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Los Angeles Superior Court

AUG 14 2013

John A. Clarke, Executive Officer/Clerk

By R. Pinkney, Deputy

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6
7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

10	PEOPLE OF THE STATE OF CALIFORNIA,)	CASE NO. 1WA02269
11)	
12	Plaintiff,	)	MOTION FOR NEW TRIAL
13		)	UNDER PENAL CODE § 1181(6)
14	v.	)	AS VERDICT CONTRARY TO
15		)	EVIDENCE; UNDER § 1181(8)
16		)	ON NEW EVIDENCE; AND FOR
17	JOSEPH FRANCIS	)	PROSECUTOR MISCONDUCT;
18	Defendant.	)	POINTS AND AUTHORITIES
19		)	Date: August 27, 2013
		)	Time: 9:00 a.m.
		)	Dept: 145


20 TO: THE HONORABLE NANCY NEWMAN, JUDGE OF THE SUPERIOR
21 COURT, AND THE LOS ANGELES CITY ATTORNEY'S OFFICE:

22
23 NOTICE IS HEREBY GIVEN that Defendant Joe Francis moves this Court for a
24 new trial based on the grounds that the verdict is contrary to the evidence. Under the
25 law, where the court finds the evidence is insufficient as to any count, it has the option
26 of ordering a new trial on that count or dismissing the count and barring its retrial. The
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1 court also has the option of granting a new trial where material evidence is presented
2 that could not have been produced by defendant at the time of trial.

3 This motion is based on the accompanying Memorandum of Points and
4 Authorities, the trial transcript, the declaration and on such other evidence and argument
5 presented at the hearing of this motion.
6

7
8 DATED: August 13, 2013

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10 STEVEN GRAFF LEVINE
11 Attorney for Defendant
12 Joseph Francis

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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 A. New Trial Based on Insufficient Evidence

4 “In considering a motion for a new trial made on the ground of insufficiency of
5 the evidence to support the verdict, the trial court independently weighs the evidence, in
6 effect acting as a ‘13th juror.’ If the trial court, sitting as a ‘13th juror,’ would have
7 decided the case differently from the other 12 jurors and grants the motion for a new
8 trial, there is no double jeopardy bar to retrial. (*People v. Veitch* (1982) 128 Cal.App.3d
9 460, 467-468.) [¶]

10 Double jeopardy does bar retrial, however, when a court, using the ‘substantial
11 evidence’ test, determines as a matter of law that the prosecution failed to prove its case.
12 (*Hudson v. Louisiana* (1981) 450 U.S. 40, 44; *People v. Trevino* (1985) 39 Cal.3d 667,
13 694-695.) To determine whether substantial evidence supports a verdict, the court
14 reviews ‘the whole record in the light most favorable to the judgment’ and decides
15 ‘whether it discloses substantial evidence . . . such that a reasonable trier of fact could
16 find the defendant guilty beyond a reasonable doubt.’ (*People v. Johnson* (1980) 26
17 Cal.3d 557, 578.) [¶]

18 In deciding whether substantial evidence supports a verdict, a court does not
19 “ask itself whether *it* believes that the evidence at the trial established guilt beyond a
20 reasonable doubt.’ [Citation.] Instead, the relevant question is whether, after viewing
21 the evidence in the light most favorable to the prosecution, *any* rational trier of fact
22 could have found the essential elements of the crime beyond a reasonable doubt.’
23 (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319, original italics.)” (*People v.*
24 *Lagunas* (1994) 8 Cal.4th 1030, 1038, fn. 6.)

1 Put differently, “In considering a motion for a new trial under section 1181,
2 subdivision 6, (on the ground that the verdict is contrary to the evidence), the trial court
3 is not bound by the jury’s decision as to conflicts in the evidence or inferences to be
4 drawn therefrom. It is under the duty to give the defendant the benefit of its
5 independent conclusion as to the sufficiency of credible evidence to support the verdict.
6 [Citation.] If the trial court grants a new trial under this motion, the decision is not an
7 acquittal and is not a bar to retrial for the offense of which appellant had been
8 convicted.” (*People v. Veitch, supra*, 128 Cal.App.3d at p. 467.)

