for the purpose of conducting a Vehicle Code section 2805 administrative search for stolen
6 automobiles and parts. Prior to searching the business premises, Detective Chapman asked
7 defendant if he had any weapons on the premises. Defendant took the officers to an upstairs
8 storage room where he produced a "California-compliant" .50 caliber bolt-action rifle, a box of
9 unassembled AK-type rifle parts, and two boxes of ammunition. Defendant informed the officers
10 that he had purchased the rifle and AK parts over the internet from out-of-state vendors.

11 The officers spent the next several hours inspecting defendant's inventory but found no
12 stolen parts and no other firearms. A subsequent search of defendant's home failed to turn up
13 any stolen parts or anything illegal.

III. ISSUE AND ARGUMENT

15 Issue: Whether evidence of defendant's possession of the .50 caliber rifle and
16 ammunition is admissible to show his intent to manufacture or possess an assault rifle.

17 Argument: Such evidence is inadmissible for the following reasons:


18 Defendant intends to plead guilty to counts 3 and 4 of the information prior to the
19 commencement of trial of the remaining counts. He is not requesting to sever the counts (Pen.
20 Code §954); he simply chooses to plead guilty to them. Merely because the People chose to join
21 all four counts in a single information does not require defendant to enter the same plea to all.
22 His guilty plea renders possession of the rifle and ammunition irrelevant to prove any remaining
23 fact in issue in the trial of counts 1 and 2. This is because defendant could legally possess those
24 items were it not for his ex-felon status. Anyone not legally prohibited from possessing a
25 firearm or ammunition may lawfully possess the same rifle and bullets in California. Therefore,
26 once defendant exercises his absolute right to plead guilty to counts 3 and 4 (via an "open plea")
27

1 prior to trial, his possession of legal firearms loses all evidentiary value to prove the assault
2 weapon counts.

3 The People assert that defendant's possession of a .50 caliber rifle that had been modified
4 to comply with California law somehow proves his intent to "circumvent" the law and construct
5 an illegal assault rifle from his collection of parts. Logic points to the opposite assumption.
6 Furthermore, a large-caliber rifle and ammunition, though legal, could appear quite menacing to
7 someone unfamiliar with military-style armaments. The probative value, if any, of such evidence
8 is far outweighed by the potential dangers of undue prejudice or of confusing and misleading the
9 jury. (Evidence Code §352.)

10 **Conclusion:** Defendant has the absolute right to plead guilty to counts 3 and 4. The court
11 should exclude all evidence of the .50 caliber rifle and the ammunition from the trial of counts 1
12 and 2 on the grounds of irrelevance and undue prejudice.

13
14 Respectfully submitted,

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16 
17 Christopher J. Hennes
18 Attorney for Defendant
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1 TONY RACKAUCKAS, DISTRICT ATTORNEY
2 COUNTY OF ORANGE, STATE OF CALIFORNIA
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FILED
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
APR 04 2011
ALAN CARLSON, Clerk of the Court
BY D. PELL DEPUTY

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER**

11 THE PEOPLE OF THE STATE OF CALIFORNIA,)
12)
13) Plaintiff.)
14)
15) vs.)
16)
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19)
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22)
23)
24)
25)
26)
27)
28)
TJEN DUC NGUYEN)
Defendant(s))

Case No.: 10WF0918

TRIAL BRIEF

INTRODUCTION

Defendant Tien Due Nguyen is charged in Count 1 with Attempted Manufacture of an Assault Weapon, a Felony, pursuant to California Penal Code¹ section 664-12280(a)(1), in Count 2 with Attempted Possession of an Assault Weapon, a Felony, pursuant to PC section 664-12280(b), in Count 3 with Possession of a Firearm by a Felon, pursuant to PC section 12021(a)(1), and in Count 4 with Possession of Ammunition by a Prohibited Person, pursuant to PC section 12316(b)(1). There is a strike prior allegation pursuant to Penal Code sections 667(d) and (e)(1) and 1170.12(b) and (c)(1). Defendant has not sought to sever any counts, but rather

¹ Unless otherwise noted, all sections hereinafter refer to the California Penal Code (PC).

1 seeks an advisory ruling on whether IF he pleads to counts 3 and 4, he can exclude evidence of
2 possession of all ammunition and of one of the firearms he possessed.

3 STATEMENT OF ANTICIPATED FACTS

4 On March 17, 2010, law enforcement investigators searched Defendant's auto parts
5 business in connection with an ongoing insurance fraud investigation. Evidence pertaining to that
6 investigation, including suspected inflated invoices, which Defendant admitted to creating, were
7 located in Defendant's possession. The insurance fraud investigation is currently pending.

8 The investigators asked Defendant if he had any weapons or anything illegal on the
9 premises. Defendant, who is a convicted felon, told them he had a rifle he uses for hunting. He
10 displayed photographs on his cell phone of several pigs or wild hogs that had been shot.
11 Defendant stated his rifle was for hunting purposes. When asked where he kept his hunting rifle,
12 Defendant led the officers upstairs above the office to a storage-type area where they observed a
13 completed and assembled .50-caliber rifle. The upper portion of the rifle was a bolt-action type
14 with a large bolt and barrel designed to chamber a .50-caliber DTC, the casing of which is
15 approximately 2 mm shorter than a .50 caliber BMG round, therefore taking it outside the
16 California definition of an illegal assault weapon. Examination of the lower portion of the rifle
17 indicated no manufacturer's name stamp, serial number or other identification marks. Defendant
18 admitted he purchased what he called the "80 percent" lower off the internet. He claimed this
19 was a machined AR-15 type lower receiver which was not totally complete. Defendant said he
20 had machined the last couple of holes to finish the weapon. He said since it was not complete
21 when he received it, he did not have to register it. He said after receiving the lower portion of
22 the rifle, he purchased the upper portion and the rifle was now complete.

23 When questioned about ammunition, Defendant produced a box of 50 rounds of .50
24 caliber DTC ammunition for the rifle, which he claimed he had received from a re-loader
25 through the mail. Defendant also had 120 rounds of Alexander Arms .50 caliber Beowulf
26 ammunition, which did not fit the .50 caliber DTC rifle. Defendant claimed this .50 caliber
27 ammunition was left over from his pig hunt and claimed he had "rented" a .50 caliber rifle when
28 he had hunted.

1 Investigators asked Defendant if he had any other weapons in his possession, and
2 Defendant went on to tell them he had an AK-47 in the shop which he was also manufacturing
3 himself. He led them to a box full of parts which appeared to be all the parts necessary to put
4 together an AK-47 type semi-automatic assault rifle. Defendant showed the investigators the
5 receiver portion of the AK-47 type rifle which had no manufacturer's name or serial number
6 affixed to it. He showed them a web site called AK Builder.com which shows how to build your
7 own AK-47 type assault rifle yourself and therefore avoid the registration process. Defendant
8 said he had purchased an AK-47 receiver flat, which is a receiver with the holes milled or
9 punched out, but is flat and not bent into the proper shape to assemble the rifle.

10 Defendant stated he personally altered the receiver and bent it into the proper shape in
11 order to assemble his own AK-47 type rifle, therefore, completing the process himself. He said
12 he had not yet assembled this AK-47 type rifle and he had not yet fired the .50 caliber DFC rifle
13 in question. Investigator Chapman later dry-fired the .50 caliber DFC rifle and found it to be in
14 good working order.

15 When questioned about the legalities of making and having his own assault weapons
16 without registering them, Defendant stated he knew what he was doing was wrong and admitted
17 he had a prior felony conviction for possession of a firearm and being a gang member, and knew
18 he was not supposed to possess any firearm.

19 During the course of the inspection of Defendant's auto body shop, Defendant was on his
20 cell phone in the back alley for extended periods. He claimed he had no more weapons, but
21 stated his wife had a shotgun registered in her name. He claimed he had lent it out and it was not
22 in his possession. Defendant agreed to a search of his home several hours after the search of his
23 business began. When officers responded to his residence, Defendant let them inside, where
24 they found a gun safe completely empty, with the door ajar.

25 In a taped phone interview the next day, defendant again admitted manufacturing the two
26 weapons. He further admitted he used a part called an AK builder flat bending die set which is
27 used as a press to bend the flat into shape. He also described in detail the case with which he
28 manufactured the .50 caliber DFC, including purchasing the 80% lower, and avoiding

1 purchasing a template by obtaining the dimensions for the firearm on line. He described how
2 dangerous the gun was and described how the .50 caliber DTC ammunition is slightly shorter
3 than the .50 caliber BMG ammunition, making it legal to possess. He again claimed to have the
4 .50 caliber BMG ammunition for hog hunting. He then commented that he knew his associate,
5 who was the target of the fraud investigation, was affiliated with gangsters, and expressed
6 concern that individual could "shoot my wife or something. You know. Something stupid." He
7 again admitted he knew he was not supposed to have guns, but claimed he liked to "tinker" and it
8 was a "hobby thing."

9 The AK-47 type rifle parts were later examined by firearms expert, Sgt Greg Schuch,
10 who compared the parts to a fully functioning previously fired AK-47 type rifle. He determined
11 the most difficult part of the manufacture of Defendant's gun was already completed, with the
12 shaping of the flat. He opined that little needed to be done but assemble the firearm, and all the
13 parts were present to complete a fully functioning semi-automatic, center fire rifle *with the*
14 *capacity to accept a detachable magazine* and a forward pistol grip that would protrude
15 conspicuously beneath the action of the weapon.

16 Furthermore, although defendant possessed invoices for parts ordered to complete these
17 two firearms Defendant *did not even possess a part required for the rifle to accept a fixed*
18 *magazine, nor any invoice which would indicate he ever ordered such a part.*

19 PRE-TRIAL MOTIONS

- 20 I. Defendant is not entitled to an advisory opinion from the court on whether IF he
21 were to plead to Counts 3 and 4, evidence of possession of the completed .50
22 caliber bolt action rifle and ammunition would be excluded because he has not
23 pled guilty to those counts.

24 The Defense does not intend to sever counts. The Defense suggests that Defendant intends to
25 plead guilty to Counts 3 and 4 and has asserted Defendant has always been ready to plead to
26 Counts 3 and 4. To the contrary, Defendant has never in the course of the pendency of the trial
27 offered or agreed to plead to any count. On at least one occasion prior to preliminary hearing, in
28 July 2010, he explicitly rejected the People's offer to settle the case with a plea to Count 3.
Defendant, on the eve of trial, now seeks to obtain an indication from the court on a hypothetical

1 evidentiary ruling, in the event he decides to plead to Counts 3 and 4. It is the People's position
2 that unless and until the Defendant does plead to Counts 3 and 4, such an indicated ruling would
3 be irrelevant, improper and premature.

4
5 **II. Even if the Defendant were to plead guilty to Counts 3 and 4, evidence of**
6 **possession of the completed .50 caliber bolt action rifle and ammunition should**
7 **be admitted to show Defendant's knowledge and intent to manufacture**

8 To prove a violation of Penal Code section 12280(a)(1), the People are required to prove
9 knowledge that Defendant was attempting to possess/manufacture an assault weapon, and that he
10 knew or reasonably should have known it had characteristics that made it an assault weapon
11 (CALCRIM 2560). "In a prosecution for this offense, the People bear the burden of proving the
12 defendant knew or reasonably should have known the firearm possessed the characteristics bring
13 it within the AWC.A (Assault Weapons Control Act of 1989)" In re Jorge M. (2000) 23 Cal. 4th
14 866, 887.

15 Defendant described himself to police as a "hobbyist" who likes to "tinker." This self-
16 characterization would tend to negate the necessary knowledge of what an assault weapon is, and
17 specifically that the parts he was using to construct the AK-47 type gun had the characteristics
18 that made it an assault weapon. However, at the same time, he was able to describe in detail how
19 he manufactured the "California compliant" .50 caliber bolt action gun and the 2 mm difference
20 in the bullet casing that distinguished that firearm from a non-conforming (ie illegal) .50 caliber
21 BMG. He further described how he was able to circumvent registration laws by purchasing what
22 he called an "80 percent" lower off the internet. He claimed this was a machined AR-15 type
23 lower receiver which was not totally complete. Defendant described machining the last couple
24 of holes to finish the weapon. He said since it was not complete when he received it, he did not
25 have to register it. He said after receiving the lower portion of the rifle, he purchased the upper
26 portion and the rifle was now complete. Such descriptions show Defendant's depth of
27 knowledge of firearms manufacturing and negate his claim of being a mere tinkering hobbyist.

28 The People also bear the burden of proving that what he was doing was in fact attempting
to manufacture a firearm. (CALCRIM 2560). The fact of what he is attempting to do (ie

1 manufacture rather than possess mere pieces and parts) is proven by the fact that he has already
2 successfully completed the manufacture of the .50 caliber weapon. His ability and intent to
3 manufacture and possess an assault weapon are shown by the fact he has already completed the
4 act of manufacturing another high powered weapon and this evidence is highly probative of his
5 intent to use all the AK-47 parts he has compiled to in fact manufacture a second weapon.
6 Moreover, his possession of .50 caliber ammunition for yet another illegal firearm supports his
7 intent to possess one.

8 Defendant's argument that evidence of the completed firearm and ammunition would
9 unduly prejudice, confuse or mislead the jury is without merit. "How much 'probative value'
10 proffered evidence has depends upon the extent to which it tends to prove an issue by logic and
11 reasonable inference (degree of relevancy), the importance of the issue to the case (degree of
12 materiality), and the necessity of proving the issue by means of this particular piece of evidence
13 (degree of necessity.)" People v. Thomas (1980) 27 Cal 3d 307, 318, fn. 20. The primary issue
14 in this case is intent. Yet, Defendant seeks to bar the People from producing the best evidence of
15 Defendant's intent to manufacture by the evidence available; evidence of what he has already
16 done; i.e. completed the manufacture of another weapon; and what he has had to say about how
17 he achieved the completion of that second weapon shows even more clearly how he does it, and
18 that he has the requisite knowledge, skill and forethought to do it again. He knows exactly
19 where to find exactly what he is looking for and he has carefully and successfully completed the
20 manufacture process at least once already.

21 Though justifiably incriminating because of the highly probative nature of the evidence
22 as to the material issue in this case, i.e. proving Defendant's extensive firearms knowledge and
23 intent to manufacture, there is little risk evidence of an already manufactured, "California
24 compliant" weapon, or ammunition for such weapons, would so incense the jury that it could not
25 come to a just verdict with respect to whether Defendant is manufacturing an illegal assault
26 weapon. Both weapons are similarly intimidating and dangerous, and neither is any more or less
27 offensive than the other, unless one considers the fact that the .50 caliber may be legally
28 possessed in California; and the AK-47 like assault weapon is altogether illegal.

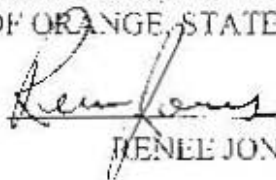
1 Finally, it would mislead the jury to prevent it from considering evidence the Defendant
2 is in fact involved in manufacturing. "A trial is a search for the truth. To the extent possible,
3 jurors must be told the truth if they are to find the truth." People v. Harris (1998) 60 Cal.App. 4th
4 727, 733. "Painting a person faithfully is not, of itself, unfair." Id at 737.

5 **CONCLUSION**

6
7 The People respectfully request that the court decline the invitation of the defense to provide an
8 advisory ruling, and rule evidence as to all four counts be admitted. In the event Defendant does
9 elect to plead to Counts 3 and 4, the People respectfully request the court nonetheless admit
10 evidence of the Defendant's concurrent possession of a completed, manufactured .50 caliber rifle,
11 50 rounds of DIC ammunition, and 120 rounds of Beowulf ammunition for a still outstanding
12 firearm as highly probative of Defendant's knowledge and intent.

13 TONY RACKAUCKAS, DISTRICT ATTORNEY
14 COUNTY OF ORANGE, STATE OF CALIFORNIA

15 By:


RENEE JONES

16 Deputy District Attorney
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Peoples Wires

Investigator Brian Chapman - BPPD

Sgt Greg Schuch - OCSD

Investigator Todd Wollard - Dept of Insurance

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

APR 04 2011

ALAN CARLSON, Clerk of the Court

BY D. PELI DEPUTY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
ADVISEMENT AND WAIVER OF RIGHTS FOR A FELONY GUILTY PLEA**

Case No. 10WF0918 People v. Tien Duc Nguyen

1. TN My true full name is TIEN Duc Nguyen
I am represented by Christopher Hennes

2. TN I understand that I am pleading guilty, and admitting the following offenses, special punishment allegations, and prior convictions, carrying the possible penalties as follows:

Ch	Charge	Sentence Range	Enhancements	Yrs.	Term for Priors	Yrs.	Total Penalty Years
3	12021(a)	16-2-3			667(a)(2)(1)	2	6 yrs
4	12316(b)(1)	16-2-3			1170.12(b)(1)(A) 3 mos x 2	2	16 mos
Maximum Total Punishment:							<u>7 yrs 4 mos</u>

3. TN In addition to time in custody, I understand the court may also order me to pay a fine as follows: up to \$10,000 for most felonies [P.C. 672]; up to \$20,000 for selected drug offenses [H&S 11372]; up to \$50,000 for selected drug offenses [H&S 11352.5]; or other

4. TN I understand it is absolutely necessary that all plea agreements, promises of a particular sentence, and sentence recommendations be completely disclosed to the court on this form.

5. TN **Right to an attorney:** I understand I have the right to be represented by an attorney at all stages of the proceedings until my case is completed. If I cannot afford an attorney, one will be appointed for me free of charge. However, I understand that at the conclusion of my case, the court may order me to reimburse the County of Orange for the cost of my attorney, according to my ability to pay.

6. TN **Right to a preliminary hearing:** I understand I have the right to a preliminary hearing at which a judicial officer will determine if there is sufficient evidence to justify setting my case for trial. At this hearing, I have the right to be represented by an attorney as described in paragraph 5 above, the right to confront and cross-examine witnesses against me, the right to present evidence on my behalf, and the right to remain silent and not testify; but I may testify if I want to. I waive and give up my right to a preliminary hearing.

7. TN **Jury trial rights:** I understand I have the right to a speedy and public trial by a jury. I waive and give up these rights.

8. TN **Rights to confront and cross-examine witnesses:** I understand I have the right to confront the witnesses against me and to cross-examine them myself or have my attorney cross-examine them. I waive and give up these rights.

9. TN **Right to testify or remain silent:** I understand I have the right to testify on my behalf. I also understand I have the right to remain silent, and I cannot be compelled to testify against my will. I waive and give up these rights.

10. TN **Right to present evidence:** I understand I have the right to present evidence and to call witnesses to testify on my behalf. I further understand I have the right to invoke the compulsory process of the court to subpoena evidence and witnesses at no cost to me. I waive and give up these rights.

11. TN **Immigration consequences:** I understand that if I am not a citizen of the United States the conviction for the offense(s) charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Case No. 10WF0918 People v. Tien Duc Nguyen

12. TA **Fourth Amendment waiver:** I understand under the Fourth and Fourteenth Amendments to the United States Constitution, I have a right to be free from unreasonable searches and seizures. I waive and give up this right, and further agree that for the period during which I am on probation I will submit my person and property, including any residence, premises, container or vehicle under my control to search and seizure at any time of the day or night by any law enforcement officer or probation officer, with or without a warrant, probable cause, or reasonable suspicion.

13. TA **Sentencing waiver:** I understand I have the right to a jury or court trial as to certain factors that may be used to increase my sentence on any count, sentencing enhancement, or allegation, to the upper or maximum term provided by law. I waive and give up the right to a jury or court trial on all of these factors. I agree the judge will determine the existence of any of these factors, within the judge's discretion, as allowed by law. I agree this waiver shall apply to any future sentence imposed following a probation revocation.

14. TA **Appeal waiver:** I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including motions to suppress evidence brought pursuant to Penal Code section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.

15. TA **Parole after prison:** I understand if I am sentenced to state prison, upon my release I will be on parole for a period of time ranging from 3 years to life. I further understand I could be sent back to state prison for a period of up to one year for each violation of any term or condition of my parole.

16. TA **Mandatory state prison:** I understand I am not eligible for probation, and I will be sentenced to state prison in this case.

17. TA **Proposed disposition:** I voluntarily agree and understand the court will. (initial all that apply)

~~(a)~~ Sentence me to state prison for a period of _____ years and _____ months, credit for time served of _____ days actual custody and _____ days of good time/work time for a total credit of _____ days. I waive and give up my right to make application for probation and request immediate sentence.

(b) Consider my application for probation before pronouncing sentence. I understand the court may deny my application for probation and sentence me to state prison for a maximum period of _____ years and _____ months.

~~(c)~~ Grant me probation under the terms and conditions set forth on the attached page 5 that I have initialed and signed. I understand I have the right to reject probation and have the court impose a final sentence. However, I agree to accept probation on the terms and conditions set forth on the attached page 5. I further understand that if I am found in violation of any of the terms or conditions of probation, the court may sentence me to state prison on this case for a maximum period of _____ years and _____ months.

(d) Order me to pay restitution on counts _____, even if any of these counts have been dismissed as part of the plea agreement, in the amount of _____, or in an amount to be determined by the Probation Department. If I disagree with the amount of restitution determined by the Probation Department, I may request a court hearing to determine the amount of restitution.

(e) Order me to pay the mandatory state restitution fine between \$200 and \$10,000 [P.C. 1202.4]. A second restitution fine in the same amount will also be ordered if I receive a sentence that includes probation, a conditional sentence, or parole. This second fine will be suspended and I will only have to pay it if the court later finds that I have violated the terms of my probation, conditional sentence, or parole [P.C. 1202.44 & 1202.45]. A twenty dollar court security fee must also be paid [P.C. 1465.8] as well as a thirty dollar court facility fee [G.C. 70373] on each count convicted.

(f) Order me to provide a state DNA sample and prints for the State DNA Database pursuant to P.C. 296 and P.C. 296.1.

(g) Order me to provide a local DNA sample, prints and photograph to the OCDA for permanent retention, analyses and search within any law enforcement database(s) for only law enforcement purposes.

Case No. 10WF0978 People v. Tien Duc Nguyen

(h) Order me to register pursuant to the following: (Circle and initial all that apply)

- (1) H&S 11590 (narcotics offense)
- (2) P.C. 186.30 (gang-related offense)
- (3) P.C. 457.1 (arson-related offense) I understand I will have to register for the rest of my life.
- (4) P.C. 290 (sex offense) I understand I will have to register for the rest of my life if I work, attend school, or reside in California.

(i) Order that my driver's license or driving privilege be suspended or revoked for a period of _____

(j) The court will order that all monies paid will first be applied to restitution; and that the following terms are also part of this plea: _____

(k) CVC 23593 Advisement: You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.

18. I acknowledge all other cases pending against me in Orange County and the proposed disposition: no other cases

19. I understand a plea of guilty in this case may constitute an admission I violated a previous grant of probation or parole in other cases and may result in additional penalties being imposed in those cases.

20. I offer my plea of guilty freely and voluntarily, and with full understanding of all matters set forth in the accusatory pleading and this advisement and waiver of rights form. No one has made any threats or used any force against me, my family, or anyone else I know, in order to convince me to plead guilty in this case. Further, all promises that have been made to me to convince me to plead guilty are on this advisement and waiver of rights form.

21. I offer the following facts as the basis for my guilty plea:
 In Orange County, California, on March 17, 2010, having previously been convicted of a felony, I did own, purchase, receive, possess & have in my custody & control a FIREARM AND AMMUNITION. I knew I was prohibited from owning & possessing a FIREARM pursuant to Penal Code Sections 12021 & 12021 & Welfare & Institutional Code ~~8100~~ ^{SECTIONS} 8100 & 8103.

Case No. 10WF0918 People v. Tien Duc Nguyen

22 X I understand each and every one of the rights set forth above in this advisement and waiver of rights form. I waive and give up each of those rights in order to enter my guilty plea. I am entering a guilty plea because I am in fact guilty and for no other reason. I declare under penalty of perjury I have read, understood, and personally initialed each numbered item above, and I have discussed them with my attorney. I declare under penalty of perjury everything on this form is true and correct. I understand the signing and filing of this form is conclusive evidence I have pled guilty to the charges listed on this advisement and waiver of rights form.

Executed in Orange County, California.

Dated: 4/4/11 Signed: [Signature]
Defendant

23 **DEFENSE ATTORNEY'S STATEMENT:** I am the attorney of record for defendant. I have explained to defendant each of the rights set forth on this form. I have discussed the charges and the facts with defendant. I have studied the possible defenses to the charges and discussed those possible defenses with defendant. I have discussed the possible sentence ranges and immigration consequences with defendant. I also have discussed the contents of this form with defendant. I concur with defendant's decision to waive the rights set forth on this form and to plead guilty. No promises of a particular sentence or sentence recommendation have been made to defendant by me, or to my knowledge by the prosecuting attorney or the court, which have not been fully disclosed on this form. I agree that this form may be received by the court as evidence of defendant's advisement and voluntary, intelligent, knowing, and express waiver of the rights set forth on this form.

Dated: 4-4-11 Signed: [Signature]
Attorney

24. **INTERPRETER'S STATEMENT:**

I, _____, having been duly sworn as a court certified interpreter, state that I am fluent in the _____ language. I translated the contents of this form to defendant in that language. The defendant told me he/she understood the contents of this form and initialed and signed it in my presence.

Dated: _____ Signed: _____
Interpreter

25. **FOR THE PEOPLE:**

Dated: _____ Signed: _____
Deputy District Attorney

Plea to the Court X

**ADMISSION OF PRIOR CONVICTIONS AND PRIOR PRISON TERMS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

DEFENDANT: 10WF0918 ATTORNEY: Christopher Hennessy

1 TW

I understand the information alleges that I have sustained the following prior conviction(s) and prior prison term(s):

DATE OF CONVICTION	COUNTY AND STATE	CASE NUMBER	CRIME CONVICTED OF	PRIOR ALLEGED PURSUANT TO FOLLOWING CODE SECTION	YEARS INCREASE IN CURRENT SENTENCE
8-11-99	Orange Co, CA	99WF1808	12025(X1)/6(X)	667019(C)(1) & 1170.12(C)(1)	3 yrs 8 mos
Total Increase in Sentence					3 yrs 8 mos

2 TW

I understand that if I admit the prior conviction(s) and prior prison term(s) set forth in paragraph 1 of this form, my admission will have the effect on my sentence as indicated on line 2, the reverse side of this form or as set forth below. I offer this form as a factual base for my admissions.

13: _____ (EFFECT ON SENTENCE OTHER THAN THAT INDICATED ON LINE 2 AND REVERSE SIDE OF FORM)

4 TW

I understand that I have the right to be represented by an attorney at all stages of the proceedings until the case is terminated and that if I cannot afford an attorney, one will be appointed free of charge.

5 TW

I understand that I have the following rights: (1) right to a jury trial; (2) right to confront and cross-examine witnesses; (3) right to testify or not testify as I so choose; (4) right to call witnesses to testify on my behalf and to use the court's compulsory process to subpoena those witnesses. I hereby waive and give up each and every one of these rights.

6 TW

I hereby admit that I have sustained the prior conviction(s) and prior prison term(s) set forth both in this form and as alleged in the information.

7 TW

I further admit that for each prior conviction alleged pursuant to Penal Code Section 867.5(b)(1) I served a separate prison term and within five (5) years of my release from prison custody I committed a new offense resulting in a felony conviction.

8 TW

I offer my admission(s) freely and voluntarily and with full understanding of all the matters set forth in the information and in this form. No one has made any threats, used any force against myself, family or loved ones, or made any promises to me except as set out in this form.

9 TW

I have personally initialed each of the above boxes and discussed them with my attorney. I declare under penalty of perjury that the foregoing is true and correct. The signing and filing of this form is CONCLUSIVE EVIDENCE I have admitted to the enumerated charges herein.

EXECUTED at _____ California
DATED 4/4/11 SIGNED _____ Defendant

DEFENDANT'S ATTORNEY ONLY - I am attorney of record and I have explained each of the above rights to the defendant, and having explained the facts with him/her and studied his/her possible defenses to the charges, I concur in his/her decision to waive each of the above rights and to admit his/her prior conviction(s) and prior prison term(s). I further stipulate this document may be received by the court as evidence of the defendant's assent and voluntary, knowing and intelligent waiver of each of the above rights and his/her admission(s) and that it shall be filed by the clerk as a permanent record of the advisement, waivers, and admission(s).