9 Indeed, as again stated by our Supreme Court in *Porter v. Superior Court* (2009)
10 47 Cal.4th 125, 133,

11 “A grant [of a new trial] under section 1181(6) is different. The
12 court extends no evidentiary deference in ruling on a section 1181(6)
13 motion for new trial. Instead, it independently examines all the evidence
14 to determine whether it is sufficient to prove each required element
15 beyond a reasonable doubt to the judge, who sits, in effect, as a ‘13th
16 juror.’ (*Lagunas, supra*, 8 Cal.4th at p. 1038 & fn. 6; see also *People v.*
17 *Davis* (1995) 10 Cal.4th 463, 523–524; [citation].) If the court is not
18 convinced that the charges have been proven beyond a reasonable doubt,
19 it may rule that the jury’s verdict is ‘contrary to [the] ... evidence.’ (§
1181(6); see *People v. Veitch* (1982) 128 Cal. App. 3d 460, 467–468.) In
doing so, the judge acts as a 13th juror who is a “holdout” for acquittal.
Thus, the grant of a section 1181(6) motion is the equivalent of a mistrial
caused by a hung jury.”

20 However, in *Lagunas*, as noted, the Supreme Court affirmed that it is also
21 appropriate for the trial court to utilize the “substantial evidence” standard (similar to a
22 motion for acquittal made under section 1118.1) at the same time it is deciding a motion
23 for a new trial under section 1181(6); if it does and concludes that, as a matter of law,
24 no rational trier of fact could have found the defendant guilty beyond a reasonable
25 doubt, a retrial on the affected counts is barred.

1 used her cell phone or attempted to use her cell phone, and she replied, "We had no
2 service." She added that she personally attempted to use her cell phone and that she
3 saw Nicole and Sheila also try, unsuccessfully, to use their cell phones. (Testimony
4 attached as Exhibit A.)

5 Sheila testified that she got a call from Liz when she was right outside the Supper
6 Club, and that Liz told her how Nicole was pulled into this guy's car and there will be
7 paparazzi. (But Liz never testified to any such conversation with Sheila.) Sheila
8 admitted that Nicole's boyfriend texted her while she was in the car; she found out that
9 Joe was from Girls Gone Wild and she had a massive panic attack. She was yelling,
10 screaming, kicking the door, and Liz assured her that when they arrived at Joe's they
11 would just get a cab and go home. The City Attorney asked her if she had her cell
12 phone with her; she replied, "yes." The following colloquy occurred: "Did you attempt
13 to use you cell phone this night when you were at Joe's house?" "Yes." "Were you
14 successful, able to use your phone?" "No. None of us had service there. "And how do
15 you know the other two didn't have service?" "We all tried calling and all of us were
16 frantically trying to look for another way. We were asking everybody else there for
17 phones because our phones weren't able to dial out." (Trial Transcript, Exhibit B.) On
18 cross-examination, Sheila specifically testified that she was unable to text message
19 because she did not have service at the house.

20 Nicole testified that she never knew who Joe Francis was at any time during the
21 evening, and only found out days later. (Contrary to the other girls' testimony.) She
22 also told the jury Sheila had an "anxiety attack" immediately when they drove past
23 where their car was parked. This testimony too was materially different than Nicole and
24 Sheila's testimony. Joe, she said, never tried to kiss her or make a move. (But Sheila
25 testified that Joe kept trying to make out with her.) Nicole also testified that when they
26 got to the house, after the gate closed, she and her sister went toward the gate and "we
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28

1 stood there for awhile and tried to get – tried to call out on our cell phones but we
2 couldn't.” (Trial Transcript, Exhibit C.)

3 Sadly, *all three* girls testified to the jury they had no cell phone service and told
4 the police the same lie, as Detective Carlozzi testified that she did not subpoena the
5 girls' cell phone records because they told her they had no cell phone service at Joe's
6 residence. In fact, it was the defense that subpoenaed Nicole's and Sheila's cell phone
7 records, as the City Attorney would not despite repeated requests, and brought the girls'
8 lies to the attention of the court and jury.

9 As the court knows all too well, the evidence showed this was a big lie, as at
10 least two of the girls' had cell phone service, but all three lied about it and were caught
11 red-handed in the lie on cross-examination. Nicole was on her cell phone throughout
12 the almost two hours she was at Joe's house, and she made and received *dozens* of calls
13 and texts to her boyfriend throughout the evening; she also used the driver's phone to
14 call her boyfriend after her cell phone battery died from overuse. Sheila too, throughout
15 the entire evening sent out and received several texts and made several phone calls.

16 In other words, the evidence CLEARLY showed that the three girls could have
17 called a cab and left Joe's residence at any time. The evidence also showed that they
18 could have called 911 at any time, or told ANYONE they were freely communicating
19 with to please call 911 but it NEVER happened. Indeed, the evidence also showed that
20 five additional people walked into the house within a few minutes for the same after
21 party (all of whom met Joe at the same time as the three girls, and in the same place),
22 and the three girls did not ask them for help; there were several landlines in the living
23 room area, and the girls never attempted to call a cab or 911 on any landline.
24 Incredibly, the evidence also showed that Joe was *not with them* for a long period of
25 time but that the driver, who was acquitted, stayed downstairs and he let them use his
26 phone!

1 The only *reasonable* conclusion from the evidence is that the three girls went
2 willingly to a party at Joe's house with many other people and were NEVER in danger.
3 Accordingly, as the three girls blatantly lied to the court and jury about a *material* fact
4 that goes to the heart of the false imprisonment claim, and the false imprisonment is
5 based solely on their false testimony, there clearly is a reasonable doubt that any false
6 imprisonment took place. Indeed, given the sheer audacity and outrageousness of this
7 lie, *none* of their testimony can be trusted.

8 Moreover, as to these counts, defendant and his driver stand in the same shoes.
9 The witnesses testified that the driver closed the door, the driver did not stop, the driver
10 locked the gate, and the driver refused to give them a ride; he must have been, under
11 these facts, an aider and abettor as to the false imprisonment, but he was acquitted. In
12 *United States v. Powell* (1984) 469 U.S. 57, the high court held that inconsistent
13 verdicts are generally not reviewable on that basis, but its reasoning is pertinent here:
14 "Inconsistent verdicts therefore present a situation where 'error' in the sense that the
15 jury has not followed the court's instructions, most certainly has occurred, but it is
16 unclear whose ox has been gored. Given this uncertainty, and the fact that the
17 Government is precluded from challenging the acquittal, it is hardly satisfactory to
18 allow the defendant to receive a new trial on the conviction as a matter of course." (469
19 U.S. at p. 65.)

20 So while the uncertainty of "whose ox was gored" created a rule of law against
21 asserting inconsistent verdicts as a grounds for appeal, here, it is a virtual certainty here
22 that defendant's ox was gored. The evidence was plagued with doubt, and the co-
23 defendant received an acquittal based on the same evidence. Accordingly, defendant is
24 not asking for a new trial based on inconsistent verdicts, but points the court to this fact
25 because the inconsistent verdicts highlight the fact there was indeed reasonable doubt as
26 to defendant's guilt, based on the material inconsistencies and outright lies the three
27 witnesses made under oath.

1 The court was attentive and taking notes throughout the testimony. The
2 overwhelming weight of evidence shows that the three girls were wildly inconsistent in
3 their stories about how all three of them got into the vehicle, but Liz's testimony about
4 waiting 15 minutes for Sheila and calling her multiple times (confirmed by phone
5 records) shows the three girls entered defendant's vehicle willingly. There was no false
6 imprisonment. The evidence also shows the girls to be wildly inconsistent about what
7 happened once inside defendant's vehicle: whether Sheila had an anxiety attack and
8 started kicking or not; when they learned who Joe Francis really was, whether it was at
9 the club, in the car, at Joe's house, or not until days later; whether Joe was making
10 moves on Nicole or not; and whether the badge incident was simply an attempt to calm
11 down Sheila or not (the jury acquitted the driver on this count).