DATE: 4-4-11 SIGNED _____ Attorney

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

FOR COURT USE ONLY

JUSTICE CENTER:

- Central - 700 Civic Center Dr. West, Santa Ana, CA 92701
- Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512
- Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653
- Harbor-Newport Beach Facility - 4801 Jamboree Rd., Newport Beach, CA 92660-2595
- Laguna Niguel Facility - 30143 Crown Valley Parkway, Laguna Niguel, CA 92677-2089
- Lamoreaux - 341 The City Drive, Orange, CA 92868
- North - 1275 N. Berkeley Ave., Fullerton, CA 92835
- West - 8141 13th Street, Westminster, CA 92683

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

APR - 7 2011

W. CARLSON, Clerk of the Court

BY: [Signature] DEPUTY

PLAINTIFF/PETITIONER:

People

DEFENDANT/RESPONDENT:

US
NGUYEN, TICH DUC

STIPULATION AND ORDER FOR RETURN OF EXHIBITS AND RECEIPT FOR RECORDS

CASE NUMBER

10WF0918

IT IS STIPULATED by the parties to this action, personally or by counsel if represented, that at the conclusion of the trial, the clerk will return all exhibits to the party who offered them whether or not the exhibit was received into evidence or only marked for identification.

Plaintiff/Petitioner Defendant/Respondent Other

Exhibit number(s) 1, 2, 3, 4, 51-5w, 7, 15 shall be released to Detective CHAPMAN

Plaintiff/Petitioner Defendant/Respondent Other

Exhibit number(s) shall be released.

Plaintiff/Petitioner Defendant/Respondent Other

Exhibit number(s) ALL shall be released A-D to M.J. Penhall

Refer to attached page(s) for additional exhibits.

All such exhibits must be maintained by counsel or self-represented party until the time for appeal has expired. All exhibits will be kept in a safe and secure location. Any disputes as to exhibits shall be resolved by the trial court prior to submission of exhibits to the Appellate Division or to the Court of Appeal.

Dated: 4-7-11

I acknowledge receipt of above exhibits.

Print Name of represented party

Signature of Attorney Plaintiff/Petitioner Defendant/Respondent

[Signature]

I acknowledge receipt of above exhibits.

Print Name of represented party

Signature of Attorney Plaintiff/Petitioner Defendant/Respondent

[Signature]

I acknowledge receipt of above exhibits.

Print Name of represented party

Signature of Attorney Plaintiff/Petitioner Defendant/Respondent

IT IS SO ORDERED.

Dated:

Signature of Judicial Officer

Approved for Optional Use
L1008 (Rev. July 1, 2006)

STIPULATION AND ORDER FOR EXHIBITS AND RECEIPT FOR RECORDS

Code of Civil Procedure § 1952
Penal Code 1417.2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff(s),

vs.

CASE NO. 10WF0918

NGUYEN, TIEN DUC
Defendant(s).

JURY INSTRUCTIONS:

- Given
- Refused
- Withdrawn

The court declines to give CALCRIM no. 306 because it finds good cause under penal code section 1054.7 for D's late discovery of its gun expert. Defense counsel has represented to the court that he had in fact procured an expert who had reviewed this case in the presence of the People but that expert either withdrew from the case or was otherwise taken off of the case. During our pretrial conference in chambers last week, on March 30, 2010, defense counsel indicated that he might be calling an expert. At that time the People registered an objection as violative of the discovery rules as set forth in section 1054.3. Defense counsel advised the court that he met with, and spoke to, the proposed expert yesterday (who is a different expert from the previous one), confirming the expert's agreement to appear as a witness in this trial. As of this morning, defense counsel made an offer to the court relative to the anticipated expert testimony. Defense counsel at that time also informed the court that as soon as he himself receives the expert's qualifications and statements, he will discover that information to the People. The court not only finds the proffered testimony to be relevant, but also over the People's objection (1) will allow the defense to call the expert in its case and (2) the court declines to give an admonishing instruction.

* allowing reference to felon in possession under
Valentine (1986) 42 Cal. 3d 170, 187

* Kronmeyer 189 CA3d 314 - similarly bedan pro v ant
+ current charge
1999 conviction -

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff(s),

vs.

CASE NO. 10WF0918

NGUYEN, TIEN DUC
Defendant(s).

JURY INSTRUCTIONS:

- Given
- Refused
- Withdrawn

361. Failure to Explain or Deny Adverse Testimony

If the defendant failed in (his/) testimony to explain or deny evidence against (him/), and if (he/) could reasonably be expected to have done so based on what (he/) knew, you may consider (his/) failure to explain or deny in evaluating that evidence. Any such failure is not enough by itself to prove guilt. The People must still prove the defendant guilty beyond a reasonable doubt.

If the defendant failed to explain or deny, it is up to you to decide the meaning and importance of that failure.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff(s).

vs.

CASE NO. 10WF0918

NGUYEN TIEN DUC
Defendant(s).

JURY INSTRUCTIONS:

- Given
- Refused
- Withdrawn

CALCRIM 200. DUTIES OF JUDGE AND JURY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 12/2008

Members of the jury, I will now instruct you on the law that applies to this case. I will give you a copy of the instructions to use in the jury room. [REDACTED]

[REDACTED] The instructions that you receive may be printed, typed, or written by hand. Certain sections may have been crossed-out or added. Disregard any deleted sections and do not try to guess what they might have been. Only consider the final version of the instructions in your deliberations.

You must decide what the facts are. It is up to all of you, and you alone to decide what happened, based only on the evidence that has been presented to you in this trial.

Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes, but is not limited to, bias for or against the witnesses, attorneys, defendants or alleged victims, based on disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, or socioeconomic status [REDACTED].

You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions.

Pay careful attention to all of these instructions and consider them together. If I repeat any instruction or idea, do not conclude that it is more important than any other instruction or idea just because I repeated it.

Some words or phrases used during this trial have legal meanings that are different from

their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in these instructions are to be applied using their ordinary, everyday meanings.

Some of these instructions may not apply, depending on your findings about the facts of the case. Do not assume just because I give a particular instruction that I am suggesting anything about the facts. After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.

CALCRIM 201. DO NOT INVESTIGATE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 4/2010

Do not do any research regarding this case on your own or as a group. Do not use a dictionary, the Internet, or other reference materials. Do not investigate the facts or law. Do not conduct any experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

CALCRIM 202. NOTE-TAKING

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 8/2009

You have been given notebooks and may have taken notes during the trial. You may use your notes during deliberations. The notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete. If there is a disagreement about the testimony and stipulations at trial, you may ask that the court reporter's record be read to you. It is the record that must guide your deliberations, not your notes. You must accept the court reporter's record as accurate.

Please do not remove your notes from the jury room.

At the end of the trial, your notes will be (collected and destroyed/ [REDACTED] [REDACTED]).

CALCRIM 220. REASONABLE DOUBT

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge _____			

Print date: 8/2006

The fact that a criminal charge has been filed against the defendants is not evidence that the charge is true. You must not be biased against the defendants just because (he/ [REDACTED] (has [REDACTED] been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt unless I specifically tell you otherwise.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendants guilty beyond a reasonable doubt, (he/ [REDACTED] (is [REDACTED] entitled to an acquittal and you must find (him/ [REDACTED] not guilty.

CALCRIM 222. EVIDENCE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge _____			

Print date: 8/2009

You must decide what the facts are in this case. You must use only the evidence that was presented in this courtroom [REDACTED]. "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence.

Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses' answers are evidence. The attorneys' questions are significant only if they helped you to understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.

During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I ruled on the objections according to the law. If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or witnesses.

During the trial, you were told that the People and the defense agreed, or stipulated, to certain facts. This means that they both accept those facts as true. Because there is no dispute about those facts you must also accept them as true.

The court reporter has made a record of everything that was said during the trial. If you

decide that it is necessary, you may ask that the court reporter's record be read to you. You must accept the court reporter's record as accurate.

CALCRIM 223. DIRECT AND CIRCUMSTANTIAL EVIDENCE: DEFINED

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 6/2007

Facts may be proved by direct or circumstantial evidence or by a combination of both. Direct evidence can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

CALCRIM 224. CIRCUMSTANTIAL EVIDENCE: SUFFICIENCY OF EVIDENCE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge _____			

Print date: 1/2006

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALCRIM 225. CIRCUMSTANTIAL EVIDENCE: INTENT OR MENTAL STATE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given as Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 6/2007

The People must prove not only that the defendant did the acts charged, but also that (he/ she/ it) acted with a particular (intent/ mental state). The instruction for (each) crime and allegation explains the (intent/ mental state) required.

An (intent/ mental state) may be proved by circumstantial evidence.

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to conclude that the defendant had the required (intent/ mental state), you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant had the required (intent/ mental state). If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions supports a finding that the defendant did have the required (intent/ mental state) and another reasonable conclusion supports a finding that the defendant did not, you must conclude that the required (intent/ mental state) was not proved by the circumstantial evidence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALCRIM 226. WITNESSES

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 4/2008

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. You must judge the testimony of each witness by the same standards, setting aside any bias or prejudice you may have.

You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

How well could the witness see, hear, or otherwise perceive the things about which the witness testified?

How well was the witness able to remember and describe what happened?

What was the witness's behavior while testifying?

Did the witness understand the questions and answer them directly?

Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?

What was the witness's attitude about the case or about testifying?

Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?

How reasonable is the testimony when you consider all the other evidence in the case?

Did other evidence prove or disprove any fact about which the witness testified?

Did the witness admit to being untruthful?

[REDACTED]

Has the witness been convicted of a felony?

Has the witness engaged in other conduct that reflects on his or her believability?

[REDACTED]

[REDACTED]

Do not automatically reject testimony just because of inconsistencies or conflicts.

Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently.

[REDACTED]

[REDACTED]

[REDACTED]

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.

CALCRIM 251. UNION OF ACT AND INTENT: SPECIFIC INTENT OR MENTAL STATE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judge			
Withdrawn	<input type="checkbox"/>				

Print date: 4/2008

The crimes ([REDACTED]) charged in this case require proof of the union, or joint operation, of act and wrongful intent.

For you to find a person guilty of the crimes (in this case/ ^{in counts 1 and 2} [REDACTED]), that person must not only intentionally commit the prohibited act or intentionally fail to do the required act, but must do so with a specific (intent/ [REDACTED]). The act and the specific (intent/ [REDACTED]) required are explained in the instruction for that crime or allegation.

[REDACTED]

CALCRIM 300. ALL AVAILABLE EVIDENCE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 1/2006

Neither side is required to call all witnesses who may have information about the case or to produce all physical evidence that might be relevant.

CALCRIM 301. SINGLE WITNESS'S TESTIMONY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge _____			

Print date: 1/2010

_____ (The)
 testimony of only one witness can prove any fact. Before you conclude that the testimony of one witness proves a fact, you should carefully review all the evidence.

CALCRIM 302. EVALUATING CONFLICTING EVIDENCE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>				
					Judge

Print date: 6/2007

If you determine there is a conflict in the evidence, you must decide what evidence, if any, to believe. Do not simply count the number of witnesses who agree or disagree on a point and accept the testimony of the greater number of witnesses. On the other hand, do not disregard the testimony of any witness without a reason or because of prejudice or a desire to favor one side or the other. What is important is whether the testimony or any other evidence convinces you, not just the number of witnesses who testify about a certain point.

CALCRIM 332. EXPERT WITNESS TESTIMONY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 1/2006

[REDACTED] (Witnesses were) allowed to testify as an experts and to give an opinions.

You must consider the opinions, but you are not required to accept **[REDACTED]** (them) as true or correct. The meaning and importance of any opinion are for you to decide. In evaluating the believability of an expert witness, follow the instructions about the believability of witnesses generally. In addition, consider the expert's knowledge, skill, experience, training, and education, the reasons the expert gave for any opinion, and the facts or information on which the expert relied in reaching that opinion. You must decide whether information on which the expert relied was true and accurate. You may disregard any opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

An expert witness may be asked a hypothetical question. A hypothetical question asks the witness to assume certain facts are true and to give an opinion based on the assumed facts. It is up to you to decide whether an assumed fact has been proved. If you conclude that an assumed fact is not true, consider the effect of the expert's reliance on that fact in evaluating the expert's opinion.

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters on which each witness relied. You may also compare the experts' qualifications.

CALCRIM 333. OPINION TESTIMONY OF LAY WITNESS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 1/2006

[REDACTED] (Witnesses), who ([REDACTED] were) not testifying as an experts, gave ([REDACTED] their) opinions during the trial. You may but are not required to accept ([REDACTED] those) opinions as true or correct. You may give the opinions whatever weight you think appropriate. Consider the extent of the witness's opportunity to perceive the matters on which his or her opinion is based, the reasons the witness gave for any opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

CALCRIM 355. DEFENDANT'S RIGHT NOT TO TESTIFY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>				
					Judge

Print date: 1/2006

A defendant has an absolute constitutional right not to testify. He or she may rely on the state of the evidence and argue that the People have failed to prove the charges beyond a reasonable doubt. Do not consider, for any reason at all, the fact that the defendant did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

CALCRIM 358. EVIDENCE OF DEFENDANT'S STATEMENTS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 12/2008

You have heard evidence that the defendant made an oral or written statements (before the trial/ [redacted]). You must decide whether the defendant made any [redacted] of these) statements, in whole or in part. If you decide that the defendant made such a statements, consider the statements, along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statements.

Consider with caution any statement made by (the [redacted] defendant tending to show (his/ [redacted] guilt unless the statement was written or otherwise recorded.

**CALCRIM 359. CORPUS DELICTI: INDEPENDENT EVIDENCE OF A CHARGED
CRIME**

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 8/2006

The defendant may not be convicted of any crime based on (his/) out-of-court statements alone. You may only rely on the defendant's out-of-court statements to convict (him/) if you conclude that other evidence shows that the charged crime or a lesser included offense was committed.

That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed.

The identity of the person who committed the crime and the degree of the crime may be proved by the defendant's statements alone.

You may not convict the defendant unless the People have proved (his/) guilt beyond a reasonable doubt.

CALCRIM 362. CONSCIOUSNESS OF GUILT: FALSE STATEMENTS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 4/2010

If the defendant _____ made a false or misleading statement before this trial relating to the charged crime, knowing the statement was false or intending to mislead, that conduct may show (he/ [redacted]) was aware of (his/ [redacted]) guilt of the crime and you may consider it in determining (his/ [redacted]) guilt. [redacted]

If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself.

CALCRIM 370. MOTIVE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 1/2006

The People are not required to prove that the defendant had a motive to commit (any of the crimes/) charged. In reaching your verdict you may, however, consider whether the defendant had a motive.

Having a motive may be a factor tending to show that the defendant is guilty. Not having a motive may be a factor tending to show the defendant is not guilty.

460. Attempt Other Than Attempted Murder (Pen. Code, § 21a)

The defendant is charged in Count 1 with attempted manufacture of an assault weapon.

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took a direct but ineffective step toward manufacturing an assault weapon

AND

2. The defendant intended to manufacture of an assault weapon

A *direct step* requires more than merely planning or preparing to manufacture an assault weapon or obtaining or arranging for something needed to manufacture an assault weapon. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to manufacture an assault weapon. It is a direct movement towards the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

A person who attempts to manufacture an assault weapon is guilty of attempted manufacture of an assault weapon even if, after taking a direct step towards committing the crime, he or she abandoned further efforts to complete the crime or if his or her attempt failed or was interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward manufacturing an assault weapon, then that person is not guilty of attempted manufacture of an assault weapon.

To decide whether the defendant intended to manufacture an assault weapon, please refer to the separate instructions that I will give you on that crime.

The defendant may be guilty of attempt even if you conclude that manufacture of an assault weapon was actually completed.

460. Attempt Other Than Attempted Murder (Pen. Code, § 21a)

The defendant is charged in Count 2 with attempted possession of an assault weapon.

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took a direct but ineffective step toward possession of an assault weapon

AND

2. The defendant intended possess an assault weapon

A *direct step* requires more than merely planning or preparing to possess an assault weapon or obtaining or arranging for something needed to possess an assault weapon. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to possess an assault weapon. It is a direct movement towards the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

A person who attempts to possess an assault weapon is guilty of attempted possession of an assault weapon even if, after taking a direct step towards committing the crime, he or she abandoned further efforts to complete the crime or if his or her attempt failed or was interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward possessing an assault weapon, then that person is not guilty of attempted possession of an assault weapon.

To decide whether the defendant intended to possess an assault weapon, please refer to the separate instructions that I will give you on that crime.

The defendant may be guilty of attempt even if you conclude that possession of an assault weapon was actually completed.

CALCRIM 2560 (Attempted) MANUFACTURE OF AN ASSAULT WEAPON

The defendant is charged in Count 1 with attempting to manufacture an Assault weapon in violation of Penal Code section 12280(a).

To prove the defendant is guilty of this crime, the People must prove that:

1. The defendant attempted to manufacture an assault weapon;
2. The defendant knew that he was attempting to manufacture it;
3. The defendant knew or reasonably should have known that it had characteristics that made it an assault weapon.

An Assault Weapon is defined as a semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

A "detachable magazine" means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered to be a tool.

A "forward pistol grip" means a grip that allows for a pistol style grasp forward of the trigger.

A "pistol grip that protrudes conspicuously beneath the action of the weapon" means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

CALCRIM 2560 (Attempted) POSSESSION OF AN ASSAULT WEAPON

The defendant is charged in Count 2 with attempting to possess an Assault weapon in violation of Penal Code section 12280(b).

To prove the defendant is guilty of this crime, the People must prove that:

1. The defendant attempted to possess an assault weapon;
2. The defendant knew that he was attempting to possess it;
3. The defendant knew or reasonably should have known that it had characteristics that made it an assault weapon.

An Assault Weapon is defined as a semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

A "detachable magazine" means any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered to be a tool.

A "forward pistol grip" means a grip that allows for a pistol style grasp forward of the trigger.

A "pistol grip that protrudes conspicuously beneath the action of the weapon" means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/or the right to control it), either personally or through another person.

CALCRIM 3515. MULTIPLE COUNTS: SEPARATE OFFENSES (Pen. Code, § 954)

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge _____			

Print date: 1/2006

Each of the counts charged in this case is a separate crime [REDACTED]
 [REDACTED] You must consider each count separately and return a separate
 verdict for each one [REDACTED]
 [REDACTED]

CALCRIM 3550. PRE-DELIBERATION INSTRUCTIONS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>				
Withdrawn	<input type="checkbox"/>	Judge			

Print date: 4/2008

When you go to the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard.

It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict if you can. Each of you must decide the case for yourself, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you become convinced that you are wrong. But do not change your mind just because other jurors disagree with you.

Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other.

As I told you at the beginning of the trial, do not talk about the case or about any of the people or any subject involved in it with anyone, including, but not limited to, your spouse or other family, or friends, spiritual leaders or advisors, or therapists. You must discuss the case only in the jury room and only when all jurors are present. Do not discuss your deliberations with anyone.

During the trial, several items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. (These exhibits will be sent into the jury room with you when you begin to deliberate.) [REDACTED]

[REDACTED]

If you need to communicate with me while you are deliberating, send a note through the bailiff, signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. If you have questions, I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else how the vote stands on the (question of guilt/or issues in this case) unless I ask you to do so.

Your verdict on each count [REDACTED]s must be unanimous. This means that, to return a verdict, all of you must agree to it. Do not reach a decision by the flip of a coin or by any similar act.

It is not my role to tell you what your verdict should be. Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

You must reach your verdict without any consideration of punishment.

You will be given a verdict forms. As soon as all jurors have agreed on a verdict, the foreperson must date and sign the appropriate verdict forms and notify the bailiff. If you are able to reach a unanimous decision on only one [REDACTED] of the (charges [REDACTED]), fill in (that [REDACTED] verdict forms only, and notify the bailiff. Return any unsigned verdict form.

CALCRIM 3577. INSTRUCTIONS TO ALTERNATE JUROR(S)

To the alternate juror(s): The jury will now begin deliberating but you are still an alternate juror(s) and are bound by my earlier about my instructions about your conduct.

Do not talk about the case or about any of the people or any subject involved in it with anyone, not even your family or friends. Do not have any contact with the deliberating jurors. Do not decide how you would vote if you were deliberating. Do not form or express an opinion about the issues in this case, unless you are substituted in for one of the deliberating jurors.

CALCRIM 3590. FINAL INSTRUCTIONS ON DISCHARGE OF JURY

You have now completed your jury service in this case. On behalf of all the judges of the court, please accept my thanks for your time and effort.

Now that the case is over, you may choose whether or not to discuss the case and your deliberations with anyone.

I remind you that under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about this case.

Let me tell you about some rules the law puts in place for your convenience and protection.

The lawyers in this case, the defendant, or their representatives may now talk to you about this case, including your deliberations or verdict. Those discussions must occur at a reasonable time and place and with your consent.

Please immediately report to the court any unreasonable contact, made without your consent, by the lawyers in this case, their representatives, or the defendant.

A lawyer, representative, or defendant who violates these rules violates a court order and may be fined.

I order that the court's record of personal juror identifying information, including names, addresses, and telephone numbers, be sealed until further order of this court.

If, in the future, the court is asked to decide whether this information will be released, notice will be sent to any juror whose information is involved. You may oppose the release of this information and ask that any hearing on the release be closed to the public. The court will decide whether and under what conditions any information may be disclosed.

Again, thank you for your service. You are now excused.

Handwritten signature

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF.	)	CASE NO. 10WF0918
)	
vs.	)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
DEFENDANT.)	
_____)	

We the jury in the above-entitled action find the Defendant, TIEN DUC NGUYEN, NOT GUILTY, of the crime of ATTEMPTED MANUFACTURE OF AN ASSAULT WEAPON, a Felony, in violation of Section 664(a)-12280(a)(1) of the Penal Code of the State of California, as charged in COUNT 1 of the Information

DATED: _____

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE WEST JUSTICE CENTER

_____)	
THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF,	)	CASE NO. 10WF0918
)	
vs.	)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
DEFENDANT,)	
_____)	

We the jury in the above-entitled action find the Defendant, TIEN DUC NGUYEN, NOT GUILTY, of the crime of ATTEMPTED POSSESSION OF AN ASSAULT WEAPON, a Felony, in violation of Section 664(a)-12280(b) of the Penal Code of the State of California, as charged in COUNT 2 of the Information.

DATED: _____

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF.)	CASE NO. 10WF0918
)	
vs.)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
DEFENDANT.)	
_____)	

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DATED: _____

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF,)	CASE NO. 10WF0918
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TIEN DUC NGUYEN)	
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DATED: _____

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF.)	CASE NO. 10WF0918
)	
vs.)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
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DATED: 4/11/11

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF,)	CASE NO. 10WF0918
)	
vs.)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
DEFENDANT.)	

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DATED: 7/7/11

SIGNED: _____
Forcperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

_____ THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
	)	PLAINTIFF.
	)	CASE NO. 10WF0918
)	
)	
vs.	)	VERDICT
)	
TIEN DUC NGUYEN)	
)	
	)	DEFENDANT.
_____)	

We the jury in the above-entitled action find the Defendant, TIEN DUC NGUYEN, GUILTY, of the crime of ATTEMPTED MANUFACTURE OF AN ASSAULT WEAPON, a Felony, in violation of Section 664(a)-12280(a)(1) of the Penal Code of the State of California, as charged in COUNT 1 of the Information

DATED: 4/7/11

SIGNED: _____
Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF.) CASE NO. 10WF0918
)
) vs.) VERDICT
)
 TIEN DUC NGUYEN)
)
) DEFENDANT.)
)

We the jury in the above-entitled action find the Defendant, TIEN DUC NGUYEN, GUILTY of the crime of ATTEMPTED POSSESSION OF AN ASSAULT WEAPON, a Felony, in violation of Section 664(a)-12280(b) of the Penal Code of the State of California, as charged in COUNT 2 of the Information.

DATED: 11/11/10

SIGNED:

Foreperson

FILED
CLERK OF SUPERIOR COURT
NOV 30 2011
A. J. WILSON, Clerk
BY: [Signature]

Prob/Sent Report
DOCUMENT

DATE FILED

11-14-11
SENTENCING DATE

PRE SENTENCE
PROBATION
REPORT
CONFIDENTIAL
AFTER ABOVE DATE
(60th day after
sentencing)

CONFIDENTIAL

NGUYEN, Tien Duc
DEFENDANT'S NAME

10WF-0918
CASE NUMBER

Pages 190 - 254

CONFIDENTIAL
Per Sec 11142 P.C., the furnishing of this report or information contained within, to an unauthorized person is a misdemeanor.

ORANGE COUNTY PROBATION DEPARTMENT

PROBATION & SENTENCING REPORT

WEST JUSTICE CENTER W8

May 31, 2011 8:30 AM

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

MAY 31 2011

ALAN CARLSON, Clerk of the Court

BY: S. MELESKE, DEPUTY

1 Defendant: NGUYEN, TIEN DOC Court #: 10WF0918
2 AKA: SEE ADDENDUM Probation #: A339349
3 Address: 11662 PALMWOOD DR, GARDEN GROVE, CA 92840
4 Telephone: NONE Present Whereabouts: BAIL
5 Cell Phone: 714 383 1736
6 DPO: MIRAMONIES, KELLY S.:dme Attorney: CHRISTOPHER HENNES, RETAINED
7 ATTORNEY

DESCRIPTION

10 Age: 35 DOB: 07/03/1975 POB: GUAM
11 Sex: MALE Ethnicity: VIETNAMESE Arrival in CA: 1980
12 Height: 5-9 Weight: 160 Hair: BLACK Eyes: BROWN
13 Citizenship: U.S. CITIZEN ID Marks: TTS: "W" "T" RT & LF THIGHS;
"NGUYEN" ON STOMACH
14 DMV: CA B3370423 Expires: 07/03/2015 SSN: 586-66-4650 CDC: NONE
15 FBI: 205389XAO CII: A10938112 OCSO: 864711 Booking #: 100904BP

CASE STATUS

16 Case No: 10WF0918
17 Present Offense:
18 CT. 1: 664(a)-12280(a)(1) PC (ATTEMPT- UNLAWFUL ASSAULT WEAPON
ACTIVITY), FELONY;
19 CT. 2: 664(a)-12280(b) PC (ATTEMPT- POSSESSION OF AN ASSAULT
WEAPON), FELONY;
20 CT. 3: 12021(a)(1) PC (POSSESSION OF FIREARM BY FELON) FELONY;
21 CT. 4: 12316(b)(1) PC (POSSESSION OF AMMUNITION BY PROHIBITED
PERSON), FELONY.
22 Enhancement: NONE
23 Priors: 667(d) AND (e)(1) AND 1170.12(b) AND (c)(1) PC
24 Other Allegations: NONE
25 Off Date: 03/17/2010
26 Arr Date: 03/18/2010 Arr Agn: OCAIT
27 Filed: INF 11/15/2010 Guilty By: JURY Date: 04/07/2011
28 Days Custody: 2 Custody Info: BOOKED AND RELEASED ON 03/18/2010

NGUYEN, TIEN DUC

Page: 2

Court # 13WF0918 A239349

Codefendants: NONE

EMPLOYMENT HISTORY

Last or Present Employer: IMPORT AUTO PROS (OWNER)

Date Began: 6/2006 Date Term: PRESENT Reason: INTACT

Type of Work: AUTO REPAIR SHOP Work Phone: 714-383-1736 Salary: \$2K/MO

Job Skills Possessed: MECHANIC

PREVIOUS EMPLOYMENT

<u>From</u>	<u>To</u>	<u>Employer</u>	<u>Type Of Work</u>	<u>Salary</u>	<u>Reason</u>
2001	2003	CROWN LIFT TRUCKS	TECHNICIAN	\$16/HR	PRICR RECORD

MARITAL HISTORY

Current Spouse: JAN T. NGUYEN DOB: 10/26/1977

Home Address: 11662 PALMWOOD DR, GARDEN GROVE, CA 92840

Date/Place Of Marriage: 11/25/2000 - FOUNTAIN VALLEY, CA Status: MARRIED

Occupation: ESCROW OFFICER Phone: 714-851-9728

Employer Address: CALIFORNIA EAGLE ESCROW, WESTMINSTER, CA

Children: ASHLEY NGUYEN DOB: 03/27/2000 SEX: FEMALE

Address: 11662 PALMWOOD DR, GARDEN GROVE, CA 92840

Other Parent: JAN T. NGUYEN Age: 11

Children: MEGAN NGUYEN DOB: 10/07/2002 SEX: FEMALE

Address: 11662 PALMWOOD DR, GARDEN GROVE, CA 92840

Other Parent: JAN T. NGUYEN Age: 8

Previous Spouse: NONE

FAMILY DATA

Name: NIEM NGUYEN Relation: FATHER Age: 70
Address: 5210 W WISTERIA PL, SANTA ANA, CA Phone: 714 531 1557
92704
Occupation: RETIRED POB: VIETNAM

Name: TAN NGUYEN Relation: MOTHER Age: 65
Address: 5210 W WISTERIA PL, SANTA ANA, CA Phone: 714-531-1557
92704
Occupation: N/R POB: VIETNAM

Name: TIUAI NGUYEN Relation: SISTER Age: 47
Address: 1244 W BALBOA BLVD #3, NEWPORT BEACH, CA Phone: 714-623-1440
92661
Occupation: ORANGE COAST COLLEGE COUNSELOR

Name: MAX NGUYEN Relation: BROTHER Age: 45
Address: 5210 W WISTERIA PL, SANTA ANA, CA Phone: 714-224-2303
92704
Occupation: N/R

Name: HARRY NGUYEN Relation: BROTHER Age: 42
Address: 29141 HEART DESIRE DR, Phone: UNKNOWN
MECHANICSVILLE, MD 20659
Occupation: COMPUTERS

Name: DANNY NGUYEN Relation: BROTHER Age: 38
Address: 5210 W WISTERIA PL, SANTA ANA, CA Phone: 714-531-1557
92704
Occupation: UNEMPLOYED

Name: NANCY NGUYEN Relation: SISTER Age: 33
Address: 228 COLE ST #3, COSTA MESA, CA 92627 Phone: 714-725-6798
Occupation: UNEMPLOYED

Name: VU NGUYEN Relation: BROTHER Age: 30
Address: 5210 W WISTERIA PL, SANTA ANA, CA Phone: 714-531-1557
92704
Occupation: STUDENT

<u>Former Residences</u>	<u>From</u>	<u>To</u>
10141 MEGAN CT, WESTMINSTER, CA 92683	2002	2006
10312 KENN AV, GARDEN GROVE, CA 92843	1995	2002
22931 BELQUEST DR, LAKE FOREST, CA 92630-4007	1995	1998

NGUYEN, TIEN DUC

Page: 0b

Court # 10WF0918

A239349

EDUCATIONAL BACKGROUND

Highest Grade Completed: 12

Where: WESTMINSTER HIGH SCHOOL

Degrees Held: NONE

Job Training: UNIVERSAL TECHNICAL

INSTITUTE: 2002

CERTIFICATION IN AUTOMOTIVE
REPAIR

PERSONAL INFORMATION

Health: GOOD

Past Health Issues: NONE

Religion: CATHOLIC

Military Record: NONE

Hobbies and Interests: CARS

Alcohol: 1-2X A YEAR, FIRST TRIED AT 18 YRS OLD

Drugs: MARIJUANA 1ST USED AT 18 YRS OLD, LAST USED ON 1/1/11;
METHAMPHETAMINE 5X

Previous Treatment Programs: NONE

Vehicle(s) Owned

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Color</u>
2002	FORD	EXCURSION	SILV & BLK

Firearms Owned/Possessed: CONFISCATED; NONE PER AFS.

A D D E N D U M

AKAs:

Last Name	First Name	Middle	NameExtension
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BIRTHDATES:

No additional...

SOCIAL SECURITY NUMBERS:

586-66 4650

Court No. 10WF0918; A-239349

COURT STATUS

On November 15, 2010, an Information was filed in the Orange County Superior Court, West Justice Center, charging the defendant, as follows:

Count 1: Violation of Section 664(a)-12280(a)(1) of the Penal Code (Attempt-Unlawful Assault Weapon Activity), a Felony;

Count 2: Violation of Section 664(a)-12280(b) of the Penal Code (Attempt-Possession of an Assault Weapon), a Felony;

Count 3: Violation of Section 12021(a)(1) of the Penal Code (Possession of Firearm by Felon), a Felony.

The defendant was previously convicted of a violation of Section 12025(a)(1)/(b)(3) of the Penal Code on or about August 11, 1999, in the Superior (WEST) Court of the State of California, in and for the County of Orange, in case: 99WF1808.

Count 4: Violation of Section 12316(b)(1) of the Penal Code (Possession of Ammunition by Prohibited Person), a Felony.

PRIOR CONVICTIONS

It is further alleged pursuant to Penal Code Sections 667(d) and (e)(1) and 1170.12(b) and (c)(1), that the defendant was previously convicted of a serious and violent felony:

The defendant was previously convicted of a violation of Section 12025(a)(1)/(b)(3) of the Penal Code on or about August 11, 1999, in the in the Superior Court of the State of California, in and for the County of Orange, case: 99WF1808.

On April 7, 2011, a Jury found the defendant guilty of Counts 1 and 2, and the matter was referred to the Probation Department for preparation of a Probation and Sentencing Report and continued to May 31, 2011, in Department W8. At that time, the Court indicated that any fees would be determined at the time of sentencing and present bail was deemed sufficient and continued. Previously, on April 4, 2011, the defendant

Court No. 10WF0918; A-239349

1 pled guilty to Counts 3 and 4, and admitted the prior pursuant to
2 667(d)/(e)(1) and 1170.12(b)/(c)(1) PC.

3 CIRCUMSTANCES OF THE OFFENSE

4 Since the Court is familiar with the evidence presented during
5 the Jury Trial, the following is offered as a brief summary of the offense
6 according to police reports and may not exactly reflect trial testimony.

7 According to records of the Orange County Auto Theft Task Force
8 (OCATT #10-03-012), on March 17, 2010, the defendant was found in
9 possession of a completely assembled .50-caliber rifle and an AK-47-type
10 rifle, which had all of the pieces but was not assembled. The two rifles
11 did not have a manufacturer's name or serial number affixed to the lower
12 receivers, and the defendant claimed he completed the machining process to
13 the receivers himself. (It was noted that the lower receiver of a rifle
14 is the portion which is usually controlled and registered.) In addition
15 to the two rifles, the defendant was also found in possession of two types
16 of .50-caliber ammunition.

17 Detectives conducted CVC 2805 inspections (motor repair shop
18 inspections for stolen vehicles and vehicle parts) at several locations in
19 Westminster. They responded to Sirlarity Motor Sports in Westminster,
20 which was being operated by Duan K. Ho, and discovered a "chop shop" with
21 numerous stolen vehicles and vehicle parts.

22 At approximately 10:30 a.m., detectives responded to Import Auto
23 Pros and contacted the owner (later identified as the defendant). The
24 defendant was informed that the detectives were completing CVC 2805
25 inspections, and he agreed to allow them to search the premises.

26 Detective Chapman asked the defendant if any weapons were present, and he
27 stated he had a rifle he used for hunting. The defendant then showed the
28 detectives photographs on his cellular phone of several pigs which had

Court No. 10WF0918; A-239349

1 been shot. He indicated he recently shot the pigs in San Bernardino and
2 reiterated that he used the rifle for hunting purposes.

3 The defendant led the detectives to a storage-type area where
4 the rifle was located. Detective Chapman described the rifle as an
5 extremely large and heavy bolt-action type rifle which was assembled in
6 one piece. The upper portion of the rifle was a bolt-action type with an
7 extremely large bolt and barrel, which chambered the .50-caliber DTC
8 round. The .50-caliber DTC round appeared to be a modified version of the
9 .50-caliber BMG round. Detective Chapman noted that this type of round is
10 extremely powerful and is used in the military for applications such as
11 destroying personnel, vehicles, large equipment, and aircraft.

12 Detective Chapman examined the rifle and did not locate any
13 numbers or identification marks. The defendant claimed he purchased an
14 "80% lower" from the Internet, which he described as a machined AR-15-type
15 lower receiver. He explained that the lower receiver was not completed
16 and he had machined the last few holes to complete the rifle. The
17 defendant implied that since the rifle was not complete when he received
18 it, he did not have to register it. He explained that after receiving the
19 lower portion of the rifle, he purchased the upper portion and attached
20 it.

21 The defendant produced a box of 50 rounds of .50-caliber DTC
22 ammunition for the rifle, which he claimed he received from a "re-loader"
23 through the mail. Also in his possession were 120 rounds of Alexander
24 Arms .50-caliber Beowulf ammunition that did not go with the rifle in
25 question. The defendant stated the ammunition was left over from his pig
26 hunt and said he rented that caliber rifle while hunting.

27 The defendant advised Detective Chapman he also had an AR-47 in
28 the shop, which he was also manufacturing himself. The defendant provided

Court No. 10WF0918; A-239349

1 a box full of parts appearing to be the parts necessary to put together an
2 AK-47-type semiautomatic assault rifle. The receiver portion of the AK-
3 47-type rifle did not have a manufacturer's name or serial number on it.
4 The defendant showed the detectives a website called "AKBuilder.com." The
5 website advised how to build an AK-47 assault rifle and, therefore, avoid
6 the registration process. The defendant explained he purchased an AK-47
7 "receiver flat," which is a receiver with the holes milled or punched out,
8 but that is not bent into the proper shape to assemble the rifle. He
9 advised that he personally altered the receiver to assemble his own AK-47-
10 type rifle. The defendant claimed he had not yet assembled the AK-47-type
11 rifle and had not fired the .50-caliber DTC rifle either.

12 When the detectives asked the defendant about the legalities of
13 making and owning the rifles without registering them, he implied he knew
14 his behavior was wrong and later admitted he had a previous felony
15 conviction for possessing a firearm and being a gang member. The
16 defendant also acknowledged he was aware he was not supposed to be in
17 possession of any firearms. A criminal history check revealed the
18 defendant had been arrested several times for felony-type charges,
19 including at least one gang enhancement.

20 Regarding the defendant's involvement with suspect Ho, he stated
21 they often purchased used automotive parts from each other. He implied
22 they purchased and sold used engines, drive trains, and suspension parts
23 for miscellaneous vehicles. The defendant admitted he recently sold parts
24 to a 2006 Mitsubishi to suspect Ho, and stated he faxed the receipts to
25 the insurance company after they requested them. The receipts indicated
26 the defendant had sold a used clutch kit for \$1,750 on July 28, 2009, a
27 used exhaust system for \$1,550 on August 15, 2009, a used "coil over" on
28 September 2, 2009, an AEM EMS system for \$1,600, and an HKS down pipe for

Court No. 10WF0918; A-239349

1 \$300 on October 26, 2009, for the 2006 Mitsubishi. Detective Chapman
2 acknowledged that the prices on the receipts for used parts seemed
3 extremely inflated. The defendant responded that suspect Ho had a lot of
4 money and cars and liked to "show it off" so he "taxed" him for
5 "showboating." When asked if suspect Ho charged the defendant inflated
6 prices for his used parts, he claimed he did not buy many parts from Ho
7 and avoided giving details.

8 The co-owner of the shop, David N., stated he could not recall
9 the transaction involving the 2006 Mitsubishi, and indicated the defendant
10 was the only person who sold the products. David N. stated he was
11 currently on probation and that he lived at the defendant's house. The
12 defendant again acknowledged he was not to be in possession of any weapons
13 and agreed to allow the detectives to search his residence. He indicated
14 his wife had a shotgun registered in her name, but claimed he had lent it
15 to a friend and it was not at his home or the shop.

16 In the hallway closet of the defendant's residence, was a
17 moderate-sized gun safe, which was empty with the door ajar. The
18 defendant claimed he left the door open since it was unlocked and had
19 nothing inside. Detective Chapman noted that the defendant's explanation
20 of the open gun safe did not appear to make sense.

21 On March 18, 2010, detectives met with the defendant to further
22 interview him regarding the insurance fraud involving suspect Ho. The
23 defendant again admitted he was a convicted felon, was not supposed to
24 have firearms, and that he had purchased the parts for the firearms and
25 completed the process of machining and building the lower receivers of the
26 AR-47 and the .50-caliber rifle. The defendant again reported he had
27 purchased the AR-15 type lower on the .50-caliber rifle as an "80%"
28 completed lower assembly, which he finished himself to make the weapon

1 operable and, therefore, did not have to complete the registration
2 process. Detective Chapman asked the defendant why he did this and he
3 stated, "Because I can."

4 Regarding the AK-47, the defendant again stated he purchased the
5 items as a kit and had all of the parts necessary to assemble a completed
6 AK-47-type rifle, except the receiver. He then purchased the receiver
7 portion (which the kit was lacking) and completed the process of bending
8 the flat-milled materials to make the rifle operable. However, the
9 defendant indicated he had not yet assembled the rifle. Detective Chapman
10 noted the defendant had changed his explanation of how he had completed
11 the process of bending the AK-47-type receiver. The defendant was placed
12 under arrest and was transported to the Buena Park Police Department for
13 booking. He later made bail (\$20,000) on his charges.

14 On March 30, 2010, Orange County Sheriff's Department Firearms
15 Instructor David Teague was contacted, and indicated he was a retired
16 assault weapons expert from the military. Teague briefly examined the box
17 of AK 47-type parts and indicated he was familiar with the process of
18 buying AK-47 receiver flats and parts kits in order to assemble a working
19 rifle. Teague stated the defendant had partially completed the process of
20 making a working receiver, but said the rifle was not in working order at
21 the time. He advised that the hammer and the sear were possibly missing
22 and were needed to assemble a completed rifle.

23 Several days later, Detective Chapman met with a firearms
24 examiner from the Santa Ana Police Department. The examiner checked the
25 .50-caliber DTC rifle and stated it appeared to be in working order.
26 Detective Chapman had already dry fired the rifle and stated he could hear
27 and feel the firing pin release when the trigger was pulled. After
28 checking the AK rifle parts, the examiner felt the necessary parts were

Court No. 10WF0918; A-239349

1 present to create a working rifle, possibly with some modifications. He
2 examined the AK receiver and advised that it had been bent into shape for
3 assembly. The receiver had holes drilled into it but needed several more
4 holes to complete the project.

5 DEFENDANT'S STATEMENT

6 The defendant was interviewed at the Orange County Probation
7 Department on April 26, 2011, at which time he also provided a written
8 statement. Regarding the instant offense, the defendant stated the police
9 arrived at his shop to investigate insurance fraud. He denied running a
10 "chop shop," and explained that he buys and sells used and new auto parts.
11 He claimed he sold the auto parts in question and wrote receipts to
12 suspect Ho. According to the defendant, none of the parts were stolen,
13 but suspect Ho had submitted the receipts to the insurance company after
14 his vehicle was stolen.

15 Regarding the .50-caliber rifle, the defendant said he assembled
16 it to use while hunting for pigs. He indicated he hunted pigs at a ranch
17 in San Bernardino on one occasion, and the rifle is not generally used to
18 hunt pigs because it is considered a "big game" hunting rifle. The
19 defendant claimed he purchased the "80% kit" from the Internet. He
20 reiterated that the part he purchased was the "lower portion" and he had
21 to finish the pieces by machining them. The defendant stated he only
22 assembled one rifle and never had any bad intentions; however, he also
23 acknowledged his awareness that he could not purchase a rifle because of
24 his past criminal record. He claimed he has never sold any firearms,
25 including any he that he made or assembled himself.

26 Regarding the AK-47-type rifle, the defendant stated he
27 purchased a "parts kit" from HendersonDefense.com, and purchased the "flat
28 lower" from AKBuilders.com. He stated he learned to make the rifles by

Court No. 10WF0918; A-239349

1 watching movie clips on YouTube.com. According to the defendant, when he
2 became interested in hunting pigs, he began "dabbling" in building his own
3 rifle and it became a hobby.

4 The defendant claimed the gun locker located by police at his
5 residence was open because he planned to bring the rifles home. He stated
6 he had not figured out how to use the combination lock on the gun locker
7 and, therefore, he left the door open. The defendant acknowledged that
8 his wife owns a shotgun that she used "years ago" for skeet shooting. He
9 claimed a friend took the gun for hunting a few years ago and has not
10 returned it.

11 The defendant stated he feels he has let his family down with
12 his "foolish" behavior, and understands he should not have had the rifles
13 at his shop. He then reiterated that he never had any bad intentions by
14 purchasing the parts and assembling them. The defendant then reported he
15 was making the rifles as a hobby, and not to get around having to register
16 them. He stated, "I am an impulse kind of guy but regret it totally
17 because of putting my family in jeopardy."

18 The defendant hopes to remain out of custody so he can help
19 provide for his family and continue to maintain his auto repair shop. He
20 indicated that if given the opportunity to be placed on probation, he
21 would abide by all of the terms and conditions required of him. His plans
22 for the future include caring for his family and getting his life back on
23 track. He stated his family keeps him busy and out of trouble.

24 The defendant reported that if he is incarcerated for a lengthy
25 period of time, his wife would struggle financially, and they would
26 probably lose their house and his business. The defendant would like the
27 Court to know he is not a threat to the community or a criminal. He

28

1 stated he has "come a long way," and will not own any weapons in the
2 future.

3 STATEMENTS OF REFERENCES AND INTERESTED PARTIES

4 Statement of Deputy District Attorney

5 Deputy District Attorney Renee Jones submitted a letter
6 regarding this matter, and indicated this is clearly a state prison case
7 based on the criteria set forth in Rule 4.414. She reported that the
8 defendant has already previously suffered a "strike" conviction for
9 possessing a firearm for the benefit of a criminal street gang and appears
10 to have been in the business of creating large-caliber, extremely powerful
11 assault weapons. Further, he was in possession of a large amount of
12 ammunition for the completed weapon, and another box of ammunition for at
13 least one other, still outstanding, .50-caliber firearm. According to Ms.
14 Jones, this was in addition to the AK-47-type assault weapon that the
15 defendant was in the midst of manufacturing.

16 Ms. Jones also stated that police located an invoice for three
17 "river kits" which the defendant had ordered, indicating his intent to
18 build or that he had already built at least two other AK-47s. Upon
19 searching the defendant's residence several hours after the initial
20 weapons were found, and after the defendant had the opportunity to contact
21 his home, police found a large, unlocked gun safe, which appeared to have
22 been recently emptied. Further, the defendant claimed there was another
23 firearm registered to his wife that had never been surrendered.

24 Ms. Jones wrote:

25 "It is unfathomable an individual who has already
26 been convicted of a strike offense for gang-related
27 gun possession, knowing he was prohibited from owning
28 a firearm, would be in possession of even one gun
except for nefarious purposes. This individual is
heavily involved with extremely powerful weapons
including .50-caliber weapons commonly used in the

Court No. 10WF0918; A-239349

1 military for numerous applications such as destroying
2 personnel, vehicles, large equipment and aircraft.
3 The Defendant provided an unbelievable justification
4 for possessing these extremely powerful firearms;
5 namely, to shoot pigs. The Defendant was certainly
6 an active participant, in that he alone was
7 manufacturing the weapons himself. His criminal
8 sophistication is apparent by the manner in which he
9 studied the design and manufacture of the weapons,
10 gathered necessary parts and tools, completed the
11 manufacture of the .50-caliber gun, and successfully
12 completed the most difficult part of creating the AK-
13 47 by shaping the receiver. He also admitted he knew
14 how to avoid registration requirements, thereby
15 evading the law. There were no unusual circumstances
16 whatsoever to justify this crime or to suggest the
17 Defendant would not re-offend in the future.

18 "Facts relating to the Defendant further support a
19 denial of probation pursuant Rule 4.414. He has a
20 prior record of criminal conduct including two prior
21 theft related convictions, and two prior firearms
22 possession convictions, one of which constituted a
23 strike involving gang related activity. It is
24 unlikely that [the] Defendant would follow the terms
25 of probation, having in the past knowingly violated a
26 prior probation in his first firearms possession
27 case, by then possessing a weapon again for the
28 benefit of his gang. Further, he has shown intent to
circumvent and violate the law repeatedly by
manufacturing these weapons. Finally, he certainly
presents a danger to others by manufacturing and
possessing these extremely dangerous weapons if not
sent to prison."

Ms. Jones indicated that the defendant's level of criminality
has increased significantly, having already suffered two prior firearms
possession convictions, a burglary conviction, and a theft conviction.
The defendant has graduated from "mere possession" of a standard 9mm
firearm, to the manufacture of high-caliber and assault weapons. Ms.
Jones discussed that this is the defendant's third firearm possession
conviction, and stated he has certainly failed to learn from his two prior
convictions and four prior grants of probation. She stated,

"The People will respectfully request the Court take
into account and impose [the] Defendant's prior
strike in sentencing this Defendant to state prison."

Court No. 10WF0918; A-239349

Statement of Defense Attorney

Defense Attorney Christopher Hennes provided a letter dated May 3, 2011, in which he advised that the defendant pled guilty to carrying a concealed weapon in 1999 and served a jail sentence. Mr. Hennes also represented the defendant in that matter, and stated that after he served his custody commitment, the defendant lived a productive, law-abiding life until his involvement in the instant offense. Mr. Hennes acknowledged that because the defendant is a convicted felon, he is prohibited from indulging in his hobby and interest in firearms. He indicated the defendant should have known better than to possess ammunition and a rifle that he never intended to use. Mr. Hennes wrote:

"His guilty pleas to the felon-in-possession counts were the consequence of his poor judgment. The convictions for attempted manufacture and attempted possession of an assault weapon will be challenged in [the] defendant's motion for new trial and, if necessary, appeal. The assault weapon charges were based on Mr. Nguyen's possession of a gun kit he purchased online from an out-of-state retailer. The California Department of Justice has issued written opinions advising that possession of unassembled firearms parts identical to Mr. Nguyen's may be lawfully possessed in California. Thus, in my opinion, incarceration is inappropriate because the law is, to say the least, unsettled and conflicting in the context of unassembled weapons."

Mr. Hennes stated that the unusual circumstances in this matter render incarceration an inappropriate punishment for any of the convictions. Further, he stated there was no related criminal behavior associated with or contemplated by the defendant's unlawful possession, and had it not been for a random search, it is unlikely that the guns, parts, or ammunition would ever have left the defendant's shop.

Mr. Hennes indicated that the defendant declined the prosecution's pretrial offer of one year in custody on the felon in possession charge with the remaining counts to be dismissed. He feels the

Court No. 10WF0918; A-239349

1 defendant's decision may have been a "strategic error"; however, the
2 Jury's verdict does not change the defendant's culpability of his conduct.
3 Mr. Hennes stated the defendant's chance of recidivism can safely be
4 calculated at zero, and wrote:

5 "The possession of the otherwise-legal firearm and
6 parts, without any associated criminal conduct, was
7 *malum prohibitum*. Imprisonment would have
8 devastating effects on [the] defendant's family and
9 business for no rehabilitative or punitive purpose.
[The] defendant has proven his reformation over the
past dozen years; his lapse of judgment caused no
harm other than his own extreme mental anguish."

10 Personal References

11 Statement of Defendant's Wife

12 Jan Tran-Nguyen has known the defendant for over 17 years. She
13 indicated their two daughters attend a private Catholic school, and both
14 she and the defendant moved their businesses to the city of Westminster to
15 be closer to the school. They decided this was the best way to give more
16 time to their children, rather than devoting all of their time to work.

17 According to Mrs. Nguyen, she experienced the defendant's "last
18 run-in with the law," which he was convicted of 11 years ago. She
19 indicated this was a devastating moment for both of them because while the
20 defendant was incarcerated, she found out she was expecting their first
21 child. They viewed the pregnancy as the beginning of a positive outlook
22 on life together. Since then, the defendant and Mrs. Nguyen have made
23 their daughters their priority. She indicated the defendant is a very
24 "hands-on" father and often cares for the children while she is at work.

25 Mrs. Nguyen stated she knows for a fact that the defendant is
26 not a threat to society. She stated his contributions to the community
27 are "immeasurable." According to her, the defendant should not be going
28 through this. She reiterated that they spent 11 years raising their

Court No. 10WF0918; A-239349

1 family and working hard to have their own business to see all of it be
2 destroyed due to their "misjudgment" and "ignorance of the law." Mrs.
3 Nguyen stated she wishes this upon herself, so the defendant can continue
4 to live life vicariously through their daughters. Mrs. Nguyen asks that
5 the Court see what kind of person the defendant really is. She stated his
6 character does not fit the crime for which he is currently convicted.

7 Mrs. Nguyen wrote:

8 "If anything, his carefree, adventurous, curiosity
9 and enthusiasm for what life has to offer him put him
10 in our current situation with the law. Of which, he
11 humbly and regretfully is sorry for. Without a
12 doubt, this is an honest misjudgment on his part,
13 which kills him every day to think about. If he was
14 to be taken away his time from his daughters, Ashley
15 and Megan, I know that he will never be the same
16 again. I can't replace him nor provide our girls the
17 time that he would spend with them. Please allow
18 leniency of probation so he may continue to support
19 our family physically, emotionally and financially.
20 Without him, I cannot continue to pay for our girl's
21 [sic] tuitions, run my business 14 hours a day, pay
22 our mortgages, nor attend to our girls in ways that
23 we are doing now. If community services and or
24 probation can be granted, we humbly thank you for
25 forgiving us."

17 Statement of Defendant's Sister

18 Nancy Nguyen described her upbringing with the defendant as
19 "traditional." She acknowledged his interest in building things at a
20 young age, and stated he was very skilled at it. She has always looked to
21 the defendant for support because he is reliable. Nancy stated that since
22 becoming a parent, the defendant's personality shifted from being a
23 carefree person to an unconditional loving father. He is dedicated to his
24 family and makes them a priority. She indicated that his daughters'
25 education is very important to him and he is very helpful with their
26 studies. Nancy hopes her insight of the defendant will convince the Court
27 for leniency in granting him probation and no jail time.
28

Court No. 10WF0918; A-239349

Statement of Defendant's Sister

Tijai Nguyen indicated their family was taught virtues such as patience, perseverance, self-sacrifice, humility and to respect their parents and elders. They were also taught to be polite, and she described their family as traditional with "old values." Tijai stated they were raised Catholic, which shaped and influenced the orientation and behavior of their family lives.

Tijai described the defendant as more curious, adventurous, bold, brave, active, and thrilling than the rest of the children. Although he was raised with "old values" at home, he was introduced to modern values such as individualism, self-reliance, equality of opportunity, and competition. The difference of two cultures may have caused the defendant to explore his own identities when he was in his 20's, and he began hanging out with the wrong crowd. According to Tijai, "that life" was short-lived; however, a "mistake in judgment" landed the defendant in jail for eight months. She explained that experience was a wake-up call for the defendant, and holding his daughter in his arms after his release from custody was a pivotal moment in his life. According to Tijai, the defendant made a conscious decision to be a loving father and a devoted husband at that time.

Tijai stated that the defendant's life truly is a success story. He walked away from his past without a second glance and completely turned his life around. She indicated his involvement in his daughters' lives, and said he has made a name for himself in society. Further, he capitalized his passion for cars and transformed that into a "booming" business. She reported that the defendant has an exterior appearance of being a "tough, unapproachable guy," but beneath his exterior is a "sensitive guy." Tijai advised that the defendant now surrounds himself

Court No. 10WF0918; A-239349

1 with a positive environment and a strong family support system. She
 2 acknowledged having difficulty with the defendant 12 years ago when he was
 3 in trouble with the law, but has also witnessed the respectable, honest,
 4 generous, loving man he has become. Tijai does not feel the defendant is
 5 a dangerous man or a threat to society, and wrote:

6 "I sincerely feel that society is better served by
 7 allowing Tien to raise his two daughters away from
 8 the prison system. It is with utmost respect that I
 9 ask your Honor leniency in granting Tien probation
 and no jail time. He is an honorable family man who
 loves his wife and daughters more than life itself."

10 Additional References

11 In addition to the above, the defendant submitted approximately
 12 14 other reference letters, which were drafted by his pastor, family
 13 members, and friends. Most of the letters are lengthy, and describe the
 14 defendant as a great family man, who is a kind and caring individual.

15 PRIOR RECORD

16 According to the Federal Bureau of Investigation, the California
 17 Bureau of Criminal Identification and Information, records of the Orange
 18 County Probation Department, and the Orange County Deputy District
 19 Attorney's Office, the defendant has the following record of arrests and
 20 prior convictions:

21 Adult Record

22 <u>Date</u>	23 <u>Agency</u>	24 <u>Offense</u>	25 <u>Disposition</u>
26 11/5/94 (Age 19)	27 Westminster PD (DR #94-11572)	28 12025(a) PC 12031(a) PC	3/10/95; WJC, 95WM02421, 12025(a) PC, conv., misd., 12031(a) PC, conv., misd., 3 years prob., 45 days jail.

26 Records regarding this incident were requested; however, they
 27 have been purged by the Westminster Police Department.

28 The defendant reported to the probation officer that he was
 inside a vehicle where a gun was located. He claimed he knew the gun was

Court No. 10WF091B; A-239349

1 there; however, he stated it was not his. He denied having any knowledge
2 of the gun being used in any crimes, and said he was cited and released.

3	11/18/94	Westminster PD	12025 PC	3/10/95: WJC, 95WMO2420,
	(Age 19)	(DR #94-12129)	12031 PC	12025(b) PC, conv., misd.,
4			537(e) PC	12031(a) PC, conv., misd.,
5				537(e) PC, conv., misd., 3
				yrs. prob., 45 days jail.

6 Records regarding this incident were requested; however, they
7 have been purged by the Westminster Police Department.

8 According to the defendant, he was at a party when police
9 arrived and ordered everyone to get down on the floor. He stated that the
10 police located a gun next to him on the floor, but he denied it was his.

11	11/28/1994	Westminster PD	488 PC	12/28/94: WJC, 94WM16648,
12	(Age 19)	(DR #94-12426)		488 PC, conv., misd., work
				time (not specified).

13 Records regarding this incident were requested; however, they
14 have been purged by the Westminster Police Department.

15 The defendant stated he could not recall this arrest.

16	8/7/95	Westminster PD	459 PC	8/18/95: WJC, 95WM10394,
17	(Age 20)	(DR #95-7639)	484(a)-488 PC	459 PC, conv. misd.,
				484(a)-488 PC, conv.,
				misd., 5 yrs. prob., 270
				days jail, gang terms.
				9/17/99: Prob. terminated.

18 According to police records, an officer responded to a theft
19 which occurred at One Stop Mart. The owner reported that two suspects
20 entered the store, one of whom was the defendant. The defendant stood
21 inside blocking the doorway while his companion went to the beer cooler.
22 The defendant's companion took four 12-packs of beer to the magazine rack
23 and looked at magazines for approximately 15 minutes. Eventually, the
24 defendant's companion took the beer and ran from the store. The defendant
25 followed him and they ran to a vehicle. The defendant opened the
26 passenger door for his companion and then got into the driver's side of
27 the vehicle. The defendant drove away at a high rate of speed; however,
28 the victim was able to provide police with the license plate number.

The defendant reported to the probation officer that he was not
ever at the store. He claimed he was at the park with his friends when
his other friends brought beer to the park. He stated, "I took the blame
for that."

27	6/10/99	Westminster PD	11357(b) HS	DA reject.
28	(Age 23)	(DR #99-06531)		

Court No. 10WF0918; A-739349

1 Records regarding this incident were requested; however, they
2 have been purged by the Westminster Police Department.

3 The defendant stated he could not recall this arrest.

4	7/23/99	Westminster PD	148(a) PC	8/11/99: WJC, 99WF1808,
	(Age 21)	(DR #99-08257)	186.22(a) PC	148(a) PC, conv., misd.,
5			12025(a)(1) PC	12021(d), disp., 186.22(a)
6			12021(d) PC	PC, disp., 12025(a)(1) PC,
7				conv., fel., 3 yrs. formal
				prob., 365 days jail, gang
				terms.

8 According to police records, police officers and a probation
9 officer were working gang suppression when they noticed a vehicle being
10 driven by the defendant turn into a motel parking lot. The defendant
11 drove around the parking lot; however, when the officers pulled up next to
12 him, he exited and began running. The defendant was ordered to stop by
13 several officers, but continued running. One of the officers in the foot
14 pursuit observed the defendant drop a handgun. Two "West Trece" gang
15 members were detained in the defendant's vehicle and a semi-automatic
16 handgun was located on the ground.

17 The defendant reported to the probation officer that he went to
18 a motel party and there was a gun in the room. His friends told him they
19 did not want the gun in the room because the police were on the way. The
20 defendant stated he offered to hide the gun in his car for his friends and
21 said, "When the police came I panicked and ran." He denied the gun was
22 his.

23 DMV History

24 A record check with the California Department of Motor Vehicles
25 revealed the defendant's class C, non-commercial driver's license and M1
26 motorcycle license were issued on July 12, 2010, and will expire on July
27 3, 2015. The following convictions were noted:

28	<u>Viol. Date</u>	<u>Conv. Date</u>	<u>Sec. Viol</u>	<u>Disposition</u>
29	8/19/09	10/27/09	27315(d) VC	West Orange County Judicial District; bail forfeiture.
30	5/18/10	8/9/10	23123(a) VC	WOCJD; bail forfeiture.

31 No departmental actions, failures to appear or accidents were
32 noted on the defendant's driving record.

Court No. 10WF0918; A-239349

PROGRESS ON PROBATION

The defendant was initially referred to the Probation Department in 1994 for two separate arrests and convictions for misdemeanor charges relating to carrying a concealed weapon in a vehicle, carrying a loaded firearm (twice), carrying a concealed weapon, and articles with the identification removed. At that time, he was placed on three years of probation and ordered to serve 45 days in custody. Approximately 10 months later, the defendant involved himself in a theft and was placed on five years of probation with gang terms and ordered to serve 270 days in jail.

Adult Chronological Assessments prepared by the Probation Department between January 30, 1996, and August 19, 1998, indicate the defendant was working full-time and not involved in any new law violations. However, an Assessment dated January 27, 1999, indicated he moved back to Westminster and was contacted by police while associating with a "West Trece" gang member. Further, the defendant left for Tennessee for his employment, and did not obtain a travel permit to leave the state. During a search of his room, a marijuana pipe, pepper spray, and knives were located and confiscated. Probation documents indicate the defendant continued his gang involvement and marijuana use during 1999, until he was placed in custody. A Probation Violation dated August 9, 1999, indicated that since being placed on probation supervision, the defendant violated his terms and conditions by absconding, associating with a "West Trece" gang member, possessing a loaded 9mm handgun, and possessing a knife.

Adult Chronological Assessments prepared by the Probation Department between April 19, 2000, and August 10, 2002, indicate the defendant made good progress, appeared to have removed himself from the

Court No. 10WF0918; A-239349

1 gang lifestyle, and was attending the Universal Technical Institute. It
2 was noted, however, that he was having some difficulty making restitution
3 payments.

4 SOCIAL HISTORY

5 The defendant is the sixth child of eight born to the union of
6 his parents. He was born in Guam; however, his entire family moved to
7 Louisiana when he was approximately three years old. The defendant's
8 family moved to the city of Westminster when he was five years old. He
9 reportedly has a very good relationship with his siblings, as well as his
10 parents. The defendant described his childhood as "normal," and stated he
11 enjoyed skateboarding, sports, and his paper route. He did not report any
12 abuse, mental illness, or domestic violence occurring in his childhood.
13 His mother reportedly suffers from a heart condition, and the defendant
14 said he has not told her or his children about his current legal troubles
15 because he does not "have the heart."

16 The defendant stated he enjoyed school, received average grades,
17 and did not have trouble making friends. He participated in many ROP
18 classes and enjoyed automotive and wordworking classes. The defendant
19 claimed he was never suspended or expelled from school, did not change
20 schools often, and graduated from Westminster High School in 1993. He
21 explained that he spent much of his time with his siblings because his
22 parents were very strict and rarely allowed them to leave the house.

23 According to the defendant, when he was 18 years old, he left
24 his parents' home. He slept anywhere he could find, including hotels and
25 at friends' houses. He stated that this time in his life was the only
26 time he did not feel completely controlled by his parents. He then said,
27 "I know I put my parents through hell." During that time, the defendant
28 was not employed, did not have any possessions, and began "hanging out"

Court No. 10WF0918; A-239349

1 with members of the "West Trece" street gang. The defendant was "jumped"
2 into "West Trece" around 1993, and stated he left the gang after he was
3 arrested in July 1999. Further, he acknowledged he was placed on gang
4 terms when he was 20 years old.

5 In 2000, while working various construction jobs, the defendant
6 began attending an 18-month program at the Universal Technical Institute
7 (UTI). His first job after graduating from UTI was with Crown Lift
8 Trucks. According to the defendant, he was excused from his job after the
9 company completed a background check and determined he had been arrested.
10 The defendant then worked doing "odd jobs" until opening Import Auto Pros
11 in 2005 in the city of Westminster. He and his co-owner, David, are the
12 only two employees and do all of the work themselves. The defendant
13 reported that business has been slow recently. The defendant stated he
14 enjoys speaking to the students at UTI about his successful business,
15 which he does a few times a year.

16 According to records of the Huntington Beach Police Department
17 (DR #01-18390), in October 2001, officers responded to a call of reckless
18 "drag racing," and pulled the defendant over while he was driving. During
19 an inspection of the defendant's vehicle, an officer noticed that a large
20 portion of the federal label had been scratched out and a large portion of
21 the VIN had been removed. Further, the officer observed that the Honda
22 Civic had an Acura Integra motor installed. The transmission number had
23 also been partially removed, and the defendant's vehicle was towed. The
24 defendant claimed he had purchased the vehicle in November 2000. He
25 indicated he purchased the motor during the first part of 2001 from the
26 PennySaver. He claimed the transmission was already installed in the
27 vehicle when it was purchased.

Court No. 10WF0918; A-239349

1 The defendant admitted to the probation officer that he was
2 racing his vehicle when he was pulled over. The officer checked the
3 engine and noted that the serial numbers were missing. According to the
4 defendant, the engine "came up stolen," but he had just purchased it from
5 a shop in Rialto. The defendant denied knowing the engine was stolen, and
6 said the police confiscated the engine and he had to pay a large fine.

7 The defendant has been married to his wife, Jan, for 17 years.
8 His now 11-year-old daughter, Ashley, was born approximately eight months
9 before they married. The defendant also has an eight-year-old daughter
10 named Megan, and stated he adores both of his daughters. He enjoys
11 spending time with them and strives to provide a loving and safe place to
12 raise them. He stated his daughters are constantly on his mind, which
13 pushes him to work hard and do the right thing so he can provide them with
14 everything he never had as a child. The defendant reported that his
15 daughters attend a private Catholic school, which provides them with the
16 same religious background he grew up with. He stated that Jan has been
17 extremely supportive of him, and she believes he was wrongfully convicted.

18 The defendant stated he first experimented with drinking alcohol
19 at age 18, and claimed he only drinks alcohol a few times a year on a
20 social basis. He also first used marijuana when he was 18, and stated he
21 last used it approximately five months ago on New Year's Eve. According
22 to the defendant, he has an injured knee and occasionally smokes marijuana
23 to help him sleep; however, he denied having a medicinal marijuana card.
24 The defendant denied ever experimenting with any other type of illegal
25 drugs, and stated he has never been in drug or alcohol treatment.

26 The defendant was given a "Notice of Right to a Financial
27 Hearing" pursuant to 1203.1b PC and submitted an "Adult Financial

Court No. 10WF0918; A-239349

1 Statement" in which he declared \$28,000 in monthly income, and \$17,870 in
2 monthly expenses.

3 EVALUATION

4 CIRCUMSTANCES IN AGGRAVATION

5 The Crime

6 4.421(a) - 8 The manner in which the crime was carried out
7 indicates planning, sophistication, and
8 professionalism on the part of the defendant. In
9 this case, the defendant purchased parts kits via
10 the Internet and had already assembled a .50-
11 caliber rifle. Further, he purchased and shaped
12 the receiver of an AK-47-type rifle, and admitted
13 he knew how to avoid registration requirements.

14 The Defendant

15 4.421(b) - 2 The defendant's prior convictions as an adult are
16 numerous and include a theft-related crime, as
17 well as two prior firearms possession
18 convictions, one of which constituted a "strike"
19 involving gang-related activity.

20 4.421(b) - 5 The defendant's prior performance on probation
21 could be considered unsatisfactory, in that he
22 previously violated his probation in a firearms
23 possession case, by possessing an additional
24 firearm.

CIRCUMSTANCES IN MITIGATIONThe Crime

4.423 (a) None apparent.

The Defendant

4.423 (b) None apparent.

PROBATION ELIGIBILITY

4.413 (a) It appears the defendant is statutorily ineligible for a grant of probation pursuant to Section 667 (c) of the Penal Code inasmuch as he has previously suffered one serious or violent felony conviction.

DISCUSSION

The 35-year-old male defendant is a documented "West Trece" gang member who was found in possession of a completely assembled .50-caliber rifle and an AK-47-type rifle, which had all of the pieces but was not yet assembled. Further, a large amount of ammunition for both of the weapons was located. According to Deputy District Attorney Renee Jones, police also located an invoice for three "rivet kits" ordered by the defendant, indicating his intent to build (or that he already built) at least two other AK-47s.

It is quite disturbing that the defendant, a convicted felon and admitted gang member, was in possession of these extremely powerful rifles, coupled with the ammunition. Although he appears to have refrained from criminal activity since his last arrest in 1999, his lengthy prior record is considered very serious. It cannot be overlooked that after being placed on probation with gang terms for possession of a firearm, the defendant violated his probation by again possessing a firearm in the presence of gang members. The defendant has engaged in

Court No. 10WF0918; A-239349

1 extremely dangerous behavior in the past and it seems fortunate that no
2 one was ever injured by the weapons he possessed.

3 The defendant readily admitted he was aware he could circumvent
4 the firearm registration process, and it seems there is no doubt he did
5 just that by manufacturing his own .50-caliber rifle and preparing to
6 manufacture at least one AK-47 rifle. His behavior is very dangerous to
7 the community, and there is no definitive way of knowing that the
8 defendant only intended to use the rifles to hunt pigs, as he has
9 reported. It is documented that the defendant was once deeply entrenched
10 in the gang lifestyle and although he may have discontinued his
11 involvement, it is unknown if he still associates with street gang
12 members, or if his manufacturing of these rifles was for the benefit of
13 any street gang.

14 To the defendant's credit, he appears to have worked hard to
15 care for his family and build a lucrative business. He appears to care
16 very deeply for his children and showed emotion when discussing their
17 futures. Further, the defendant seems to have a large network of family
18 and friends that are very supportive of him and have submitted letters to
19 the Court asking for "leniency" for him.

20 The defendant appears to be devastated by his actions and how
21 they have now placed his future and the future of his family in jeopardy.
22 Unfortunately, he was well aware that his actions were illegal and yet he
23 made a conscious decision to engage in manufacturing and possessing the
24 assembled rifle and the parts to assemble the AK-47. His level of remorse
25 was difficult to ascertain. It is apparent the defendant is very upset
26 that he was caught by the authorities, but it is unknown if he is truly
27 remorseful for his behavior or just because he is in this legal trouble.

Court No. 10WF0918; A-239349

1 The defendant was found guilty at trial of Attempt-Unlawful
2 Assault Weapon Activity and Attempt-Possession of an Assault Weapon, as
3 well as previously pleading guilty to Possession of a Firearm by a Felon
4 and Possession of Ammunition by a Prohibited Person. Further, he admitted
5 the prior pursuant to Penal Code Sections 667(d) and (e)(1) and 1170.12(b)
6 and (c)(1), which appears to render him not eligible for probation.
7 Although the defendant led the officers to the rifles, his behavior is
8 considered tremendously dangerous and sophisticated. In order to protect
9 the community and impress upon the defendant the seriousness of his
10 actions, it seems a prison commitment is warranted, and the following
11 recommendation is offered.

12 RECOMMENDATION

13 In view of the forgoing, it is respectfully recommended that
14 probation be denied and sentence imposed. Further, the defendant be
15 ordered to pay a restitution fine pursuant to Penal Code 1202.4(b)(1), in
16 the amount of \$1,000.

17 The defendant has been notified of his right to a Financial
18 Hearing, pursuant to PC 1203.1b. The Probation Department has conducted a
19 financial evaluation and has determined he has the ability to pay for the
20 costs of probation, including the cost of this report in the amount of
21 \$2,762.17. It is recommended that he be ordered to pay for the costs in
22 the amount of \$136.78 per month until paid in full.

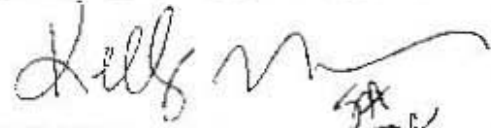
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NGUYEN, Tien Duc

Court No. 10WF0918; A-239349

Respectfully submitted,

STEVEN J. SENTMAN
Chief Probation Officer



Kelly S. Miramontes
Deputy Probation Officer
(714) 569-2084
FAX: (714) 558-3642

Dated this 31st day of May, 2011.

I have read and considered the foregoing
report of the Chief Probation Officer.

JUDGE OF THE SUPERIOR COURT

KM:dea

HONORABLE JUDGE DAPITING SKYES, SECT.
CASE # 10WF0918

9/10/11

My NAME is Tien Due Nanyen I'm
A Husband to JAY Nanyen and A
FATHER TO TWO YOUNG GIRLS Astley
Nanyen and MEAN Nanyen. I ALSO
OWN MY OWN BUSINESS. WE LIKE EVERY-
ONE IN THE WORLD STRIVE TO PROVIDE
A LOVING & SAFE PLACE TO RAISE OUR
CHILDREN. WE YORN TO HAVE THE "AMERICAN
DREAM" AT THIS DAY & AGE IT IS VERY
HARD TO DO SO, BUT WE MANAGE TO DO
SO BY TRUSTING IN EACH OTHER, LOVING
EACH OTHER, AND SUPPORTING EACH OTHER.
NO ONE CAN GO THROUGH LIFE BY THEMSELVES.
WE ALSO LOOK TO THE LORD UPSTAIRS FOR
HELP, AND SO FAR HE HAS BLESSED US.
I'm NOT PERFECT BY ALL MEANS. I'm
HUMAN. NO ONE GAVE US INSTRUCTIONS ON
HOW TO RAISE A FAMILY. ITS VERY HARD.
BUT WE LEARN FROM EACH OTHER AND GOD
HELP GUIDE US IN THE RIGHT DIRECTION.
WHEN HE BLESSED US WITH TWO BEAUTIFUL
GIRLS. MY GIRLS ARE THE BEST THING THAT
COULD EVER HAPPEN TO ME. WE DO OUR
BEST TO RAISE THEM RIGHT. EVERYBODY
ALWAYS ASK US "HOW DO WE DO IT?"
AND MY ANSWER IS ALWAYS, OUR GIRLS
TEACHES US, WE JUST GUIDE THEM. ITS
TRUE. OUR GIRLS HAVE TAUGHT US MORE
ABOUT LIFE, LOVE, AND RESPECT THAN ANYONE

could ever teach us they completely changed
my point of view about life. Their innocence
brings laughter and joy to any situation.
They are constantly in our minds and that's
what pushes us to work hard & to do
the right things so they can have every-
thing we never had.

With all this chaos and trials and
court date its a very stressful
time for us. The only thing I can
think of during this unfortunate ordeal
is how about my family. We have a
hard enough time with mortgage car
payments, school tuition, auto bills. I
can't imagine how my family would be
if I wasn't there to provide for them.
I don't want us to lose the home
and our business that we worked
so long and hard for. We wanted
to buy a house and build a business
on our own and to lose it all on
my mistake would be devastating. Its
not their fault. Its my fault. They
don't deserve this. I beat myself up
this many sleepless nights. All I want
is for my family to be safe and happy.
With that I beg the court & the
probation office to grant me probation
so I can continue to provide for my
family and contribute to the community.
I'm not a criminal, I'm just a family
man that made a stupid mistake. I have
no threat to the community.

Thank you for the opportunity to provide comments regarding the sentencing of Defendant Tien Duc Nguyen.

It is the position of the District Attorney's Office that this is clearly a state prison case, based on the criteria set forth in Rule 4.414. With respect to the crime itself, the nature, seriousness, and circumstances of this crime as compared to other instances of possession and attempted manufacture of assault weapons is aggravated. This Defendant, who has already previously suffered a strike conviction for possessing a firearm for the benefit of a criminal street gang, appears to have been in the business of creating large caliber, extremely powerful assault weapons. Along with a .50 caliber DTC that he had already completed, he was in possession of a large amount of ammunition for the completed weapon, and another box of ammunition for at least one other still outstanding .50 caliber firearm. This was in addition to the AK-47 type assault weapon he was in the midst of manufacturing. Furthermore, police located in his possession an invoice for three rivet kits this Defendant had ordered, indicating an intent to build or that he had already built at least two other AK-47's. When police searched his home, several hours after the initial weapons were found, and after Defendant had had the opportunity to make contact with his home thru his cell phone, they arrived to find a large, unlocked, wide open gun chest that appeared to have been recently emptied. Finally, the Defendant claimed there was another firearm registered to his wife that he had loaned out, and which he has never surrendered. It is unfathomable an individual who has already been convicted of a strike offense for gang-related gun possession, knowing he was prohibited from owning a firearm, would be in possession of even one gun except for nefarious purposes. This individual is heavily involved with extremely powerful weapons including .50 caliber weapons commonly used in the military for numerous applications such as destroying personnel, vehicles, large equipment and aircraft. The Defendant provided an unbelievable justification for possessing these extremely powerful firearms; namely, to shoot pigs. The Defendant was certainly an active participant, in that he alone was manufacturing the weapons himself. His criminal sophistication is apparent by the manner in which he studied the design and manufacture of the weapons, gathered necessary parts and tools, completed the manufacture of the .50 caliber gun, and successfully completed the most difficult part of creating the AK-47 by shaping the receiver. He also admitted he knew how to avoid registration requirements, thereby evading the law. There were no unusual circumstances whatsoever to justify this crime or to suggest the Defendant would not reoffend in the future.

Facts relating to the Defendant further support a denial of probation pursuant to Rule 4.414. He has a prior record of criminal conduct including two prior theft related convictions, and two prior firearms possession convictions, one of which constituted a strike involving gang related activity. It is unlikely that Defendant would follow the terms of probation, having in the past knowingly violated a prior probation in his first firearms possession case, by then possessing a weapon again for the benefit of his gang. Further, he has shown intent to circumvent and violate the law repeatedly by manufacturing these weapons. Finally, he certainly presents a danger to others by manufacturing and possessing these extremely dangerous weapons if not sent to prison.

Turning to selection of an appropriate prison term, the aggravating factors as set forth in Rule 4.421 appropriately include consideration by the court of the sophisticated and professionalism apparent in the Defendant's criminal activity.

With respect to the Defendant himself, Rule 4.421 suggests his level of criminality has increased significantly, having already suffered two prior firearms possession convictions, a burglary conviction and another theft conviction, he has graduated from mere possession of a standard 9mm firearm to the manufacture of high caliber and assault weapons.

This is the defendant's third firearm possession conviction. He certainly has failed to learn from two prior convictions and four prior grants of probation. The People will respectfully request the court take into account and impose Defendant's prior strike in sentencing this Defendant to state prison.

CHRISTOPHER J. HENNES

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TELEPHONE (714) 536-6033
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May 3, 2011

VIA FAX ONLY
(714) 558-3642

Kelly S. Miramontes
Deputy Probation Officer 51571
909 N. Main Street, Suite 1
Santa Ana, CA 92711-0260

RE: NGUYEN, Tien Duc
A-239349
Court Case #: 10WF0918

Dear Officer Miramontes:

Regarding my client Tien Duc Nguyen, I offer the following comments that I hope will assist you in recommending an appropriate sentence to the court:

As you know, Mr. Nguyen pled guilty to carrying a concealed weapon in 1999 and served a jail sentence. I represented him in that matter also. After serving his time, Mr. Nguyen lived a productive, law-abiding life until the recent trouble. He owns a successful - and completely legitimate - business selling performance auto parts, is happily married to a wonderful lady, and is a devoted parent to their two young daughters.

As a convicted felon, however, Mr. Nguyen is prohibited from indulging his hobbyist's interest in firearms. He should have known better than to possess ammunition and a rifle he never intended to use. His guilty pleas to the felon-in-possession counts were the consequence of his poor judgment. The convictions for attempted manufacture and attempted possession of an assault weapon will be challenged in defendant's motion for new trial and, if necessary, appeal. The assault weapon charges were based on Mr. Nguyen's possession of a gun kit he purchased online from an out-of-state retailer. The California Department of Justice has issued written opinions advising that possession of unassembled firearms parts identical to Mr. Nguyen's may be lawfully possessed in California. Thus, in my opinion, incarceration is inappropriate because the law is, to say the least, unsettled and conflicting in the context of unassembled weapons.

The unusual circumstances of this case, moreover, render incarceration an inappropriate punishment for any of my client's convictions. There was no related criminal behavior associated with or even contemplated by defendant's unlawful possession. Had it not been for a random administrative search, it is highly unlikely that the guns, parts, and ammo would have ever left the

Kelly S. Miramontes
Deputy Probation Officer
May 3, 2011
Page Two

storage area of defendant's shop. Mr. Nguyen declined the prosecution's pretrial offer of a year in jail on the felon-in-possession charge with the remaining counts to be dismissed. The fact that his decision, in retrospect, may have been a strategic error in light of the jury verdict does not change the culpability of his conduct. The chance of recidivism may be safely calculated at zero. The possession of the otherwise-legal firearm and parts, without any associated criminal conduct, was *malum prohibitum*. Imprisonment would have devastating effects on defendant's family and business for no rehabilitative or punitive purpose. Defendant has proved his reformation over the past dozen years; his lapse of judgment caused no harm other than his own extreme mental anguish.

Very truly yours,



Christopher J. Hennes
Attorney for Tien Duc Nguyen

April 26, 2011

RE: Tien Duc Nguyen

A-239345

Court Case #: 10WF0918

To The Honorable Judge Daphne Sykes Scott,

My name is Ian Tran-Nguyen, my husband Tien D. Nguyen and I have known each other for over 17 years. We have two amazing daughters, Ashley and Megan, whom are 11 and 8 years old. They are attending Blessed Sacrament Catholic School in the City of Westminster. I work full time, if anything overtime as a private contractor at California Eagle Escrow, Inc., as an Escrow Officer approved and licensed under the Department of Corporation, currently located in the City of Westminster. Tien is the owner of Import Auto Pros, located in the City of Westminster as well. We both moved our businesses to the City of Westminster to be closer to the school where our girls attend. We've decided that this was the best way to give more time to Ashley and Megan rather than devoting our time to work hours.

I was there to witness and experience his last run in with the law, which he was convicted of 11 years ago. This was one of the most devastating moments in our lives. Timing of such incident couldn't have been the worst. During the beginning of his incarceration, we found out that we were expecting our first child. Rather than feeling sorry for ourselves, wallowing in fear of the unknown of his own wrong doing and past bad judgments. We saw that it was an opportunity to prove to each other that this was the beginning of a positive outlook on life together. A lesson learned. We both knew without a doubt that god sent us his Angel and to allow us a second chance to take care of life most precious gift.

Since then, Tien and I put our girls, Ashley and Megan as our priority and guidance on how to live life. If anything, they are our mentors. Tien makes it so easy to raise our girls. He's usually the first to attend to our girls when their sick. He's the one that drops them off to school and pick them up from school. He makes the girl's breakfast in the morning, prepares dinner for them and bathes them. He study and reads with them and makes sure that they learn their prayers. He often sends me pictures of what I'm missing while I'm working late. If anything, I'm more envious of him. I look up to my husband. His love for Mo, Ashley and Megan is never boastful nor harsh. But rather, sweet, gentle, caring and enduring. When we're sick, he doesn't hesitate to take time off of the business that he runs to attend to us. His nurturing is second nature to him. His patience and understanding allows the girls to mirror their

Daddy. His keenness for understanding and responsive to negativity allows him to show our girls and I to be humble and forgiving.

I know for a fact that Tien is no threat to society. If anything, his contributions to our community are immeasurable. From stopping on the side of the road to help a police officer in needing assistance with his car, helping a parent from Blessed Sacrament School replacing a dead battery so she wasn't late picking up her daughter from school, a nephew who needs his daily hormones shot due to his acute Silver Russell Syndrome, a friend who's car wouldn't start at 2:00A.M. in the morning, to a simple quick fix service of no charge to a walk in customer that needed help with no monies to offer but a cup of coffee. It brings me to tears to see Tien go through what he shouldn't be going through. We spent 11 years raising our family, working hard to have our own business and to see all of this destroyed due to our misjudgment and perhaps the word I'm looking for is ignorance of the law. I wish this upon myself, so that he may continue to live life vicariously through our daughters. So that he can continue to smile and reflect his smile through others eyes. So he can continue to live life happy again.

Your honor, I can never compare or measure myself to my husband. What he's given to society is what I wish I can do. He's given all he's had to everyone we know. I pray that you allow your heart to see what kind of a person Tien really is. His character doesn't fit the crime for which he's currently convicted of. If anything, his carefree, adventurous, curiosity and enthusiasm for what life has to offer him put him in our current situation with the law. Of which, he humbly and regretfully is sorry for. Without a doubt, this is an honest misjudgment on his part, which kills him every day to think about. If he was to be taken away his time from his daughters, Ashley and Mogan, I know that he will never be the same again. I can't replace him nor provide our girls the time that he would spend with them. Please allow leniency of probation so he may continue to support our family physically, emotionally and financially. Without him, I can not continue to pay for our girl's tuitions, run my business 14 hours a day, pay our mortgages, nor attend to our girls in ways that we are doing now. If community services and or probation can be granted, we humbly thank you for forgiving us.

If I can help answer any questions or clear any issues. I can be reached at: [REDACTED]

Thank you,

Jan Tien Nguyen

April 15, 2011

Re: Tien Duc Nguyen

Case #: 10WF0918

Dear Honorable Judge Daphne Skyes Scott:

Growing up with my brother Tien was nothing shy of traditional. We were only two years apart and were close from our childhood years. I am Nancy, his baby sister and the youngest daughter of the family.

Some of my fondest memories of my brother include playing with my Barbie dolls. This fact may prove to be embarrassing for Tien, but it was his passion for taking apart my dolls and putting them back together that express his interest for building things. He was very skilled at this among other things in the household that he would take apart and put back together. We often rode our bikes around the neighborhood, where our parents would put Tien in charge of looking after me, a task he was happy to do. I always felt secure with Tien around. Even up to adult life I see him in the same manner, as a protector.

I've always looked to Tien for help and support because he is so reliable. I try to replicate this by being a responsible aunt to his little girls. I'm sure if you ask Ashley and Megan who their favorite aunt is, I'm pretty much up there on the list though the other aunts may not agree.

Since becoming a parent his personalities has shifted from being a carefree person to an unconditional loving father. His dedication to their education and well being is undeniably a step above standard. He always makes it a priority to attend every school event, complete all homework assignments on time and rewards them in such a way that encourages them to achieve even more. I'm particularly impressed with the way Tien always makes special school assignments fun for his girls. For example, Ashley had to build a solar system, so a trip to Michael's to get all the craft materials was like a kid being in a candy store for Tien. He gets so excited and makes the event so memorable for his kids. Not only are they learning, they have fun in the process. It is no doubt the Ashley and Megan has a successful academic journey ahead of them with the support of their parents Tien and Jan.

From putting together Barbie dolls, building toy cars and fixing our bicycles as a kid to co-owning a successful automotive business as an adult, he has always had a talent and curiosity to build and fix anything he lay hands on. Tien's perspective on life has taken a completely different turn since becoming father. His positive outlook on life and devotion to his family has become a model for our family. I hope that this letter will convince you of his deserving qualities and ask your Honor for leniency in granting Tien probation and no jail time.

Best regards,



Nancy Nguyen



ORANGE COAST COLLEGE

April 15, 2011

Re: Tien Duc Nguyen
Case #: 10WF0918

Dear Honorable Judge Daphne Skyes Scott:

Like many Vietnamese families, we were taught virtues such as patience, perseverance, self-sacrifice and humility and to respect our parents and elders without questions. We were taught to be polite and spare feelings are more important than factual truth. We were a "traditional family" with old values. We were born and raised Catholic so Vietnamese Catholic has become our family theme and it has shaped and influenced the orientation and behavior of our family lives. Growing up we were taught to maintain traditional values and as children we were caught between two cultures, the traditional one and the modern one. Nonetheless, we are a cohesive family of ten, three girls and five boys, and I am proud to say that we get along with each other but more than that we love and enjoy each other's company. There was always a special bond and a connection between siblings. My family is truly blessed.

Tien is the sixth sibling and the first to be born in Guam, USA on July 3, 1975. He was more curious, adventurous, bold, brave, active and thinking than the rest of us. While he was raised with old values at home, he was also introduced to modern values by society such as individualism, self-reliance, equality of opportunity, and competition. Perhaps, the difference of two cultures caused Tien to explore his own identities when he was in his twenties and wound up hanging with the wrong crowd. That life was short lived however, a mistake in judgment has landed him in jail for eight months. He was out in six months on good behavior. That misstep in life was a wake-up call for Tien. On the day of his release was also the day that his daughter Ashley was born and the moment he held Ashley in his arms was also the pivotal moment of his life. He said God sent him a precious little Angel and a second chance and he has to do right for his daughter. That was also the day he made a conscious decision to be a loving father to his daughter and a devoted husband to his wife Jan. I was there to witness such joyful moment just as I was there every agonizing weekend visiting him at Taco Lacy.



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My brother Tien's life truly is a success story. He walked away from his past without a second glance and turned his life completely around. He has built himself a family of his own, now a proud father of two well behaved girls, Ashley and Megan. He is not just a good father but he is an awesome hands-on dad. He is equally a primary care giver for his daughters as Jan. He takes them to every immunization shot, doctor visit and the emergency room for high fever. He and Jan also attend all their school plays, concerts, basketball games and school fairs that his daughters are involved in. He bathes them at night and clothes them in the morning for school. He also plays and spends time with them, from a simple family outing to grandma's house on the weekend, or to the beach, or to an exotic place like Hawaii. He disciplines them as well. One thing I noticed in Tien's family is they go everywhere together even to the grocery store. There is no doubt that his priorities in life are raising and providing for his daughters with Jan. They are the reason for his existence and he would be lost without them and vice-versa. Besides being a great dad he is also a devoted husband. He loves Jan for her strength, her love, and her generous heart. She has always been there for him through thick and thin and for better or worse. That is why I love, admire and respect Jan. Tien is one brother that at first I did not think could be a family man but he proved us all wrong. He is the first male in our family to settle down and become a great dad and husband.

Not only has he built himself a family but he has made a name for himself in society. Another conscious decision Tien made was to better himself. He was not "college student" material per se but he is gifted and talented in a trade field. He went back to school and got his Associate of Arts Degree and an ASE Master Certification in Automotive Engineering. He capitalized his passion for cars and transformed that into a booming business. Together with his partner David, they opened their auto shop and quickly became well known in their community for their integrity, honesty, generosity, and of course "auto pros". Their customers love them and one commented, " ...These guys are IRIE import auto pro's! Being in the auto industry myself, these guys are great engine builders and tuners." He realized with a past record, it would be hard to apply for any job but that did not stop Tien; he found a different way to contribute to the economy, society and to his community by becoming a business owner.

Tien has an exterior appearance as a tough, unapproachable guy, but beneath that exterior is a sensitive guy who as a little boy cried when watching Old Yeller die and later as a man cried watching the Note Book, every time. He was dubbed as "Mr. Sensitive" in my family. Tien not only loves his immediate family but also loves his parents, siblings, sister-in-law and two nephews as well. He has never hesitated to lend a hand when we need his help. My parents' house is within walking distance from St. Barbara Catholic Church and they are



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actively involved with the church so they are well known in their community. My dad often volunteers Tien's help with parishioners who cars break down and Tien never hesitates to come out and "play" with their car and somehow get them started so they are not stranded in the parking lot.

I am the second of eight and his big sister. Professionally, I have worked closely with community college students, staff and faculty, and community members for the past 20 years at Orange Coast College. My most rewarding work experience has been providing direct assistance to students and their families. Currently working in a college environment and attending graduate school for Master of Arts in Education, Counseling Degree. I understand the characteristics and behaviors of people from different economic, cultural, racial, ethnicity, sexual orientation, and religious backgrounds. I also understand how people environment affects or develops their behaviors and values.

One of the productive things in Tien's life now is that he surrounds himself in a positive environment and a strong family support system. It is because of our strong family bond that helped Tien turned away from his past life. I went through a tough time with Tien when he was in trouble with the law more than twelve years ago but I have also witnessed the respectable, honest, generous, loving man he has become and I am proud of him. My brother is not a dangerous man or a threat to society. I sincerely feel that society is better served by allowing Tien to raise his two daughters away from the prison system. It is with utmost respect that I ask your Honor leniency in granting Tien probation and no jail time. He is an honorable family man who loves his wife and daughters more than life itself.

I thank you in advance for your time in this matter that is of extreme importance to us. If I could be of further assistance, please contact me at [REDACTED]

Respectfully,

Tjai Nguyen
Orange Coast College
Scholarship Office Coordinator



April 23, 2011

Honorable Judge Daphne Sykes Scott
RE: Court Case #10WF0918/A-239349
Tien Duc Nguyen

Honorable Judge Sykes Scott,

I, Reverend Quang Vinh Chu, Pastor at Saint Polycarp Catholic Church and Chaplain of Garden Grove Police Department, verify that TIEN DUC NGUYEN is one of ten children of Mr. & Mrs. Niem Van Nguyen, who reside in Santa Ana City, Orange County.

I have known Mr. Tien Duc Nguyen for more than 30 years since he was a baby until now. His family is a wonderful family. Tien was also raised and grown in a good Catholic family. He had participated in the Vietnamese Eucharistic Youth Group since he was young until teenage. He was one of fine youth leaders at St. Barbara Church. As a youth group leader, he always cooperated with others leaders to help children and he had many responsibilities to help out younger children during weekend. He is a good person and good heart to help others.

Tien has family and devoted husband and father. He loves his wife, Jan, for her strength and weakness. He loves his children so much, Ashley and Megan. And not only his own family, he also care for other needs. As my knowledge I do not see him harm to others. He is not a fearful person. At work, he is always smile and treat others fairly.

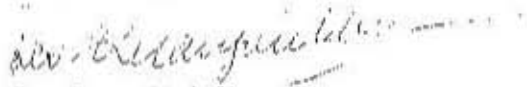
However, nobody is perfect! Last few years I heard that he was convicted. I was surprised and felt sorry for him. I thought he was there at a wrong time and wrong location. However, after he was released, he was on good behavior and work hard for being better.

For the good of community life, his own family, and his own life, I would like to ask you for his favor which is released him to go home with his family. I also respectfully request leniency in his case and recommend no jail time for him; but continued counseling and community service. And I have no doubt that with his compassion he can help others in good spirit and charity. I believe that this is a wakeup call

for him to be a better person. Your honor, I appreciate your kindness and understanding for his future to have a chance to reform his life again.

If you have any concern or further question, please do not hesitate to call me at [REDACTED]

Respectfully yours,



Rev. Quang Vinh Chu

Pastor

April 18, 2011

RE: Tien Nguyen
Case # 10WF0918

To the Honorable Judge Daphne Sykes Scott:

My Name is Don Tran, MD and I am a staff physician currently employed at the Bakersfield Family Medical Center, located in Bakersfield, California since 2009. As a physician who has seen thousands of patients throughout my career, I get quite proficient at gauging a person's character based on a 15 to 20 minute office visit. Given the opportunity to know someone for over a decade, I feel qualified to make a few judgments on his character. I am submitting this letter for your consideration regarding the case involving Tien Nguyen.

I have known Tien for the past 12 years, as his wife and mine are both sisters. Our two families have become quite close. Having lived in Orange County for over 30 years and now residing in Bakersfield, we visit Orange County often. Tien has been a gracious host to open his home and allow my family to stay at his house.

I have found him to be a warm, kind and caring individual. He is a devoted husband and a loving father who has raised two wonderful daughters, Ashley and Megan. It is said that kids are often a reflection of their parents and you only have to talk to his two girls to see how great of a father Tien truly is. Both Ashley and Megan are mild mannered and very well behaved. My wife and I often talk about who we would want to take care of our two children, Catherine and Nicholas, should anything ever happen to the both of us. Among my six as well as my wife's five siblings, we could not come up with a better person than Tien and his wife, Jan with whom we could entrust to raise our kids.

In addition, Mr. Nguyen has become a father figure to his two young nephews, Anthony and Matthew, who are being raised by a single mother. He has taken it upon himself to help guide and mentor these two boys. Tien even taught my son, Nicholas, to say his very first sentence ever, "I love Uncle Tien very much," when he was four years old. Ordinarily, this would be unimpressive to those who do not know my son, but for those who are aware of his condition, it was a miracle to hear him say more than two words at a time. Nicholas has Autism Spectrum Disorder and has significant problems communicating. My wife and I were thrilled to hear him say a complete sentence. It was no coincidence that Tien taught him to say his second sentence, "Uncle Tien is the best." When our family is in Bakersfield, Nicholas can often be heard repeatedly crying, "Uncle Tien" over and over again which is synonymous with him wanting to go to Orange County to visit his favorite uncle. I can honestly say that no one outside of Nicholas' immediate family has made more of an impact on him than his Uncle Tien. Because of

his autism, it takes a great deal of patience to break down the barrier that is required in order to gain the level of trust and comfort that Nicholas currently shares with his uncle.

Tien obviously enjoys being around young kids and they in turn enjoy his company. I have seen him on multiple occasions, taking a group of kids, including his, mine as well as the next door neighbor's kid, all by himself to the park so that they could play. He has an adventurous spirit and enjoys many outdoor activities. He owns several all terrain vehicles and rides out in the desert with his family. He has several jet skis and will host an all day barbeque down Ski Beach in San Diego. He even taught me how to jet ski which is something I would never have done on my own.

Tien personifies the definition of helping your fellow man. I have personally seen him help complete strangers without asking for anything in return. If someone is having car or mechanical trouble, as an automobile mechanic, Tien will go out of his way to assist. I find him to be a selfless individual and often put other's well being before his own. He has a positive influence on others around him with me included. If anyone is deserving of leniency, in my humble opinion that Tien Nguyen falls into this category. I truly believe Tien has learned an important lesson from this ordeal as he has expressed in his many conversations with me regarding his case. I hope and pray that the Honorable Judge Daphne Sykes Scott considers probation over jail time.

If you require additional information, please do not hesitate to contact me.

Respectfully,



Don Tran, MD
[REDACTED]



Figure 1: Tien with his nephews, Anthony & Matthew.

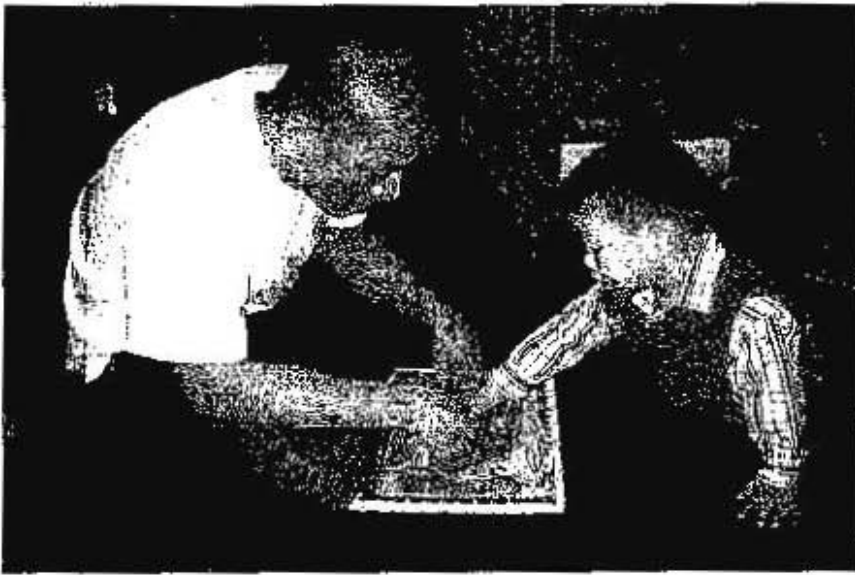


Figure 2: Tien and his nephew, Nicholas.



Figure 3: Family vacation.

April 20, 2011

Re: Tien Duc Nguyen

Case #: 10WF0918

To Whom It May Concern:

My name is Jason Nguyen, a full time student at Orange Coast College pursuing my Bachelor of Arts degree in English Literature. The purpose of this letter is to provide a character reference for Tien Duc Nguyen, my uncle whom I have known my entire life.

For 21 years, Tien has been far more than an uncle to me; he has been a mechanic, a confidant, a mentor, an inspiration and, above all, a father figure. Growing up, though I had a poor relationship with my father, there was never a lack of positive male influences around me due in large part to Tien and his brothers. Beyond his mechanical expertise and technical know-how, Tien has taught me to be independent and self-reliant, to treat others with respect, to take responsibility for my actions, and to learn from my mistakes. From picking me up from school to fixing my car to steering me clear of the bad influences that he gave into in his past, Tien has always looked out for me without regard for reward or thanks. He took care of me as though I was his son and he still does.

Now a father of two daughters, Tien has shown incredible growth as an individual and as a citizen. There is no better evidence of his character than the upbringing of Ashley and Megan, respectively eleven and eight years old. Two more well adjusted, caring and intelligent children cannot be found. I can personally attest to the transformation Tien has undergone since becoming a father. From running with the wrong crowd and getting in trouble with the law, he now runs and co-owns Import Auto Pros directly serving the community. From being self-reliant to the point of selfishness, he now passes his self-reliance selflessly to his daughters; with a caveat that help is not a bad thing and is always available from him. Together with his wife, Jan, they have built a family rooted in love, commitment and service. In addition to working tirelessly to put both girls through private Catholic school, all four frequently participate and volunteer at church and school functions and around their community. To say that the proof is in the pudding is cliché, but the proof is in his family.

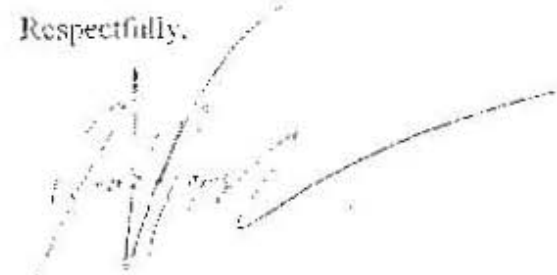
It is evident that Tien and Jan's love for each other and for their daughters permeates all aspects of their lives. Beyond the numerous family outings and trips and gifts, their love for Ashley and Megan is best displayed through the way that they raise them. Stern but never harsh. Kind but never acquiescent. Assertive but never overbearing. Together, they have guided their daughters down a path towards positivity, productivity and success. To see how much Ashley and Megan adore and idolize their parents is unlike anything I have ever seen. Always reciprocating that glow are Tien and Jan. As I previously conveyed, the proof of Tien's character is in his that of his family's. The results are unquestionable: his daughters share his upending work ethic, inquisitive mind, and unfaltering capacity to care for others regardless of association.

I know that Tien has been convicted of multiple charges regarding firearms but I also know how deeply he regrets the mistake. In conversations with our family, he has repeatedly expressed regret, sorrow and responsibility for his transgression. For over 10 years, since his last run in with the law, Tien has worked to get his life on the straight and narrow path. He has. He has shown growth through his continuing of his education to obtain a degree in automotive engineering. He has shown growth in using that knowledge to provide a service for the community. And most importantly, he has shown growth in his maturity. Tien is a responsible father, a loving husband and a contributing member of society.

Earlier I stated that, to me, Tien was a mentor, an inspiration and a father figure. Through his troubles and trials, literal and figurative, I have always seen his moral center to be good. He serves as a prime example of how to learn from previous mistakes and move forward to better yourself and those around you. With actions and words, Tien has taught me this. The family that he has raised is one that I admire and can only one day hope to aspire towards. Tien is an inspiration and a source of never ending love and dedication. To send him to prison would not only do him no good, but it would be a disservice to the community he so diligently serves. With respect to your judgment, I ask for leniency for Tien Duc Nguyen. Please allow him to continue to atone for his mistake through continuing to actively assist the community.

If you require any further information, please contact me at [REDACTED]

Respectfully,



Jason Viet Nguyen



Vietnamese Eucharistic Youth Society

St. John the Baptist Chapter

April 19, 2011

RE: Tien Duc Nguyen

A-239349

Court Case #: 10WF0918

The Honorable Judge Daphne Sykes Scott:

In my many years volunteering as a youth leader for the Vietnamese Eucharistic Youth Society (VEYS) at St. John the Baptist Catholic Church, I have worked with children of all ages, their parents, and different members within our church community to provide a safe setting for the youth to gather on the weekends. We educate our youth the contents of the Bible and the Church's teachings. We also promote community service, organize camping trips to encourage unity, and arrange retreats to stimulate their spirituality. As a non-profit organization, it is imperative that we receive parental support in order to sustain a sense of stability and an opportunity for growth.

I met Tien Nguyen about five years ago when he was registering his oldest daughter, Ashley, into our program. He had shared with me that he too, as a youth, was very much involved in a group very similar to ours, and felt that Ashley had much to gain in VEYS. He supported her education in the Vietnamese culture and the Church's beliefs and values. At the time, Ashley was only six years old and I can still remember how attached she was to her dad. On Ashley's first day participating with our group, because she was so reluctant to let her dad go home, Tien promised her he would stay for the duration of the program activities for the day. Ashley was thrilled with Tien's decision, and I was able to see the joy in Tien's eyes when he saw that he made his daughter happy. With Tien's continuous encouragement, Ashley has been motivated to attend our meetings on a consistent basis.

Overtime, I met Tien's beautiful wife, Jan, his adorable youngest daughter, Megan, and became a close friend of their family. I was able to observe their family's operations and can honestly say I was impressed. Tien is definitely someone I would describe as a "family man" or a "loving father." He is constantly catering to the girls' needs, but at the same time knew when disciplinary action was appropriate. Even when the girls are being disciplined, I have never witnessed a time when the girls resented their father. When speaking with Ashley and Megan on a one-on-one basis, they have each shared with me that their dad is their hero and their mom someone they would like to be like when they grow up.

Tien and Jan make it very apparent that Ashley and Megan are their priority. They have demonstrated this not just by voice, but by the action they take in ensuring the girls' success and happiness. Tien and Jan explained to me their reasons for enrolling their daughters at Blessed Sacrament Catholic School.

They knew they could have easily registered the girls in the public school system, but wanted the girls to be further educated in the Catholic religion. Despite the costs and the mandatory volunteer hours parents are required to fulfill when their children are students in a private school, Tien and Jan were more than willing to do what they felt was in the best interest of their girls. Tien and Jan always go above and beyond what is required of them at Blessed Sacrament. They are active members of the Parent-Teacher Association (PTA) at Blessed Sacrament School and are always helping with fundraisers. This past year, I learned that Ashley joined the basketball team at school. I attended about three home games, and saw that Tien was definitely her number one fan. He was always rooting for her, loud and proud. When games don't turn out in her team's favor, he would always encourage her to keep trying, and to never give up on her goals. This past week, I was invited to Megan's First Communion at Blessed Sacrament Church. She was all dolled up in ribbons and curls, thanks to her mother. Sitting nearby Tien and Jan during mass, I was able to see how proud they were seeing their daughter receive one of the most important holy sacraments.

Aside from being an active parent, Tien is also a valuable community member, especially in the VEYS. He is always the first to sign up when help is needed for an overnight camping trip. Tien's charisma and presence is always a pleasure to have when we have our gatherings. Tien has so much energy and is always enthusiastic when working, whether the work is enjoyable like working with the kids or labor inducing, like cleaning up after a long weekend of activities. Needless to say, he is always the first to arrive and the last to leave when it comes to serving his community. His role as the handy-man within the group of parents involves taking care of the tedious but important tasks like making sure our generator is functioning correctly and all the tents are up. Tien's time spent and support for the VEYS is priceless and appreciated beyond what words can describe.

In closing, I can honestly state how honored I am to know Tien Nguyen. He is undoubtedly an irreplaceable member within our community and without his help and effort over the years, I can't say the VEYS can be as successful as it is today. Tien is beyond question an amazing husband and father to Jan, Ashley, and Megan. His unconditional love for his family is genuine and immeasurable. Growing up without my own father, I can understand how difficult it would be should Tien not be present in his daughters' growth and development. In my opinion, Tien is a dream dad any child can only hope for. Ashley and Megan are extremely lucky to have such a caring and loving relationship with their dad. The girls are so fortunate to have Tien and Jan, and really deserve no less than the presence of both parents every minute of their lives. With that being stated, I ask your honor for your consideration and leniency in granting Tien Duc Nguyen probation.

Please contact me should you have any further questions.

Respectfully,



Chau Trinh
Vice President of Academic Affairs

To whom it may concern,

I've known Tien Duc Nguyen for at least 15 years and counting. I have a big and close knit family. I have four sisters and one brother. Tien is married to my older sister, Jan. Yes, he is my brother-in-law but in my heart I can say he's one of my siblings. The first time I met Tien, he was an outgoing and hilarious guy. I wasn't close to him in the beginning because I was much younger. But what I knew about Tien was he made my sister very happy and she showed it very well. She had a smile on her face every time he was around and made me happy when she's happy. He would include her where ever he attends. They were like two peas in a pod. As I grew older, I established a secure relationship with Tien. He is a friendly, daredevil, honorable, caring, loving and humorous man. I'm writing this letter to tell you about a man who wouldn't hurt anyone.

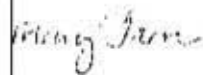
Tien has made mistakes and he chose to associate with the wrong crowd. But honestly, when I was younger I chose friends who treat me like family. I can empathize with Tien regarding his decision to value his friends. But he did make mistakes and he did serve his sentence. When he got release for good behavior, he met his first daughter, Ashley Nguyen for the first time. I witnessed a different man; a man with unconditional love for his daughter and would do anything for his own family. He would nurture his family and wouldn't think of going back to his past life. He made sure his responsibly was met and made sure his family was taken good care of. He went back to school to get a certified automotive license as a technician to support his family. There weren't businesses who would hire him because of his record. So, he opened his own business called Import Auto Pros. Tien worked well with his hands; he can fix anything or try to fix anything. He'll challenge himself with anything that is given to him. I would go home and see him with different gadgets to make it run or work or just for decor. Like hobbies little cars, jet skis, model cars, and especially automotive cars. He is very talented as a technician; I would go to him for everything.

During his transition of caring for his family, he expanded his family and had another daughter, Megan Nguyen. When I see how Tien treat the three important girls in his life, makes me want to find that kind of a man. As his daughters grew older, he wanted his girls to have the life that he couldn't afford to have. Also, have them learn the religion of God while going to school. So, he enrolled his daughters to Sacrament Catholic School. I'm so proud of Tien and Jan. They taught their kids how to treat others with love, respect, and kindness. Tien also has eleven nieces and nephews. One of his nephews has autism and it's hard for him to speak a whole sentence. But it didn't stop Tien, Tien would make his nephew speak the same sentence every time Tien sees him. Tien helped him expand and approve his knowledge. If someone asked any of my nieces and nephews who is their favorite uncle, it would definitely be Tien.

Tien is always there to take the kids to the park to ride go carts, to the movies or just play ball in the front yard.

I wanted to express my feelings with this letter to you about my brother. Tien is a great human being and would break my family's hearts if he leaves us. He has made everyone in his life smile and just enjoy being around him. Please have the leniency to give Tien at most probation. I feel that he did nothing wrong and didn't intentionally hurt anyone. Tien is not that person 11 years ago; he has truly matured. He has grown as a loving man, husband, father, uncle and son. If I ever have a family of my own, there's no doubt in my mind i wouldn't have Tien as my child's godfather. I trust him with my life and the future of my own family.

Sincerely,



Mary Tran



Date: April 19, 2011

RE: Tien Duc Nguyen

A-239349

Court Case #: 10WF0918

The Honorable Judge: Daphne Sykes Scott

To whom this may concern,

I have known Tien Nguyen for the past 6 years and have been married to his older brother for the past 4 years. Besides his role as a brother-in-law, he is also known as the family mechanic, handy-man, outdoorsy father, and last but not least, the "sensitive" one.

My first impression of Tien was somewhat questionable. He came off as this very thick-skinned tough guy that was not very approachable. Perhaps the shaved hair, casual jeans and T-shirt attire and sunglasses set the tone for my impression of him. However, during the times that I got to meet the family during my courtship with his brother, I realized that I had completely misjudged him. Knowing that this family may potentially be my future in-laws, I began to naturally collect my thoughts of each member and the dynamics of this family.

Tien particular showed a very different personality that distinctively made him stand out from the rest of his siblings. First of all, he is a father to two adorable little girls, which at the time were 5 and 3 when I met them. His love and devotion for his family is undeniable. There's no question that his wife, Jan and his little princesses are his number one priority. Tien and I quickly established a bond which I found to be very special. I love spending time with his little girls, and he trusted me whole-heartedly to allow them to spend the nights and day trips to amusement parks and the like. There was no doubt in my mind that he possesses all the great qualities of a father to his children. I somehow found myself hoping that his brother, my future husband would have the same qualities since I yearned for a family such as his. In the more recent years, there's not a weekend that goes by that he is not at the bay with his family jet-skiing, or taking them for weekend trips to the cabin in big bear, or simply a bike ride around the neighborhood. Tien lives up to the definition of family when it comes to spending time with his wife and kids.

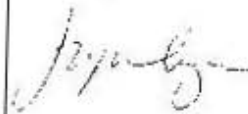
In his professional career as a mechanic, Tien is the referral of the family. We all look to him as the expert in his field of fixing cars. It is also his passion to "fix" things and thereby is given the second hat of being Mr. Handyman. There was never a question as to where to go for any car

issues. Tien would be our number one go-to person for this matter. It's a great benefit knowing that we have someone to rely on. We have all referred extended family and friends to his auto shop and have had great experiences in knowing that he would take care of each one of us.

I am not in a position to judge his past behavior as I did not know him during that time. However, in the time that I have known Tien, he is a very well loved family member and deserving of his fulfilling family life. His devotion to his family and community is well recognized by many. He works hard for what he wants and his passion to provide a loving and healthy life for his family is genuine. His girls are so fortunate to have him and they are not shy in showing that true affection. It is often the sentimental moments that brings out the sensitivity in Tien, as he is often teased for shedding a tear during emotional family moments (i.e. opening a birthday gift, or seeing his daughter achieve an award at school). Tien deserves the opportunity to continue to provide for his family in the same manner that he is currently doing. I hope this letter will convince you of his good moral character and requesting your leniency is his judgment for probation.

Please feel free to contact me should you need more information.

Best Regards,



Joycelyn Nguyen
Program Manager, Integra OrthoBiologics



April 22, 2011

Honorable Judge Daphne Sykes Scott
RE: Court Case #10WF0918 / A-239349
Tien Duc Nguyen

Honorable Judge Sykes Scott:

I am writing on behalf of a dear friend, Tien Duc Nguyen, whom I have known for over three years. I met Tien while asking a family member of his for assistance with my automobile repairs, and found that not only is he an honest, humble, and responsible businessman, but he is a loving, religious, and respected family man.

I was referred to Tien's auto shop when I needed to have my car repaired. I was unsure of what to expect as I had not had positive experiences with private repair shops in the past. Tien put my fears at ease, and indicated that he would provide me the most quality repair possible. He was honest about what repair services I needed, and returned my car within the timeframe promised. While he was proud of the work he completed, he was modest in accepting praise and thanks. On another occasion I called on him to offer professional advice to a student in my course. He was integral in helping one of my students decide that he wanted to study mechanics at Golden West College. He was able to talk to the student, provide candid insight regarding the roles and requirements of the position, and encouraged this student to return for additional assistance. He motivated this student to complete his studies rather than dropping out of college. His integrity, honesty, strong work ethic and unbridled professionalism demonstrate his benefit to the community and his employees.

I have also been fortunate to continue to interact with Tien through family and church functions. His family is very active in Blessed Sacrament Church, a Vietnamese Catholic Church. As a Catholic, I have been welcomed into their family functions and services. Tien is a dedicated member of the church, providing his assistance with holiday functions and assisting individual parishioners with their needs. He does this with humility and grace, and always with a welcoming smile. Despite the differences in our language and culture, our faith is the same and he's always reminded me that it is the teachings of the church that bind us together as family.

Tien is a loving husband and father to two young girls. Unlike most fathers, he takes a very active role in parenting, providing love and support for his children, provides assistance with their school projects, and helps with their fundraising efforts. His children are absolutely his pride and joy. He is not shy about showing them his love, adoration, and devotion. He is a good parent providing not harsh discipline, but gentle teachings for his children when needed. He is attentive to their needs and provides them with the nurturing, stability, and support that are needed by children.

His dedication to family goes beyond his immediate family. He is always caring and considerate with his extended family, and demonstrates this regularly. His family is incredibly close, and gathers frequently for "celebration". These events don't just happen during holidays. They are a regular, weekly occasion. I have been honored to be included in many of these weekend barbeque and dinners, and enjoy my time with the extended family, as well as Tien, and his daughters Ashley and Megan.

Many individuals, including myself, have overcome errors in judgment in our youth to lead healthy, productive lives and serve as contributing members of society. Tien has done this as he has left behind errors in past judgment to become a valuable member of the community. He exhibits many of qualities that demonstrate this: he



V.les Brava, President

is enthusiastic and committed to his work and family. He is patient and kind with his children; loving, reverent, modest, and benevolent with his family, parents and church; he operates his business with pride, integrity, and honesty. Tien Duc Nguyen is not a violent person, and should not be punished harshly. Your Honor, I respectfully request leniency in his case and recommend no jail time, but continued counseling, probation, and community service. Tien would no doubt return this compassion with continued service to his family, church and community.

If I can provide any further assistance in this matter, please do not hesitate to contact me at [REDACTED] or via email [REDACTED]

Respectfully,

Yvonne Valenzuela, Ed.D.

Associate Professor / Counselor
Golden West College

RE: Tien Duc Nguyen

A-239349

Court Case #:10WF0918

The Honorable Judge: Daphne Sykes Scott

My name is Matthew Foushee and I have known Tien for the past two and a half years through dating his younger sister, Nancy Nguyen. When I met Nancy's family for the first time, I was a bit anxious since I am Caucasian and I wasn't sure how that would affect their first impression of me. To my pleasant surprise, her family embraced me and made me feel very much included and part of the family. Right away, this gave me an impression that this family is very close to each other.

My interaction with Tien was well established due to the many weekends at Grandma's house (Tien's parents). There is not a weekend that goes by where the family does not gather - simply to be together. I admire Tien's expertise in cars. Even in times of car troubles during work or on the road, Tien would never hesitate to meet me up to help get my car running again. He reached out to assist me in finding and purchasing my current car. I appreciate that he is so reliable and I know I can call on him anytime I should need help.

In these times, I feel very fortunate to know Tien since he is like a brother to me. I feel a special connection with Tien, and I admire his fatherly skills with his daughters Ashley and Megan. Nancy and I often take the girls for a day out at the beach or bowling and dinner and I'm always impressed by how well behave the girls are. This is a direct reflection on the parenting skills of both Tien and his wife Jan.

I am grateful for having met him and hope to continue our relationship. I hope that my personal letter of reference can assist on requesting your Honor leniency in granting Tien probation and no jail time. If I could be of further assistance, please contact me at [REDACTED]

Best regards,

Math Foushee

Matthew Foushee



April 15, 2011

To the Honorable Judge Daphne Sykes Scott:
Regarding Case #10WF0918

I am proud and honored to say that I have known Tien Duc Nguyen for almost nine years. I know Tien because I had an almost eight year relationship with his sister Tijai. I am fifty-one years old, and I can honestly say I have never met a better person than Tijai, nor have I met a more loving, close-knit family than the Nguyen's. During the course of my relationship with Tijai, I had the great fortune of getting to know Tien. I was around him in many different types of situations. I spent time with him at work, restaurants, church, the beach, his home, weddings, and mainly at his parent's home where the family would gather at holidays, and most weekends, celebrating being around each other.

When I think of Tien, the first thing that I think of is his unwavering love and devotion to his family; his two children Ashley and Megan, his wife Jan, his parents, and his brothers and sisters. There is no doubt in my mind that he would do anything to help his family have better lives. Tien is a great father. He teaches his children, he laughs and jokes with them, he plays with them, he disciplines them, he spends time with them. When they see him their eyes light up, quite literally. They truly are the apple of each others eyes. If the way children behave is any indication of parenting skills, then it is obvious that Tien and Jan have done a great job of raising two well balanced young girls - providing a loving, nurturing, safe environment.

Tien is a hard working, intelligent, introspective, humorous person. He has a big heart and a generous spirit. I was always impressed with his passion and enthusiasm for cars and the shop that he co-owned. In a myriad of social settings, he handled himself with the appropriate class and dignity. I never saw him get drunk or act out of line. He always had a calm and easy going manner about him that allowed people to naturally gravitate to him. He makes people feel at ease, and he cares that that occurs.

I remember going to the grand-opening of Tien's car shop; I remember how impressed I was at the respect and admiration people in the community have for Tien's expertise, honesty, and trustworthiness. He is truly at the top of his field and provides an important service in the business world and his community. This is important at any time, but certainly in today's economic climate, even more vital.

I always felt a little bit more of a connection with Tien than the rest of the family members - and that is like picking between your favorite flavors of ice cream - hard to do. Perhaps it was because my brother is also a car mechanic; more likely it was

ORANGE COAST COLLEGE

Division of Physical Education & Athletics

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because I could tell he was evaluating me to see if I was worthy of being with his big sister. I always respected him for doing this, and in the way he went about doing it, subtle but effective.

I have been a teacher/coach for about 28 years and have had the opportunity to meet and work with a great deal of excellent people in a wide variety of professions. I have found the high achievers are people who exhibit traits that set them apart from the masses. I always saw many of these traits in Tien - great skill and knowledge, great work ethic, passion, enthusiasm, empathy, patience, discipline, commitment, and most important, honor, pride, and integrity.

As human beings, we all make mistakes and Tien is no different. I am aware that he has been in trouble with the law before. He should not have put himself in a situation where he was knowingly around guns of any kind. However, I firmly believe that Tien's strengths far outweigh this lapse of judgment, and that his intent was harmless. He is a productive, positive, ethical member of society that is in no way a threat to anyone. He has turned his life completely around and learned from his past mistakes.

I respectfully hope that you, the Honorable Judge Daphne Sykes Scott decide that leniency in this pending case against Tien Duc Nguyen is the only way that justice will be served for everyone involved. Tien would be the type of person that would be forever thankful for receiving a sentence that involved probation and counseling but no jail time. In this way he would be able to continue to be a worthy role model for his children, a loving husband to his wife, a help to the rest of his family members, and a contributing member of society. He will not let you down. I without a doubt believe that we need more people like Tien in the world - it would be a better place.

If I can be of any more assistance in this matter I can be reached at [REDACTED]

[REDACTED] Thank you.

Respectfully,

Steve Spencer
Head Men's Basketball Coach/Physical Education Instructor
Orange Coast College

03/28/2011

Loc Nguyen
[REDACTED]

Character Letter:

Dear Honorable Judge,

Hello, I am writing in reference to **Tien Nguyen**, who is going to appear before your court on Tuesday 04/26/2011

Tien asked me to write a character reference letter, but the truth is that I was already planning on doing so before the request. I feel strongly about **Tien**, and about his future as well as his family future, and I want to try to make you feel the same way.

From a friend's perspective, I see that **Tien** is a person of good moral character. I realize that might seem hard to believe, given the circumstances, but it's true nonetheless. I have known **Tien** for a few year and in that time I have seen him go through ups and downs, but all the while I have been convinced that he is a decent person at the core. He just needs more people to believe in him so that he can become the person I know he can be.

Tien might made a mistake in the past, and he is incredibly remorseful, and already complete his time. He is now willing to do whatever it takes to make reparations, financially and emotionally, if possible. Let's put that behind and let him has a fresh start. But to do that, **Tien** needs you to give him an opportunity to get a second chance without prejudice. I just hope you will recognize the power you wield with regard to the future of this man and his family and make a fair decision.

Thank you,



Loc Nguyen

03/26/2011

Character letter:

To Honorable Judge,

My name is **Hoa Do**, and I am writing this reference letter for **Tien Duc Nguyen**.

For a few year that I have known him, I can hereby state that **Tien Duc Nguyen** is a great husband and a wonderful parent. He is an individual, who has patience and love, is compassionate, and has the ability to take care of his family.

Tien has never stopped being a great father, constantly reminding his children that he loves and cares for them. He has never for a moment stop loving and taking care of his family. He has struggle in the past but has paid his due and continue to fight and strive to always keep his wife and his children safe and happy.

Trusting in the power of justice of this country, you have the future of this loving family and specially this man's lives in your hands. I respect the law and understand the concept of the law and are grateful for it. Although I understand the law, but I pray that God illuminates your mind into seeing the truth. I know that justice is not really blind.

God Bless You.

Sincerely,



Hoa Do

Dear Honorable Judge Daphne Sykes Scott,

Tien Nguyen used to be my landlord in 2005 to 2009. When my family first moved in Tien and his wife we're very welcoming. I gotten to know Tien very well and he has been the brother I never had. I see Tien as a devoted husband and father.

He used to work the graveyard shift and he would come home 4am or 5am. He then would stay awake and get his daughters ready for school. I see him drive his kids to school every morning for entire time I was his tenant. In the afternoon he picks them up from school and takes care of them. I never seen a father love his kids like Tien does.

Many times Tien has helped my family and I. One time my car was overheated on the road and when I called him and told him I was in trouble, he was there in a heartbeat! I know he was at work and he dropped everything to make sure my kids and I got home safe. I had no one else that would of helped me. There is not many people like him. He helps everybody around him and I know he would never hurt anyone. I can give you so many instances where he has helped my family but please take my word and I assure you that he is a good man. His home is always open to friends and family. Every time I visit his home, he has a relative or friend that he has staying in his home. He babysits his nieces and nephews. I don't think you would be able to find a person that has a negative thing to say about Tien.

I hope you would reconsider your judgement and see Tien the way I see him. I can't express enough how he is such a devoted family man and a caring friend. I know his family will not be able to function if you incarcerate him. His family needs him now and I know if you give him a chance, he wouldn't abuse it.

Thank you,

Thank by

Thanh Ly

[Redacted signature area]



ORANGE COAST COLLEGE

April 22, 2011

Re: Tien Duc Nguyen
Case #: 10WF0918

Dear Honorable Judge Daphne Skyes Scott:

I am submitting this letter of support and for your consideration regarding Tien Duc Nguyen whose sentencing is set for 5/31/11.

I have known the Nguyen family for over five years and can honestly attest to how close and caring this family is. Tien is a husband, father, son, brother and uncle to his family. He has two young daughters who need his loving and caring support as much as he needs them.

I met the Nguyen family through Tjai who is Tien older sister. I have attended many family events and gatherings. I have had the pleasure of becoming a part of this loving caring family and have grown fond of each family member. Tien is a responsible, funny, and caring man who has serviced and repaired my car many times - he refuses to accept payment because he considers me as a family friend. I see this as a trait that only an honest and generous man can have. Tien not only contributes to his community by providing employment at his shop, but also attends and assists in many church functions.

The community would not be served by incarcerating a good person like Tien. If anything the community would miss his contributions. Tien is not a threat to anyone, nor is he a danger to society. I would like to humbly ask leniency to the court and that Tien receive probation instead of any jail time. Please be considerate of him and daughters when sentencing him.

Thank you for your consideration and careful thought to this matter.

Sincerely,

Nancy Ramirez
Staff Development Coordinator
Orange Coast College





ORANGE COAST COLLEGE

Dear Honorable Judge Daphne Sykes Scott:

I have known Tien D. Nguyen for 23 years. I first met Tien when he was a youngster. I have watched him grow and mature and become a respectable, successful man. I am friends with his wife, Jan, and his daughters, Ashley and Megan.

Tien is a great father and provider for his daughters, and a loyal loving husband to his wife. Tien often is the parent the daughters go to for their primary needs. The daughters adore their Dad and would be lost without him. I have never seen anyone change in such a positive way as much as Tien did when he became a father. He is so proud of his daughters, is an awesome Dad and will do anything for his daughters. He is strict but gentle and forgiving. He participates in various events that involve his daughters such as attending school programs, games, carnivals, parent-teacher conferences etc.

I have been to many of Tien's family functions and get-togethers to know and witness that Tien is also very thoughtful of his parents and siblings and will help them with whatever they need. I have known many times how one of them might need help with a car at 1am and they call Tien and he never hesitates to help. He has scheduled family vacations with his entire family, 16-20 members, and has set-up the events for the vacation.

Tien had a goal to begin his own business and has worked hard to attain that goal. He went to school and earned his ASE Masters certification and started his own business in 2005. Tien has continually increased his business due to his honesty with customers. Tien has transformed his life and is a respectable man who has made a name for himself in his community as a business owner. His life is a success story.

With all due respect, your Honor, I ask leniency in granting Tien D Nguyen probation. I strongly believe that he is not a threat to society. he is a good person and this could adversely affect his entire family for life, especially his young daughters. They need to have their Dad with them especially now as they are becoming teenagers.

Respectfully,

Patti McDonald
Faculty Services Coordinator

1 CHRISTOPHER J. HENNES (SBN 21176)
 2 Attorney at Law
 2130 Main Street, Suite 200
 3 Huntington Beach, CA 92648
 (714) 536-6023
 4 Attorney for Defendant

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 AUG 15 2011
 CLERK OF COURT
 BY F. MENDOZA DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF ORANGE, WEST JUDICIAL BRANCH

11 PEOPLE OF THE STATE
 12 OF CALIFORNIA,
 13 Plaintiff,
 14 vs.
 15 TIEN DUC NGUYEN,
 16 Defendant.

Case No. 10WFC918
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 FOR NEW TRIAL
 Date: 8/15/2011
 Time: 8:30
 Dept: W 2

18 Defendant TIEN DUC NGUYEN submits the following memorandum of points and
 19 authorities in support of his motion for a new trial:
 20

21
 22
 23 I. THE TRIAL COURT MAY GRANT A MOTION FOR NEW TRIAL ON THE
 24 GROUND THAT THE COURT HAS ERRONEOUSLY INSTRUCTED THE JURY OR
 25 ERRED IN A QUESTION OF LAW.

26 Penal Code section 1181 provides in part:
 27 "When a verdict has been rendered or a finding made against the
 28 defendant, the court may, upon his application, grant a new trial in

1 the following cases only:

2 * * *

3 9. When the court has misdirected the jury in a matter of law, or has erred
4 in the decision of any question of law arising during the course of the trial

5"

6 The following errors of law occurred during the trial of this matter:

7 **A. The Court Erred By Admitting the DTC Rifle and the Ammunition in Evidence.**

8 Defendant made a pretrial motion, on relevancy and Evidence Code section 352 grounds,
9 to preclude evidence of the DTC rifle he had assembled and the rounds of .50 caliber
10 ammunition in his possession. The court denied the motion on the grounds that such evidence
11 showed defendant's "knowledge, dominion and control" of the AK parts that he was charged
12 with attempting to manufacture and unlawfully possess. (RT i. p. 11.) The admission of the
13 evidence was prejudicial error.
14

15 The aforementioned evidence was clearly irrelevant to prove defendant's specific intent,
16 which was the only issue in dispute. The prosecution was required to prove that defendant
17 possessed the AK parts kit with the specific intent to manufacture or possess an assault weapon
18 as described in Penal Code section 12276.1. The DTC is not an "assault weapon," and was
19 configured by defendant to comply with California law. The AK parts were similarly capable of
20 assembly into a lawful weapon or a forbidden "assault weapon." The .50 caliber bullets are also
21 perfectly legal to possess in California. Thus, the only probative value of the DTC evidence was
22 to show that defendant could assemble a legal gun from parts. The ammunition had no logical
23 tendency to prove any disputed material fact. Neither item was evidence of a criminal intent.
24

25 Their value to the prosecution lay in their menacing appearance. Considerable testimony
26 was elicited regarding the destructive capabilities of the DTC and bullets. None of it had the
27
28

1 slightest connection to the unassembled box of parts for which defendant was on trial. The
2 prejudicial effect of such evidence was obvious and intended. The court should have excluded it
3 under section 352.

4
5 **B. The Court Erred in Precluding Defendant's Expert Opinion Evidence.**

6 The court ruled that defendant's expert witness, who is a duly licensed firearms dealer,
7 could not testify whether possession of the AK gun parts was permissible under California law.
8 The basis of the court's ruling was that such evidence impermissibly infringed on the jury's duty
9 to determine the "ultimate issue" of the case. Under Evidence Code section 805, however,
10 "[t]estimony in the form of an opinion that is otherwise admissible is not objectionable because it
11 embraces the ultimate issue to be decided by the trier of fact." Moreover, such an opinion would
12 be "otherwise admissible" under section 801:
13

14 801. If a witness is testifying as an expert, his testimony in the
15 form of an opinion is limited to such an opinion as is:

16 (a) Related to a subject that is sufficiently beyond common
17 experience that the opinion of an expert would assist the trier of
18 fact; and
19

20 (b) Based on matter (including his special knowledge, skill,
21 experience, training, and education) perceived by or personally known
22 to the witness or made known to him at or before the hearing,
23 whether or not admissible, that is of a type that reasonably may be
24 relied upon by an expert in forming an opinion upon the subject to
25 which his testimony relates, unless an expert is precluded by law
26 from using such matter as a basis for his opinion.
27
28

1
2 Certainly, a licensed firearms dealer is qualified to render an opinion as to whether a
3 particular gun is permissible to possess. Moreover, his testimony could also be based on the
4 letter from the California Attorney General (Exhibit A) wherein the official position is taken that
5 possession of unassembled "Category 3" AK parts does not constitute possession of an assault
6 weapon. It is beyond reasonable dispute that the proffered evidence would likely have
7 exonerated defendant.
8
9

10
11 **II. THE TRIAL COURT MAY GRANT A MOTION FOR NEW TRIAL ON THE**
12 **BASIS OF INSUFFICIENCY OF THE EVIDENCE TO SUSTAIN THE VERDICT.**

13 Penal Code section 1181 provides in part:

14 "When a verdict has been rendered or a finding made against the defendant, the
15 court may, upon his application, grant a new trial, in the following cases only: ...

16 * * *

17
18 6. When the verdict or finding is contrary to law or evidence"

19
20 In *People v Robarge* (1953) 41 Cal.2d 628, 634, the court declared that in ruling on a
21 motion for new trial, the trial court must independently reweigh the evidence. The function of
22 the trial judge in determining a motion for new trial on the grounds of insufficiency of the
23 evidence is "... to see that the jury intelligently and justly performs its duty and, in the exercise
24 of a proper legal discretion, to determine whether there is sufficient credible evidence to sustain
25 the verdict." The trial court must "... give defendant the benefit of its independent conclusion
26 as to the sufficiency of credible evidence to support the verdict." It is not bound by the contrary
27
28

1 conclusion of the jury.

2 The duty of the trial judge was similarly explained in *People v. Sarrasowski* (1945)
3 27 Cal.2d 7, 15-16:

4 "The defendant is entitled to two decisions on the evidence, one by the jury and
5 another by the trial judge in passing upon a motion for a new trial. [Citation.] In
6 giving consideration to the important matter of the sufficiency of the evidence to
7 support the jury's verdict, the trial court, in ruling on a motion for a new trial, is
8 not bound by conflicts in the evidence [citation], and the duty is imposed upon it
9 then to consider such additional and not unimportant features as the credibility of
10 witnesses, their manner and appearance in testifying, and the proper weight to be
11 accorded to the evidence."

12 The evidence adduced at trial was insufficient to support a finding of guilt on either
13 count. As discussed, the crux of the case was defendant's intent. Guilt could only be predicated
14 upon a finding that defendant specifically intended to build a weapon with the prohibited
15 characteristics. Evidence that he had legally constructed a different type of rifle and had legal
16 non-AK ammunition does not raise an inference of criminal intent. Nor do his ambiguous and
17 misinformed statements in response to police accusations prove intent beyond a reasonable
18 doubt. The jury's verdict was based on nothing more than speculation as to defendant's future
19 and inchoate plans.
20
21
22
23

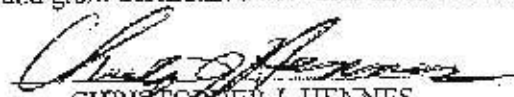
24 The aforementioned Attorney General letter underscores how arbitrary and unfair this
25 prosecution is. Justice is not served by utterly disregarding the considered opinion of the State's
26 chief law enforcement body simply because "we can."
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III. CONCLUSION

The court should set aside the jury's verdict and grant defendant a new trial on all counts.

Dated: August 12, 2011



CHRISTOPHER J. HENNES

Attorney for Defendant

Christopher J. Hennes
 Attorney at Law
 2130 Main Street, Suite 200
 Huntington Beach, California 92648
 (714) 536-6073
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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: District Attorney -
 OF 714-634-2469
 From: Christopher J. Hennes, Attorney at Law
 Claim No.:
 Date: 8/10/11

DOCUMENTS	NUMBER OF PAGES*
Memorandum of Points and Authorities in support of motion for new trial.	6
RE: Ken Duc Nguyen	
1050	

COMMENTS: Please see attached.
 Thank you.

08/12/2011 15:19 17145366073

CHRISTOPHER J HENNES, ESQ.

P.001

 *** FY REPORT ***

JOB NO.	MODE	NO.	DESTINATION TEL./ID	START TIME	PAGE	RESULT
1201	TX	ECM 001	17146342169	08/12 15:17	008	OK 01'04

Christopher J. Hennes
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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: *Dept. W 2 576228071*
 Of: *OC Superior, West Justice Center*
 From: Christopher J. Hennes, Attorney at Law
~~Case~~ No.: *10 W F 0918*
 Date: *8/12/11*

DOCUMENTS	NUMBER OF PAGES*
<i>1050</i>	<i>1</i>
<i>1st AS</i>	<i>6</i>
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Address, Telephone No.) <u>Christopher J. Hennes (SEN 711 74)</u> <u>Attorney At Law</u> <u>2150 Main St. Suite 200</u> <u>Huntington Beach, CA 92648 (714) 530-6023</u> ATTORNEY FOR _____ Bar Number _____	For Court Use Only Case Number: <u>10WF0918</u>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701 <input type="checkbox"/> Harbor-Newport Beach - 4501 Januores Rd., Newport Beach, CA 92560 <input type="checkbox"/> Harbor-Laguna Niguel - 30143 Crown Valley Pkwy, Laguna Niguel, CA 92677 <input checked="" type="checkbox"/> North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500 <input checked="" type="checkbox"/> West - 8141 13 th Street, Westminster, CA 92683	
PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant: <u>Tien Duc Nguyen</u>	
MOTION FOR CONTINUANCE (Penal Code section 1050)	

I, Christopher J. Hennes am the Defendant Attorney for the defendant Prosecuting
 (Type or Print Name)
 Attorney and move the Court for a continuance of the hearing currently scheduled for 8/15/11 at
8:30 AM in Department W2
 (Time) (Date)

The reason for this request is as follows: Defendant will move the Court for a new trial. Defendant requests that a hearing on the motion be scheduled at a later date to permit the Court and the People time to consider and/or respond to defendant's motion and to hear the sentencing matter, if applicable.
Defendant is making this motion to continue because the preparation of the trial transcripts was not completed until approx. July 12, 2011, which left insufficient time for timely preparation & service of the new trial motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: 8/12/11
Chry Hennes
 (Signature of Moving Party)

1 TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA
2 BY: RENEE A. JONES
Deputy District Attorney
State Bar Number 189207
3 Post Office Box 808
Santa Ana, California 92702
4 Telephone: (714) 834-3600

5 Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

SEP - 2 2011

ALAN CARLSON, Clerk of the Court

BY S. MIJEWSKI, DEPUTY

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER**

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)
11)

12 Plaintiff)

13 vs.)

14 TIEN DUC NGUYEN,)

15 Defendant.)

102110918
11 CASE NO. ~~04C2441~~

12 MEMORANDUM OF POINTS AND)
13 AUTHORITIES IN OPPOSITION TO)
14 MOTION FOR NEW TRIAL (P.C.)
15 SECTION 1181 (5) & (6).)

16 Date: 9/2/11
17 Dept: W2
18 Time: 8:30 a.m.
19 Est: 15 minutes

20 **STATEMENT OF THE CASE**

21 Because this case was taken to jury trial before this Court, the Court is clearly familiar
22 with the facts as presented at trial. However, the People would cite the following pertinent facts
23 gleaned from police reports and trial transcript, as well as defense motions which bear directly on
24 issues raised in this Motion.

25 Defendant Tien Duc Nguyen was brought to trial April 4, 2012 on an Information
26 alleging in Count 1: Attempted Manufacture of an Assault Weapon, a Felony, pursuant to
27 California Penal Code section 664-12280(a)(1), in Count 2: Attempted Possession of an Assault
28 Weapon, a Felony, pursuant to Penal Code section 664-12280(b); in Count 3: Possession of a
Firearm by a Felon, a Felony, pursuant to Penal Code section 12021(a)(1); and in Count 4:
Possession of Ammunition by a Prohibited Person, pursuant to Penal Code section 12316(b)(1).

1 Also alleged was a strike prior pursuant to Penal Code sections 667(d) and (c)(1) and 1170.12(b)
2 and (c)(1). Prior to trial, Defendant pled guilty to Counts 3 and 4, and further admitted he had
3 suffered the prior felony conviction which served as the basis for the strike prior allegation.
4 Remaining at issue at trial were counts 1 and 2.

5 Following a jury trial, on April 6, 2011 the jury returned a verdict of guilt on Counts 1 and 2.
6 Defendant now moves the court for a new trial, challenging the court's 352 rulings as to the
7 admission of evidence of the manufacture and possession by the same defendant of another high
8 powered weapon and ammunition by Defendant to prove possession and knowledge of the process of
9 manufacturing such weapons, and the court's 352 ruling excluding the proffered defense expert's
10 opinion testimony as to the ultimate issue in the case: i.e. the legality/illegality of the firearm
11 Defendant was attempting to manufacture. Finally, Defendant challenges the sufficiency of evidence
12 to support the jury's verdict of guilt.

13 STATEMENT OF FACTS

14 Detective Chapman testified at trial regarding the discovery of the weapon at issue. He
15 stated that on March 17, 2010, law enforcement investigators searched Defendant's auto parts
16 business. In the course of the search, the investigators asked Defendant if he had any weapons
17 or anything illegal on the premises. Defendant told them he had a rifle he used for hunting.
18 (CCT 109-109) As he told officers this, he displayed photographs on his cell phone of several
19 pigs and wild hogs that had been shot. Defendant claimed the rifle was for hunting purposes.
20 (CCT 109) When asked where he kept his hunting rifle, Defendant led the officers upstairs above
21 the office to a storage-type area where they observed a completed and assembled .50-caliber rifle,
22 (CCT 109-113). Examination of the lower portion of the rifle indicated no manufacturer's name
23 stamp, serial number or other identification marks. (CCT 119) Defendant admitted he purchased
24 what he called the "80 percent" lower off the internet. He claimed this was a machined AR-15
25 type lower receiver which was not totally complete. Defendant said he had machined the last
26 couple of holes to finish the weapon. (CCT 119-120) He said after receiving the lower portion
27 of the rifle, he purchased the upper portion and the rifle was now complete. (CCT 120)

28

1 Detective Chapman testified at trial that this weapon was not typically used for pig
2 hunting, and when asked if such a weapon would destroy a pig, he stated "I think even calling it
3 an elephant gun would be an understatement." (CCT 115)

4 Detective Chapman testified that when he asked Defendant if he had ammunition for the
5 .50 caliber DTC, Defendant produced a box of 50 rounds of .50 caliber DTC ammunition for the
6 rifle, which he claimed he had received through the mail. (CCT 121-122) Defendant also had
7 120 rounds of Alexander Arms .50 caliber Beowulf ammunition, which did not fit the .50 caliber
8 DTC rifle. Defendant claimed he purchased this .50 caliber ammunition and it was left over
9 from his pig hunt. He claimed he had "rented" a .50 caliber rifle when he had hunted and that
10 ammunition fit the rented rifle. (CCT 123-124)

11 Investigators asked Defendant if he had any other weapons in his possession and
12 Defendant went on to tell them he was making an AK-47. He led them to a box full of parts for
13 the AK-47 type semi-automatic assault rifle. (CCT 124-125) Defendant showed the
14 investigators the receiver portion of the AK-47 type rifle, which did not have a manufacturer's
15 name or serial number affixed to it. (CCT 127) He showed them a web site called AK
16 Builder.com which shows how to build an AK-47 type assault rifle and therefore avoid the
17 registration process. Defendant said he had purchased an AK-47 receiver flat, which is a receiver
18 with the holes milled or punched out, but is flat and not bent into the proper shape to assemble
19 the rifle. (CCT 127-128)

20 Defendant stated he personally altered the receiver and bent it into the proper shape in
21 order to assemble his own AK-47 type rifle. He said he had not yet assembled the AK-47 and
22 had not yet fired the .50 caliber DTC rifle. Investigator Chapman later dry-fired the .50 caliber
23 DTC rifle and found it to be in good working order.

24 When questioned about the legalities of making and have the AK-47, Defendant stated he
25 knew what he was doing was wrong. (CCT 129)

26 During the course of the inspection of Defendant's auto body shop, Defendant was on his
27 cell phone in the back alley for extended periods. He claimed he had no more weapons, but
28 stated his wife had a shotgun registered in her name. He claimed he had lent it out and it was not

1 in his possession. (CCT 129) Defendant agreed to a search of his home several hours after the
2 search of his business. When officers responded to his residence, Defendant let them in side,
3 where they found a gun safe completely empty, with the door ajar. (CCT 130)

4 In a taped phone interview the next day, defendant again admitted manufacturing the two
5 weapons. He further admitted he used a part called an AK builder flat bending die set which is
6 used as press to bend the flat into shape. He also described in detail the ease with which he
7 manufactured the .50 caliber DTC, including purchasing the 80% lower and avoiding purchasing
8 a template by obtaining the dimensions for the firearm on line. He described how dangerous the
9 gun was and how the .50 caliber DTC ammunition is slightly shorter than the .50 caliber BMG
10 ammunition, making it legal to possess. He again claimed to have the .50 caliber BMG
11 ammunition for hog hunting. He again admitted he knew he was not supposed to have the guns.
12 (CCT 138)

13 The AK-47 rifle parts were later examined by firearms expert Sgt Greg Schuch, who
14 compared the parts to a fully functioning, previously fired AK-47 type rifle. (CCT 146) Sgt Greg
15 Schuch also testified at trial. (175-269) He determined the most difficult part of the manufacture
16 of Defendant's gun was already completed, with the shaping of the flat. He opined that little
17 needed to be done but assemble the firearm, and all the parts were present to complete a fully
18 functioning semi-automatic, center fire rifle with the capacity to accept a detachable magazine
19 and a forward pistol grip that would protrude conspicuously beneath the action of the weapon.
20 Sgt Schuch further testified that the .50 caliber ammunition possessed by Defendant would fit a
21 .50 caliber weapon. (CCT 179) This evidence was probative of the fact Defendant had
22 knowledge and possession of various types of high powered weapons, at least one of which was
23 never located. (CCT 187) Schuch further testified that while it could be, he had never heard of
24 the .50 caliber ammunition being used for pig hunting. (CCT 186) Nor had he ever heard of a
25 gun dealer or a shooting range renting out the type of weapon that the .50 caliber ammunition
26 would go to. Instead, when you rent a firearm, the use is limited to the range itself. (CCT 187)
27 Sgt Schuch brought a manufactured AK-47 to court as demonstrative evidence and compared it
28 to the AK-47 type weapon Defendant was manufacturing, matching the parts piece by piece, to

1 show Defendant had all the parts necessary to complete the assault weapon, and had substantially
2 completed the weapon. (CCT 187-269)

3 Defendant did not, however, possess a part required for the rifle to accept a fixed
4 magazine, nor any invoice which would indicate he ever ordered such a part.

5 Defendant called Michael Penhall as an expert witness. (CCT 273-331) Penhall testified
6 it would take a fair amount of work to make the receiver functional. (CCT 282) Penhall further
7 testified a bullet button could have been added later, making the magazine a fixed magazine.
8 (CCT 294) On cross examination, Penhall testified that once you had the dye for one initial AK-
9 47 type rifle, others would be cheaper to make. (CCT 315) He also testified to the absence of
10 items that might take the completed weapon outside the definition of an illegal assault weapon
11 (ie a bullet button) (CCT 317)

12 ISSUE

- 13
- 14 1) **WHETHER THIS COURT SHOULD DENY THE DEFENSE**
15 **MOTION FOR A NEW TRIAL PURSUANT TO PENAL CODE**
16 **SECTION 1181, SUBSECTION (5) WHERE DEFENDANT HAS**
17 **FAILED TO ESTABLISH THE TRIAL COURT ERRED IN**
18 **INSTRUCTING THE JURY ON MATTERS OF LAW OR MADE AN**
19 **ERRONEOUS LEGAL RULING.**
 - 20 2) **WHETHER THIS COURT SHOULD DENY THE DEFENSE**
21 **MOTION FOR A NEW TRIAL PURSUANT TO PENAL CODE**
22 **SECTION 1181, SUBSECTION (6) WHERE THE VERDICT WAS**
23 **CONSISTENT WITH EVIDENCE PRESENTED AT TRIAL.**

24 ARGUMENT

- 25
- 26 1) **BECAUSE DEFENDANT HAS FAILED TO ESTABLISH THE**
27 **TRIAL COURT ERRED IN INSTRUCTING THE JURY ON**
28 **MATTERS OF LAW OR MADE AN ERRONEOUS LEGAL RULING**
THIS COURT SHOULD DENY THE DEFENSE MOTION FOR A
NEW TRIAL.

29 Penal Code section 1181 sets forth the **only** statutory grounds for the granting of a new trial.
30 This section states, in pertinent part;

31 When a verdict has been rendered or a finding made against the
32 defendant, the court may, upon his application, grant a new trial, in the following
33 cases only . . .

1 (6) When the court has misdirected the jury in a matter of law, or has
2 erred in the decision of any question of law arising during the course of the trial .

3 Defendant alleges the court erred in two evidentiary rulings, first by
4 permitting the People to admit evidence of Defendant's manufacture and
5 possession of the .50 caliber DTC and possession of various ammunition, and
6 secondly by ruling that the defense expert could not testify as to the legality or
7 illegality of the AK-47 type weapon Defendant was attempting to manufacture.
8 The court was correct on its rulings on both issues.
9

10 **A. Admissibility of Evidence of .50 caliber DTC and Ammunition**

11 To prove a violation of Penal code section 664-12280(a)(1), as alleged in
12 Count 1, the People were required to prove Defendant knew or reasonably should
13 have known the weapon he was attempting to possess/manufacture had
14 characteristics that made it an assault weapon. (CALCRIM 2560). "In a prosecution
15 for this offense, the People bear the burden of proving the defendant knew or
16 reasonably should have known the firearm possessed the characteristics that bring it
17 within the AWCA (Assault Weapons Control Act of 1989)" In re Jorge M. (2000) 25
18 Cal.4th 866, 887.
19

20 Defendant excused his criminal activity by describing himself to
21 police as a "hobbyist" who likes to "tinker." In other words, he didn't "mean" or
22 intend to manufacture an illegal weapon. This self-characterization, if believed,
23 would tend to negate the requisite knowledge that what he was in fact creating fit
24 the criteria for an illegal assault weapon. . He feigned ignorance that the parts
25 he had compiled to construct the AK-47 type weapon had the characteristics of
26 an illegal assault weapon, and yet he was able to describe in detail how he
27
28

1 manufactured the "California compliant" .50 caliber bolt action gun, down to the
2 2 mm difference in the bullet casing that distinguished that firearm from a .50
3 caliber BMG. He further described how he was able to circumvent registration
4 laws by purchasing what he called an "80 percent" lower off the internet. He
5 claimed this was a machined AR-15 type lower receiver which was not totally
6 complete. Defendant described machining the last couple of holes to finish the
7 weapon. He explained since it was not complete when he received it, he did not
8 have to register it. He further described after he received the lower portion of
9 the rifle, he had purchased the upper portion, and the rifle was now complete. In
10 discussing the manufacture of the DTC, Defendant showed an impressive depth
11 and scope of knowledge of firearms manufacturing that negated his claim of
12 being a mere "tinkering hobbyist" or of somehow accidentally compiling the
13 necessary parts to create an illegal weapon. This evidence strongly supported
14 the prosecution's case by showing Defendant had the breadth and scope of
15 knowledge to successfully manufacture the AK-47 type weapon, and should and
16 must have known, the weapon he was building had the characteristics of an
17 illegal AK-47 type weapon.
18
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21 The People also bear the burden of proving that what Defendant was
22 doing was in fact attempting to manufacture a firearm. (CALCRIM 2560). His
23 intent to manufacture rather than to merely possess a random collection of pieces
24 and parts is shown by the fact he has already successfully done was he has once
25 again set out to do; he has the knowledge, the ability and the intent to
26 manufacture a high powered weapon. His ability, knowledge and intent to
27 manufacture another high powered weapon is evidence is probative of his
28

1 ability, knowledge and intent to manufacture a second weapon. Moreover, his
2 possession of that .50 caliber ammunition that would only go to another (still
3 outstanding) illegal weapon supports the fact that he was familiar with the
4 nuances of the various types of high powered weapons and various types of
5 ammunition. This evidence went to his extensive knowledge and intent to
6 create what would in fact be illegal AK-47 type weapon.
7

8 The evidence, taken as a whole showed that this Defendant was much
9 more than a tinkering hobbyist he would portray himself to be. He was in the
10 business of manufacturing high powered weapons, some of which happen to be
11 illegal.
12

13 Furthermore, his improbable "excuse" for possession of the DTC and
14 the high caliber ammunition goes to his consciousness of guilt, in that he
15 pretended an innocent excuse for his possession and manufacture of what he
16 knew to be high powered weapons.
17

18 Defendant's argument that evidence of the completed firearm and
19 ammunition unduly prejudiced, confused or misled the jury is without merit.
20 "How much 'probative value' proffered evidence has depends upon the extent to
21 which it tends to prove an issue by logic and reasonable inference (degree of
22 relevancy), the importance of the issue to the case (degree of materiality), and
23 the necessity of proving the issue by means of this particular piece of evidence
24 (degree of necessity.)" People v. Thomas (1980) 27 Cal 3d 307, 318, fn. 20.
25 The primary issue in this case is intent. Yet Defendant alleges error in
26 admission of the best evidence of Defendant's intent to manufacture by the
27 evidence admitted; evidence of what he has already done: i.e. completed the
28

1 manufacture of another weapon; and what he had to say about how he achieved
2 the manufacture of that second weapon showed clearly that he had the extensive
3 requisite knowledge, skill and forethought to do it again. He knew exactly
4 where to find exactly what he needed and he has and successfully completed the
5 manufacturing process of the desired firearm.

6
7 Though justifiable incriminating because of the highly probative nature
8 of the evidence as to a material issue in the case, i.e. proving Defendant's
9 extensive firearms knowledge and intent to manufacture, there was little risk
10 evidence of an already manufactured weapon or ammunition would so incense
11 the jury it could not come to a just verdict with respect to whether Defendant
12 was manufacturing an illegal assault weapon. Both weapons were similarly
13 dangerous, and neither was any more or less offensive than the other.

14
15 Finally, it would have misled the jury to prevent it from considering
16 evidence Defendant had successfully manufactured another weapon. "A trial is
17 a search for the truth. To the extent possible, jurors must be told the truth if they
18 are to find the truth." People v. Harris (1998) 60 Cal.App. 4th 727, 733.
19 "Painting a person faithfully is not, of itself unfair." Id at 737.

20
21 **B. Exclusion of Defense Expert's Testimony as to "Legality" of**
22 **Weapon**

23 An expert's testimony in the form of an opinion is limited to such
24 opinion as is:

- 25 (a) Related to a subject that is sufficiently beyond common experience
26 that the opinion of an expert would assist the trier of fact; and
27 (b) Based on matter including his special knowledge, skill, experience,
28 training, and education) perceived by or personally known to the witness
or made known to him at or before the hearing, whether or not

1 admissible, that is of a type that reasonably may be relied upon by an
2 expert in forming an opinion upon the subject to which his testimony
3 relates, unless an expert is precluded by law from using such matter as a
4 basis for his opinion.

5 Ca. Evid. Code Section 801

6 Defense Expert Penhall, a gunsmith and gun store owner, was called
7 as a firearms expert by the defense. He was properly precluded by the
8 court from testifying as to the "legality" of the firearm Defendant was
9 attempting to manufacture. This was clearly beyond the scope of his
10 expertise. Moreover, defense counsel suggested that this gunsmith's
11 "legal" opinion could be based, not on his own training or experience, but
12 rather, on an alleged letter from the California Attorney General provided
13 to the defense expert by defense counsel at trial purporting to suggest the
14 "official position" taken by the California Attorney General as to legality
15 of certain AK parts and whether they constitute an illegal assault weapon
16 under the law.

17 The defense expert had no legal expertise and was unqualified to
18 proffer a legal opinion, even if admissible, based on an inadmissible
19 hearsay letter completely lacking in foundation and proffered by defense
20 counsel in order to bolster his argument as to a legal interpretation.

21 This inadmissible expert opinion testimony was properly denied by
22 the trial court.

23
24
25 **2) BECAUSE THE VERDICT WAS CONSISTENT WITH THE EVIDENCE PRESENTED AT TRIAL, THIS COURT SHOULD DENY THE DEFENSE MOTION FOR A NEW TRIAL.**

26
27 A trial court has discretion, upon motion of the defendant, to order a new trial under
28 Penal Code section 1181, subdivision 6, "[w]hen the verdict . . . is contrary to law or evidence. . .
In ruling on a motion for new trial on this ground, the trial court is not bound by the jury's

1 resolution of conflicts in the evidence or inferences to be drawn. Rather, the court must
2 independently weigh the evidence. (*People v. Seaton* (2001) 26 Cal.4th 598, 693; *People v.*
3 *Price* (1992) 4 Cal.App.4th 1272, 1275.) "It is, however, guided by a presumption in favor of the
4 correctness of the verdict and proceedings supporting it." (*People v. Davis* (1995) 10 Cal.4th
5 463, 524.)

6 While it is the exclusive province of the jury to find the facts, it is the duty of the
7 trial court to see that this function is intelligently and justly performed, and in the
8 exercise of its supervisory power over the verdict, the court, on motion for new
9 trial, should consider the probative force of the evidence and satisfy itself that the
10 evidence as a whole is sufficient to sustain the verdict.

11 (*People v. Robarge* (1953) 41 Cal.2d 628, 633.)

12 Even so, the court should not ignore the verdict or decide the case as if there had been no
13 jury. (*People v. Lopez* (1969) 1 Cal.App.3d 78, 85.) The courts have discredited the view that
14 the court acts as the "thirteenth juror," as "unfortunate" and "misleading." (*People v. Robarge*,
15 *supra*, 41 Cal.2d at p. 634; see generally, *People v. Veitch* (1982) 128 Cal.App.3d 460, 467-468.)

16 It has been stated that a defendant is entitled to two decisions on the
17 evidence, one by the jury and the other by the court on motion for a new trial.
18 This does not mean, however, that the court should disregard the verdict or that it
19 should decide what result it would have reached if the case had been tried without
20 a jury, but instead that it should consider the proper weight to be accorded to the
21 evidence and then decide whether or not, in its opinion, there is sufficient credible
22 evidence to support the verdict.

23 (*People v. Robarge, supra*, at p. 633; similarly, see *People v. Trotter* (1984) 160 Cal.App.3d
24 1217, 1221.)

25 The evidence clearly revealed that Defendant had all the parts necessary to complete what he
26 set out to manufacture: an illegal AK-47 type weapon, and he did not possess the requisite part that
27 might have enabled him to attached a "fixed" magazine, which arguably could have made it legal.
28 Furthermore, his intent and ability to personally do what he set out to do, i.e. manufacture the
29 weapon, was proven by the fact that he was in possession of yet another firearm he had personally
30 manufactured already, and the ammunition to various types of weapons, further showing his
31 extensive involvement with and knowledge of the high powered firearms he was manufacturing.
32 The verdict was supported by all of the physical evidence, Defendant's own statements, the
33 testimony of the Prosecution expert, and even the testimony of Defendant's own weapon's expert.
34 The evidence in this case was overwhelmingly consistent with the jury verdict of guilt.

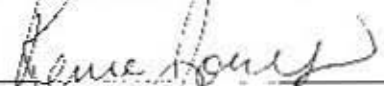
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CONCLUSION

Accordingly, for all the above reasons, the People respectfully request defendant's motion be denied and defendant be sentenced.

Dated this 2nd day of September, 2011

Tony Rackauckas, District Attorney
County of Orange, State of California

BY: 
RENEE A. JONES
Deputy District Attorney

1 TONY RACKAUCKAS, DISTRICT ATTORNEY
2 COUNTY OF ORANGE, STATE OF CALIFORNIA
3 BY: RENEE JONES
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9 Attorney for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

SEP 12 2011

ALAN CARLSON, Clerk of the Court

BY S. MILEWSKI, DEPUTY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ORANGE, WEST JUSTICE CENTER

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,)
12 vs.)
13 TIEN DUC NGUYEN)
14 Defendant)

Case No.: 10WF0918

SENTENCING BRIEF

15 STATEMENT OF THE CASE

17 Defendant Tien Duc Nguyen has been convicted of attempted manufacture of an
18 assault weapon (Count 1- Penal Code Section 12280(a)(1)), attempted manufacture of an
19 assault weapon (Count 2- Penal Code Section 12280(b)), possession of a firearm by a
20 felon (Count 3--Penal Code section 12021(a)(1)) and possession of ammunition by a
21 prohibited person (Count 4-Penal Code section 12316(b)(1)). Defendant has further
22 admitted a strike prior conviction pursuant to Penal Code sections 667(d) and (e)(1) and
23 1170.12(b) and (c)(1).

24 Because this Court heard the entire trial in this case, a discussion of relevant facts
25 will be presented in conjunction with the Rules of Court affecting sentencing.

26 ///

27 ///

28

1 POTENTIAL SENTENCE- TIEN DUC NGUYEN

2	<u>CT</u>	<u>CHARGE</u>	<u>BASE</u>	<u>STRIKE PRIOR</u>	<u>SENTENCE RANGE</u>
3	1	664-12280(a)(1)	2-3-4	x 2	4-6-8
4	2	664-12280(b)	654		
5	3	12021(a)(1)	8 mos	x 2	16 mos
6	4	12316(b)(1)	8 mos	x 2	16 mos
7					_____
8					10 yrs 8 mos

9 CRITERIA AFFECTING PROBATION

10 There are several factors supporting the People's request that this Court deny
11 probation.

12 **Facts relating to the crime:**

13 **4.414(a)(1)**

14 The nature, seriousness, and circumstances of this crime as compared to other
15 instances of the same crime are aggravated. This case involves a documented West
16 Trece gang member who is manufacturing highly powerful and extremely dangerous
17 weapons. Additional circumstances not introduced at trial included the fact that
18 Defendant was caught because he was being investigated in connection with another
19 pending insurance fraud and chop shop case against another West Trece gang
20 member by the name of Ho. When questioned in this case regarding the insurance
21 fraud, Defendant admits that he does in fact pad the repair bills of Ho, but claims he
22 does it, not to aid in the insurance fraud, but to "tax" him because he "showboats." He
23 admits he is fully aware of the danger of his continued involvement with gang members,
24 because he makes a comment on tape (edited out for trial) that he knows they could do
25 something stupid, like shoot his wife or something. Further evidence present but not
26 introduced at trial was Defendant's possession of an additional invoice for three AK-47
27 rivet kits, indicating he had ordered parts to complete three additional assault weapons,
28

1 apart from the two weapons he was caught with and the .50 caliber weapon he claimed
2 to have lent out. These aggravating circumstances indicate a serious, dangerous,
3 ongoing criminal enterprise.

4 4.414(a)(2)

5 Defendant was obviously armed while manufacturing the assault weapon, in that he
6 had in his possession the completed DTC firearm and a great quantity of ammunition.

7 4.414(a)(6)

8 Defendant was the sole active participant in the sophisticated manufacture and
9 possession of dangerous high caliber weapons.

10 4.414(a)(7)

11 There is no indication whatsoever of the crime being committed due to an unusual
12 circumstance, such as great provocation, which would be unlikely to occur. To the
13 contrary, Defendant has a prior criminal history of possessing deadly and dangerous
14 weapons and claims he now "tinkers" and considers weapons manufacturing a "hobby."

15 4.414(a)(8)

16 The crime of manufacturing was indeed carried out in a criminally sophisticated
17 manner. Defendant described in detail how he obtained the necessary parts and
18 completed the involved and technical procedure of manufacturing the weapons he
19 possessed himself. Further, he schemed to possess unregistered weapons by building
20 them himself in order to evade notice of law enforcement because he was all too aware
21 that, based on his status as a felon, his mere possession of any firearms was illegal.

22 **Facts relating to the defendant:**

23 4.414(b)(1)

24 Defendant's multiple prior criminal convictions indicate a pattern of increasingly serious
25 criminal conduct. Several times he has been caught with firearms and, if he is to be
26 believed, several times he has been the victim of misfortune; he has just been at the
27 wrong place at the wrong time. There is a pattern of possession of dangerous weapons
28

1 by this Defendant, and every time he is caught, he contends he has been a victim of
2 circumstance. In past cases, if he is to be believed, he has had terrible luck. In his
3 probation and sentencing interview by a probation officer, he gave a series of
4 unbelievable excuses: 1) he was in a vehicle with a gun he didn't know was there; 2)
5 He was a party when police arrived and ordered everyone down, and he had the
6 misfortune to lie down next to a gun that wasn't his; and 3) He was innocently in a motel
7 room with friends when the gang suppression team showed up, and he offered to hide
8 the gun in his car for his friends . . . he failed to mention the "friends" he happened to
9 with while hiding the semi-automatic handgun were also West Trece gang members.
10 Defendant has managed to remain free from arrest for a number of years, but has
11 continued on with his criminal enterprise and his associations with criminal gang
12 members. When caught in the current case building an assault weapon and
13 possessing another high caliber firearm, he formulated yet another in his pattern of
14 excuses; he claimed he is now a tinkerer and a hobbyist. Defendant's ongoing pattern
15 of dangerous conduct is consistently accompanied by a pattern of lies and deception.

16 **4.414(b)(2)**

17 Defendant's prior performance on probation in a firearms possession case was poor in
18 that he did not refrain from committing the very same offense again by possessing yet
19 another firearm, this time increasing in seriousness the crime charged, by possessing
20 the firearm as an active participant in West Trece criminal street gang.

21 **4.414(b)(3)**

22 Defendant claims he is willing to comply with the terms of probation; however, he
23 willfully violated probation in the past, and by his own admissions, he has repeatedly
24 violated the prohibition against possessing a firearm as a felon. He has gone to great
25 lengths to circumvent the law prohibiting him from possessing deadly weapons by
26 manufacturing them himself. There is no reason to believe he will not violate probation
27 if he believes he can do so successfully.

28

1 4.414(b)(7)

2 Defendant is utterly lacking in remorse unless and until he is caught. At that point he
3 has shown a pattern of minimizing and making excuses for very serious and dangerous
4 criminal conduct. Defendant has shown a pattern of offering a series of innocent
5 excuses for his increasingly dangerous criminal conduct. He would portray himself as a
6 fully rehabilitated success story, and yet he continues his criminal associations, criminal
7 activities and improbable excuses for his crimes. One cannot be considered to be
8 remorseful where he continues to deny culpability and feign ignorance. Defendant is
9 not naive, nor is he stupid. He continues to portray himself an upstanding, law abiding
10 citizen who happens to tinker in dangerous and deadly weapons while continuing to
11 associate with criminal gang members. This is not a remorseful individual.

12 4.414(b)(8)

13 This is Defendant's third and most aggravated firearms case. Despite having been
14 given four previous grants of probation for felonies, he has continued his criminality by
15 manufacturing deadly and dangerous weapons. Such conduct certainly presents a
16 danger to society, particularly when one stops to consider what damage these firearms
17 can inflict. Contrary to Defendant's unfathomable excuse of using these weapons for
18 "pig hunts" they present a very serious danger and if not imprisoned, it is very likely
19 Defendant will remain a danger to others.

20 **CIRCUMSTANCES IN AGGRAVATION**

21 Under the Rules of Court the circumstances in aggravation are as follows:

22 **Facts relating to the crime:**

23 4.421(a)(2) The Defendant was armed with a .50 caliber firearm while manufacturing
24 the assault weapon.

25 4.421(a)(8) The manner in which the crime was carried out indicates planning,
26 sophistication and professionalism.

27 4.421(a)(10) The crime involved a large quantity of contraband.
28

1 **Facts relating to the defendant:**

2 4.421(b)(2) Defendant's prior convictions as an adult are numerous and of increasing
3 seriousness.

4 4.421(b)(5) Defendant's prior performance on probation was unsatisfactory.

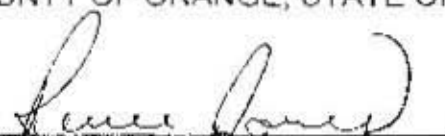
5 **DISCUSSION AND RECOMMENDATION**

6 Defendant is a documented participant of a violent criminal street gang who has
7 continued his association with gang members and criminal enterprise. His motivation
8 for building assault weapons and .50 caliber firearms can only be imagined in that he
9 refuses to come clean with why he builds them or what he does with the completed
10 weapons. Regardless, he has engaged in criminal conduct that presents a serious and
11 ongoing risk to society. He has numerous prior felony convictions and has been
12 prosecuted for firearms possession three times in the past, and yet, he continues, as a
13 felon to present an ongoing danger. He continues to undermine the integrity of the
14 criminal justice system as a felon by willfully going to great lengths to possess very
15 dangerous firearms he knows he is prohibited from possessing. The safety of society
16 at large demands a lengthy incarceration. That, of course, will not likely stop Mr.
17 Nguyen from engaging in criminal behavior. However, it will at least assure the
18 likelihood that he will cease his criminal activity while incarcerated.

19 The appropriate sentence in this case is a sentence under the three strikes law,
20 of double the base term in state prison. Defendant will of course argue that his prior
21 convictions for gun possession are distant in time. However, the facts of this case
22 indicate an ongoing enterprise, rather than an instance of an isolated lack of judgment.
23 Defendant is a savvy individual. He runs a business and is fully aware of the
24 consequences of possessing firearms as a felon. Nonetheless, and despite having a
25 family to consider, he has elected to maintain his criminal associations and enterprises
26 and has persisted in possessing ever more dangerous weapons. This is the type of
27 individual for which the three strikes law was proscribed by statute. Accordingly, the
28

1 People request a state prison commitment doubled under the three strikes law be
2 imposed. This request is not made lightly. However, all things considered, there
3 appears little likelihood Mr. Nguyen will alter the path he has chosen for himself when
4 he embarked on his career in a criminal street gang. Mr. Nguyen has continued his
5 gang affiliation, and his criminal enterprise. He has persisted in arming himself any way
6 he can with assault weapons and high caliber firearms, even if it means manufacturing
7 these high powered weapons himself. The security of society at large demands no less
8 than a state prison commitment, doubled under the three strikes law.

9
10 TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

11
12 By: 
13 RENE E JONES
Deputy District Attorney

1 CHRISTOPHER J. HENNES
Attorney at Law
2 2130 Main Street, Suite 200
Huntington Beach, CA 92648
3 Ph: (714) 536-6023
Fax: (714) 536-6073
4 Bar No. 71176
5 Attorney for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
OCT 14 2011
ALAN CARLSON, CLERK OF COURT
BY: S. MURPHY, DEPUTY

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7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
9 WEST JUDICIAL DISTRICT

10
11 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.10WF0918
12 Plaintiff,)
13 vs.) DEFENDANT'S REPLY TO
PEOPLES OPPOSITION TO
MOTION FOR NEW TRIAL
14 TIEN DUC NGUYEN,) DATE: 10/14/11
15 Defendant.) TIME: 1:30 PM
DEPT: W2
16)

17 Defendant TIEN DUC NGUYEN submits the following reply to the People's Opposition
18 to Defendant's Motion for New Trial:
19

20 **Improper "Disposition" Evidence Deprived Defendant of a Fair Trial**

21 The only substantive issue at the trial was whether defendant possessed the gun parts with the
22 specific intent to construct a firearm that violated the law. Defense expert Penhall was the sole
23 witness with expertise in firearm manufacturing, and he testified that it would take him, a
24 licensed gunsmith and manufacturer, several hours to complete the assembly that defendant had
25 begun and essentially abandoned because of its difficulty. Installation of an easily obtained
26 magazine lock (e.g., "bullet button") that renders the rifle California-compliant is virtually the
27 final step in the assembly process. Because the AK rifle at issue was not on the statutory
28 "banned" list, it could not be illegal to possess unless it was made into a functioning firearm

1 without a fixed magazine. Until then, how can it be proved that defendant had the specific intent
2 to make an illegal weapon?

3 Certainly not by the evidence presented at trial. Proving that defendant constructed a completely
4 different (and much simpler) type of firearm (the DTC) that complied with state law is not
5 substantial evidence of a criminal intent. The .50 caliber ammunition, also legal, had no
6 conceivable relevance to a legitimate trial issue. The People's argument attempts to blur the
7 bright, distinct line between legal and illegal firearms. According to the People, defendant's
8 possession of a legal DTC rifle evidenced a sinister ability to "circumvent" the law, whatever that
9 means. The People's reference to a small caliber AK rifle as a "high-powered" firearm similar to
10 a .50 caliber DTC is misleading and contrary to the evidence. At trial, the People elicited
11 testimony that was clearly improper disposition evidence: e.g., the absence of a serial number on
12 the DTC, though not unlawful, was suspicious, as was defendant's supposed avoidance of
13 nonexistent registration requirements for the gun. The prosecution's extensive display and
14 demonstrative use of a "listed" (and thus unlawful per se) AK47 further misled the jury into
15 assuming that all AK-style rifles are unlawful.

16 In summary, the DTC and ammunition were irrelevant and should not have been admitted into
17 evidence. Furthermore, the aforementioned testimonial and demonstrative evidence constituted
18 impermissible disposition evidence that had the cumulative effect of depriving defendant of his
19 constitutional rights to a fair trial and due process of law. Finally, the principle of lenity requires
20 reversal of defendant's convictions. (*Harrott v. County of Kings* (2001)
21 26 Cal.4th 1133.)

22 **Conclusion**

23 The court should vacate defendant's convictions and order a new trial on both counts.

24 Respectfully submitted,

25 _____
26 Christopher J. Hennes
27 Attorney for Defendant
28

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

NOV 14 2011

ALAN CARLSON, Clerk of the Court

BY G. WILKINSKI, DEPUTY

Honorable Judge Daphne Sykes Scott
RE: Court Case #10WF0918 / A-239349
Tien Duc Nguyen

Dear Honorable Judge Sykes Scott:

I am writing on behalf of my friend, Tien Duc Nguyen, whom I have known for some time now. I met Tien thru his sister Tijai, and immediately found him to be a humble person, an honest businessman, and a "giver" not a "taker". He is a religious person, a caring father, and a good husband.

I have a wonderful son who is eight years old and is going into the third grade. He is by far the biggest joy in my life. When I speak of my son to my friends, co-workers, or my cohort in my masters program I beam with excitement, and utter happiness about his accomplishments in school, and in sports. I must say that Tien gives me a run for my money when he talks about his daughters. He is always there for them in their school activities and basketball. My father was never really involved in my life. He was always busy reading books and sleeping on the weekends to make time for me. When my son was born, I pledged to my son and myself to be the best father that I could be to him. I believe that Tien made a similar pledge to himself, and his daughters; Megan, and Ashley. The girls are truly blessed to have a father that is always there for them.

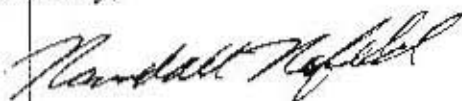
I grew up in some of the worst cities in Los Angeles County. I have seen violent people and witnessed acts of violence, and unfortunately my family was not immune from this violence. As a former Marine who served during the first Gulf War, and a current school teacher, I know violent people when I see them. Your honor, Tien is not a violent man by any stretch of the imagination. He may have a "tough guy exterior", but he is the biggest teddy bear to his girls and to children in general.

Adolescent students and young adults do not like to be lectured from teachers, counselors, and administrators on their past or possible future mistakes. Your Honor, I respectfully request leniency in Tien's case. I respectfully recommend no jail time, and alternatively request probation, and community service. I am familiar with Tien's prior mistake as a youth, and thru community service, Tien could be a beacon of light by counseling troubled teens.

Your honor, I wholeheartedly believe that today's generation, and society in general would benefit more from Tien being on the outside of jail counseling America's youth, as opposed to being on the inside where society at large wouldn't benefit whatsoever. I feel that some people can unquestionably make an immeasurable mark by helping people in the smallest ways. Please allow Tien to make his mark on our troubled teens now, and to affect our future generation of community, regional, and national leaders that may have been led astray.

I thank you for taking your time, and if I can provide any further assistance in this matter, please do not hesitate to contact me at (562) 900-6521.

Sincerely,



Randall Rosfeld

Social Science Teacher

Ms. Monica A. Smith
29141 Hearts Desire Dr
Mechanicsville, MD 20659

April 29, 2011

Honorable Judge Daphne Sykes Scott
RE: Court Case #10WF0918 / A-239349
Tien Duc Nguyen

Honorable Judge Sykes Scott:

I am writing you on behalf of my brother-in-law, Tien Duc Nguyen. I first met Tien at my wedding in 1999. Since that time, I have watched Tien grow as a human being and mature into a responsible adult. I observed his decision to straighten out his act and be the best father he could. He has worked hard over the years to build a good life for his wife and children. He honed his skills as an auto mechanic then built a successful auto repair business. As a family man and as a business owner, Tien contributes to society. During these trying economic times, this country so badly needs contributors.

I'd like to take a moment to give you my credentials. My education includes a BS in Business Administration from Widener University, and a MS in Management Information Systems from George Washington University. I am a civilian employee for the US Navy as an Operations Research Analyst. Of note is the fact I have a Top Secret clearance, information which I can only reveal on a need-to-know basis. In this case, Your Honor, I feel you have a need-to-know as the government's investigation included my husband's entire family. During the investigation I was asked several questions about my husband's family, but not even one about Tien's record. This was a bit of a surprise to me. I can only assume that the investigators found Tien was no threat to the country or society, therefore, did not ask me questions about him.

My husband's family is loving and close knit. They are warm and welcoming to all who enter their home. What impresses me the most is, even in tough times, they are always cheerful. I often think about how hard it was for Tien's family to escape war-torn Vietnam when Saigon fell and come to the United States; via Guam, New Orleans, and finally Orange County, CA. I find it amazing Tien's parents were able to keep the entire family together and safe through the escape and entry into another country and culture. I have the strongest respect for Tien's father and mother; most especially because of the strong values they instilled in each of their children. At each visit with my husband's family, I watch as Tien and his wife, Jan, instill those same values in their two young daughters. Ashley and Megan are Tien's little princesses and they love him wholeheartedly. Tien gives them the world, yet, when they misbehave, he patiently and firmly explains and gently disciplines.

When I was first getting to know my husband, he told me of Tien's prior record and how his family would not give up on him, especially his mother. In fact they moved to a different neighborhood to help Tien get a fresh start. To me, there is nothing more motivating than

making my parents proud. I believe I see that same motivation in Tien as he works to build a good life for his family.

Coming from a large family myself, I know people can get in trouble, learn from their mistakes, and build good lives. One of my brothers was caught smoking pot in a catholic high school's restroom and expelled. He was ashamed. He then built a great life. He is now a high level executive for an international pharmaceutical corporation, a new proud grandfather, and raised 8 children - all with strong values who are now beginning their contributions to society. Thus, I know from personal experience, that, given a chance, a person can learn from their mistakes and turn their life around. I see a similar story with Tien as he builds his life and raises his daughters. I believe given another chance, Tien will continue to contribute to society, and raise daughters who will also contribute when they come of age.

Your Honor, I respectfully request leniency for Tien Duc Nguyen by granting probation, counseling, community service, and no jail time. In my heart and in my mind I know without a doubt that Tien is no danger to society, and is an asset to his community.

If you require any further information, please contact me at (301) 481-9151.

Respectfully,



Monica A. Smith

1 **CHRISTOPHER J. HENNES (SBN71176)**

2 **Attorney at Law**

3 2130 Main Street, Suite 200
4 Huntington Beach, CA 92648

5 Ph: (714) 536-6023

6 Fax: (714) 536-6073

7 Attorney for Defendant

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
May 14 2011
ALAN CARTER, SBN: Clerk of the Court
BY: S. MILFRESI DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE, WEST JUDICIAL DISTRICT**

10 **PEOPLE OF THE STATE OF CALIFORNIA,**

11 **Plaintiff,**

12 vs.

13 **TIEN DUC NGUYEN,**

14 **Defendant.**

) **Case No. 10WF0918**

) **DEFENDANT'S SENTENCING**
) **BRIEF**

15
16
17
18 Defendant TIEN DUC NGUYEN submits the following sentencing brief:

19 **I. INTRODUCTION**

20 The information charged defendant with four felony violations. He pled guilty to two counts:
21 Penal Code section 12021(a)(1) [possession of a firearm by a felon] and Penal Code section
22 12316(b)(1) [possession of ammunition by a prohibited person]. A jury found defendant guilty
23 of attempted manufacture of an assault weapon [Pen. Code § 12280 (a) (1)] and attempted
24 possession of an assault weapon [Pen. Code § 12280 (b)].
25

26 The issue before the court is whether defendant should be granted probation. California
27 Rules of Court, rule 4.414 lists the relevant criteria for the court to consider in making a
28

1 determination to grant probation. The criteria that are relevant to the facts of the crimes and to
2 the defendant are discussed below.

3 **II. 4.414 (g) - FACTS RELATING TO THE CRIMES**

4 Defendant possessed a legal firearm that had never been fired and legal ammunition. His
5 possession of these items was unlawful only because of a 12-year-old felony conviction. The
6 convictions for attempted possession and manufacture of an assault weapon, even if
7 permitted to stand, are minor compared to the usual circumstances wherein the weapons are
8 used to commit other crimes.
9

10 The People make numerous misstatements of fact in their sentencing brief. Among them
11 are false allegations that defendant is a gang member, that he engaged in fraudulent conduct
12 in his business, that a customer named "Ho" is a gang member, that defendant had two
13 weapons, that defendant is engaged in the "business" of making assault weapons, that
14 defendant is engaged in a "serious, dangerous, ongoing criminal enterprise," and that
15 defendant claimed to have lent out a .50 caliber weapon (a shotgun is not a .50 caliber
16 weapon). The prosecutor should either provide proof of these accusations or retract them in
17 open court before sentence is imposed.
18
19

20 **III. 414 (h) - FACTS RELATING TO THE DEFENDANT**

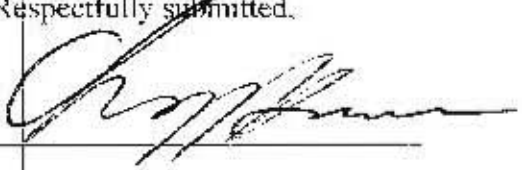
21 All factors favor probation in this case. Contrary to the misrepresentations of the People,
22 defendant has no record of criminal conduct after his felony conviction twelve years ago. He has
23 one prior felony, not four. His only previous felony probation was successfully completed with
24 no violations. Again, the prosecutor should provide proof of the allegations or retract them.
25

26 The remaining criteria strongly favor probation. He is willing and able to comply with all
27 applicable terms. He has a strong support from family and friends, a successful business, and no
28 substance abuse issues. The impact of imprisonment on defendant and his family will be

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catastrophic. His two daughters are very close to their father and nearing their teen years. His sudden absence from their lives, as well as the loss of income upon which they depend, will cause suffering and hardship that are exponentially beyond what the crimes merit. These are real people and real consequences, not the imaginary apocalypse suggested by the prosecution.

Respectfully submitted,



Christopher J. Hennes
Attorney for Defendant



ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, state bar number, and address)

Christopher J. Hennes (SBN 71176)
2130 Main Street, Suite 200
Huntington Beach, CA 92648

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 29 2011

ALAN CARLSON, CLERK OF COURT

BY C. Nguyen

TELEPHONE NO. (714)536-6023 FAX NO.
ATTORNEY FOR: Defendant TIEN DUC NGUYEN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT: TIEN DUC NGUYEN

Date of birth: 7/3/75 Cal. Dept. of Corrections and Rehabilitation No. (if any):

NOTICE OF APPEAL—FELONY (DEFENDANT)

(Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)

CASE NUMBER IS:

10WF0918

NOTICE

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.

NAME of defendant: TIEN DUC NGUYEN

DATE of the order or judgment: 11/14/2011

2. Complete either item a. or item b. Do not complete both.

a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:

- (1) This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea (Cal. Rules of Court, rule 8.304(b).)
- (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
- (3) This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
- (4) Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):

b. For all other appeals, check one

- (1) This appeal is after a jury or court trial (Pen. Code, § 1237(a)).
- (2) This appeal is after a contested violation of probation (Pen. Code § 1237(b)).
- (3) Other (specify):

3. Defendant requests that the court appoint an attorney for this appeal. Defendant was was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is same as in attorney box above as follows:

Date: 11/17/2011

CHRISTOPHER J. HENNES

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

CHRISTOPHER J. HENNES

Attorney At Law
330 Main Street, Suite 200
Huntington Beach, California 92648
Telephone: 714.949.4000
Fax: 714.949.4000

November 17, 2011

Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

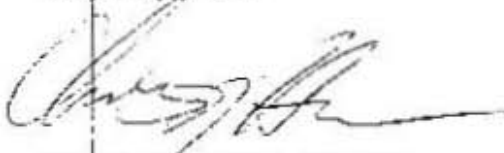
ATTN: Clerk of the Court

Re: People v. Nguyen, Case #10WF0918

To Whom It May Concern:

Please find enclosed an Amended Notice of Appeal in the matter of my client, Tien Due Nguyen. The judgment date has been corrected to accurately reflect the defendant's date of sentencing, 11/14/11.

Very truly yours,



CHRISTOPHER J. HENNES
CJH/ah
Incl.

FILED IN THE STATE OF CALIFORNIA vs.
DEFENDANT Nguyen, Tien Duc

10WF0918

-A-

-B-

-C-

-D-

11. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Penalties:

Table with 3 columns: Case, Amount, and Description. Rows include Case A, B, C, and D with amounts like \$200.00 and descriptions of per PC 1202.4(b) forfeiture and per PC 1202.45 suspension.

b. Restitution per PC 1202.4(f)

Table with 3 columns: Case, Amount, and Victim(s). Rows include Case A, B, C, and D with amounts to be determined and victims listed.

* Victim name(s), if known, and amount breakdown in item 11, below

* Victim name(s), in probation officer's report

12. Fines:

Table with 3 columns: Case, Amount, and Description. Rows include Case A, B, C, and D with amounts like \$3.00 and descriptions of Lab Fee and Drug Program Fee.

13. (a) Bail: \$10,000 per PC 1430.3 (b) California Civil Justice Assessment: \$39.00 per PC 1430.3

14. (a) (b) (c) Compliance with PC 296 verified: [X] ADAS per PC 1202.1 (d) other (specify):

15. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

Total term to be served in State Prison is 6 Year(s). Court orders all fees payable through the Department of Corrections. Defendant to provide a state DNA sample and prints for the State DNA Database pursuant to PC 296 and PC 296.1 unless collection agency verifies in any available databases that the DNA sample has been previously collected.

14. CREDIT FOR TIME SERVED

Table with 4 columns: Case, Total, Date, and Agency. Rows include A, B, C, and D with dates like 11/14/11 and agencies like DMH, CDC, CJC.

16. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

Probation report prepared and submitted. Defendant's operational name: Vietnamese

17. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

- (a) [X] at initial sentencing hearing
(b) at resentencing per decision on appeal
(c) after revocation of probation
(d) at resentencing per recall of commitment (PC 1170(d))
(e) other (specify):

18. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

CLERK OF THE COURT

File early the morning in the court official's presence made in his action

C. Calogari-Randolf DEC 14, 2011

10A

EXHIBIT NO. 10

Case No. 10WF0918

ID Date APR 05 2011

IN EVIDENCE Date APR 06 2011

Plaintiff/People Defendant Joint
 Petitioner Respondent Court
 Other _____

People

vs.

NGUYEN, Tien

SIGNATURE - Attorney/Party Introducing Sensitive Exhibit

ALAN CARLSON, Clerk of the Court

By St. Nelson Deputy

**NOTE: THIS ITEM IS A PERMANENT COURT RECORD.
DO NOT REMOVE FROM COURTROOM.**

INTERVIEW OF: TIEN DUC NGUYEN

DATE: 03-18-2010

LEGEND: ... Denotes pauses between words or phrases, incomplete sentences,
Stammering, etc. (Does not indicate missing words).
*** Denotes unintelligible conversation.
(Sic) Denotes precisely reproduced word.

[BEGINNING OF PHONE CALL]

DET. CHAPMAN: Yeah. Um, you know, I looked up that, that website like you were talking about with
the AK-47.

TIEN NGUYEN: Uh-huh.

DET. CHAPMAN: And stuff. Um, I understand you bought the flat for the receiver? Is that right?

TIEN NGUYEN: *** flat.

DET. CHAPMAN: And then you bent it into the receiver.

TIEN NGUYEN: Use a regular shop press.

DET. CHAPMAN: You didn't buy their press?

TIEN NGUYEN: No.

DET. CHAPMAN: They sell for ***

TIEN NGUYEN: like. I don't know. Four or Five hundred bucks.

DET. CHAPMAN: Hundred and fifty bucks.

TIEN NGUYEN: Oh, the dye?

DET. CHAPMAN: Yeah.

TIEN NGUYEN: Yeah.

DET. CHAPMAN: Do you have that?

TIEN NGUYEN: I think so. Somewhere.

DET. CHAPMAN: Where is that now?

TIEN NGUYEN: Um, I got to look. It might be at the shop. It might be at the house.

DET. CHAPMAN: Well...

TIEN NGUYEN: I can turn it in to you, if you want.

DET. CHAPMAN: We need that stuff. What other equipment do you have for making those ***.

TIEN NGUYEN: I have a big drill press, and a bunch of drills that we have at the shop. So um, let me know, I'll bring it to you.

DET. CHAPMAN: And it's that press kit to mold the receiver up?

TIEN NGUYEN: Yeah.

DET. CHAPMAN: To bead it?

TIEN NGUYEN: Its just steal. It's a block.

DET. CHAPMAN: And you just like screw it down?

TIEN NGUYEN: Screw it down use a press and just (WHISTLE) two seconds it's done.

DET. CHAPMAN: Okay. And that's over the shop right now?

TIEN NGUYEN: it might be.

DET. CHAPMAN: Is it over where you think where the other stuff was? That box of parts for the AK?

TIEN NGUYEN: Yeah. I mean we're not really organized people. Work here and then leave it over there, and stuff. Just let me know, I'll bring it to you ***.

DET. CHAPMAN: Um, do you have...? Are all of the parts there to, to put the AK together?

TIEN NGUYEN: No. That's why it's not together, I don't know... I never got around to it.

DET. CHAPMAN: Where did you get the kit for all that stuff?

TIEN NGUYEN: I just made that thing....

DET. CHAPMAN: for all that stuff? It looks like pretty much. Looks like pretty much everything is there. Where did you get all of the parts?

TIEN NGUYEN: Uh, the thing... all the stuff in the box?

DET. CHAPMAN: Yeah.

TIEN NGUYEN: Henderson Defense in Henderson, Nevada.

DET. CHAPMAN: Did they sell it to you as a kit?

TIEN NGUYEN: Yeah.

DET. CHAPMAN: So they gave you pretty much gave you everything other than the receiver?

TIEN NGUYEN: Right.

DET. CHAPMAN: So probably you should have everything in there then, Right?

TIEN NGUYEN: Well I have... it's so technical. All these little nuts and pieces. Like whatever they get they chop it up. And you gotta get all of the rivets out and what not and kind of like refurbish the whole thing before it comes back together. You can't just reassemble it.

DET. CHAPMAN: Okay, if I understand correctly the uh, you should have all the parts that you bought in that kit? Minus the receiver that you bought...

TIEN NGUYEN: Yeah. Yeah. Everything is in that...

DET. CHAPMAN: From the AK, whatever ...

TIEN NGUYEN: There's a little zip lock.

DET. CHAPMAN: ***

TIEN NGUYEN: and a... um, box. ***

DET. CHAPMAN: Okay.

TIEN NGUYEN: Not that easy

DET. CHAPMAN: Henderson Defense, right?

TIEN NGUYEN: Yeah. It's amazing what the net has.

DET. CHAPMAN: Yeah. And then... who did you buy the receiver from?

TIEN NGUYEN: that um, AK builder whatever...

DET. CHAPMAN: AKBUILDER.COM

TIEN NGUYEN: Yeah. That's what I got for watching YouTube. They make that shit look so easy. I get it in a bag...

DET. CHAPMAN: Okay. Well kind of like what we talked about. Well first of all... Is there anything else? Are there any other parts? Is... you know? Obviously you shouldn't be having

that stuff. As you know. And a...

TIEN NGUYEN: My wife is flipping right now.

DET. CHAPMAN: I can imagine. And so we want to take all that stuff so that A) Cause you're not supposed to have it.

TIEN NGUYEN: Yeah. I'll bring you the...

DET. CHAPMAN: B) So you're not tempted to build another one.

TIEN NGUYEN: I'll bring you the thing. Just let me know. I'll find it and I'll bring it to you. It's not a problem.

DET. CHAPMAN: Okay. Um, well yesterday. Obviously you were busy and doing a lot of stuff. And just let me clarify a couple of things. With the AR. You bought the AR lower that wasn't complete.

TIEN NGUYEN: Its called an eighty percent.

DET. CHAPMAN: Okay. Yeah. Eighty percent. And that's with the... so it's basically the AR lower, but you had to...

TIEN NGUYEN: Hone out... Hone out the bottom.

DET. CHAPMAN: Yeah. You had to clear out the bottom so that it would accept a magazine? Or what?

TIEN NGUYEN: No. So that it would fit the, the trigger and all the mechanism inside.

DET. CHAPMAN: And it gives you instructions on how to do that stuff?

TIEN NGUYEN: Well they sell... it's called a jig. But I didn't... I didn't want to buy it. So I got all the dimensions.

DET. CHAPMAN: It looks like a... it looks like a template?

TIEN NGUYEN: Yeah. And they were selling it for a grip. I forgot how much something outrageous like five hundred bucks. I just went online got all of the dimensions of what it is supposed to be. You know I make all kinds of stuff.

DET. CHAPMAN: Yeah.

TIEN NGUYEN: If I had the dimensions I could make it. It simple as a drill bit. That's why it don't

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look all that pretty.

DET. CHAPMAN: Actually it looks pretty good.

TIEN NGUYEN: I don't even know if it'll fire. The thing... I haven't... I've never even shot that thing.

DET. CHAPMAN: Well it's all together. You got all the parts right?

TIEN NGUYEN: Yeah.

DET. CHAPMAN: I mean. In theory it should be fine.

TIEN NGUYEN: In theory. But you don't know. And then I started watching clips of these things blowing up and that scared me even more. I was just like...

DET. CHAPMAN: Um, mean like on YouTube?

TIEN NGUYEN: Yeah.

DET. CHAPMAN: You could put these together and they blow up?

TIEN NGUYEN: Well, sometimes *** Los Angeles Shooting Range. They loaded a round pulled the trigger and the whole thing blew up in his face. And then you know what B.O.H.I.C.A. stands for? Bend Over Here It Comes Again. That's what it stands for. That kind of scared me a little bit. You know, I never have the time to go...

DET. CHAPMAN: Tell me again... Tell me again what that, that round is not a .50 BMG?

TIEN NGUYEN: No. It's a DTC.

DET. CHAPMAN: .50DTC?

TIEN NGUYEN: Yeah. It's not quite a .50... That's why they make it California legal. Cause California doesn't allow .50 caliber BMG. So they go DTC. What it is, it's shorter. It's a little smaller.

DET. CHAPMAN: It uses the same bullet though?

TIEN NGUYEN: No.

DET. CHAPMAN: Is it a smaller case.

TIEN NGUYEN: Smaller. Like if you were to put the DTC in the BMG it wouldn't fire. Vice Versa.

DET. CHAPMAN: Cause the BMG would be too big to put in the chamber?

TIEN NGUYEN: Right. Right.

DET. CHAPMAN: Ah, could you use the same bullet just not the same case. Make it smaller? Do you know?

TIEN NGUYEN: What do you mean? Like the bullet?

DET. CHAPMAN: The bullet tip.

TIEN NGUYEN: Oh, I don't know...

DET. CHAPMAN: It's all .50 ***. Now why do you have? Why do you have the ammo for the .50 Beowulf?

TIEN NGUYEN: Oh, That's for the hogs.

DET. CHAPMAN: Yeah, um but you can't fire that out of your rifle?

TIEN NGUYEN: Oh, hell no. It won't even take it.

DET. CHAPMAN: Then why do you have the ammo?

TIEN NGUYEN: I rent... I rented it.

DET. CHAPMAN: Uh-huh.

TIEN NGUYEN: So that I can go hog hunting. And those rounds are so freaking expensive there like five bucks a round nobody wants to give up their bullets. So I had to go buy it.

DET. CHAPMAN: What do you hunt?

TIEN NGUYEN: Just wild boar.

DET. CHAPMAN: Where at?

TIEN NGUYEN: Um, San Bernardino area.

DET. CHAPMAN: Um, So you haven't fired that gun at all?

TIEN NGUYEN: That monster?

DET. CHAPMAN: The big one?

TIEN NGUYEN: Hell no.

DET. CHAPMAN: Where did you get the upper?

TIEN NGUYEN: Um. B.O.H.I.C.A..

DET. CHAPMAN: B O.H.I.C.A.?

TIEN NGUYEN: B.O...B - Bend Over...H.I.C.A.

DET. CHAPMAN: How much did you pay for that?

TIEN NGUYEN: A grip. I think, eighteen hundred bucks. Around there.

DET. CHAPMAN: How much did you pay for the lower?

TIEN NGUYEN: Uh...

DET. CHAPMAN: For the block thing?

TIEN NGUYEN: Uh, a hundred. some change. Hundred ten.

DET. CHAPMAN: And who did you buy that through again?

TIEN NGUYEN: I got to look online. If you punch up, um, 80% lower. It's the first three...

TRANSCRIBED BY: LINDA VASQUEZ-CERDA

ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE
02/22/2011