12 But the most important fact for purposes of the motion is that all three testified
13 that false imprisonment occurred when the gate locked behind them, they could not
14 leave once the gate was locked, and they could not call a cab because they had no cell
15 phone service, making them "prisoners" in defendant's residence. But in actuality, the
16 opposite was true: they boldly lied under oath: they *had* cell phone service, and could
17 have called 911 or a cab at anytime, or they could have told the people they were freely
18 speaking to throughout the evening to do the same. That did not happen because there
19 was NO false imprisonment. The false imprisonment counts are infected with
20 reasonable doubt, and cannot stand. A new trial is warranted on these counts, or a
21 dismissal with prejudice.

22 **3. Assault Penal Code Section 245(a)(1)**

23 This count too is plagued with reasonable doubt, as the complaining witness told
24 several different stories regarding her injuries, and the medical records, expert
25 testimony, and other eyewitness testimony does not support her claims. Accordingly, a
26 new trial is warranted on this count as well. The court also has the option, under section
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1 1181(6), of reducing the charge to a simple assault (Penal Code § 240) without granting
2 or ordering a new trial, but the lesser-included charge is also plagued with doubt.

3 Liz told the Beverly Hills 911 Operator in the first call that defendant dragged
4 her by her hair, three times; nothing else. In her second call to 911, to LAPD dispatch,
5 she told the operator Joe dragged her by her hair and pulled her across the ground. In
6 the third call, in speaking to the Beverly Hills 911 Operator again, she said only that Joe
7 dragged her by the hair, she bumped her hair, and her head hit the ground pretty hard.
8 But when talking to the LAPD Officer afterwards, she now said that defendant "choke
9 slammed" her, bashed her head 4-5 times on the ground on four different occasions; she
10 testified to 16 hits of her head on the ground. But to the nurse, she said an unknown
11 assailant forced her to the ground; to the doctor, she said a man at a club threw her to
12 the ground and she sustained head trauma. These two accounts to medical personnel
13 made just an hour or so after her accounts to police, defy rational explanation. Liz tried
14 to add at trial that she lost her hair, but produced no proof.

15 The medical records and photographs further undermined her testimony. She
16 suffered no trauma, no bruising, and no injuries consistent with her trial testimony. Her
17 own pictures did not support her claims as they show a red mark, and nothing more, and
18 are completely lacking in the injuries one would expect to see given her testimony of a
19 brutal attack where her head was slammed to the ground 16 times.

20 In addition, there were six other partygoers; three of whom testified
21 (consistently) that Joe was gone but for a few minutes and was not disheveled or out of
22 breath and that he simply returned to the upstairs area where they had been hanging out.
23 This testimony, like the medical records, photographs, and expert testimony, is further
24 corroborating EVIDENCE that no attack occurred.

25 Certainly, where an alleged victim tells *wildly divergent* stories, and the medical
26 records, expert testimony, and other eyewitness testimony do not support her claim, it
27 shows that she lied to police and lied at trial. It is as simple as that. Perhaps the jury
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1 was upset with the fact defendant did not show up for his trial; perhaps they did not let
2 on during jury selection how much they disliked the defendant; but the important factor
3 is that there is reasonable doubt as to the attack Liz described as it could NOT have
4 happened in the manner in which she testified. That alone is sufficient reasonable doubt
5 for the court to order a new trial on that count or, at a minimum, reduce the charge to a
6 simple assault. As noted, however, even the lesser charge is plagued with doubt given
7 Liz's incredible testimony.

8 **4. Intimidating a Witness**

9 This count requires that defendant knowingly and maliciously tried to discourage
10 a witness from making a police report that she was the victim of a crime and that he
11 knew he was trying to discourage that report and specifically and maliciously intended
12 to do so. (CALCRIM No. 2622.)

13 Liz testified that she told Joe she was calling the police and he said, "I have pull
14 over the police. You can't do anything. I have pull over the police." That was all she
15 recalled. In the police report, Officer Magana reported that Liz told him, "Don't bother
16 calling the cops, I own the cops and they can't do shit to me. Look at my bodyguard,
17 he's a sheriff. Go ahead, call the fucking cops." Liz, when having that statement read
18 to her by the City Attorney at trial, said only that it "sounds familiar." Sheila testified
19 that, when they were leaving, Joe said he "ruled over the cops and he could buy the
20 police," but nothing else.

21 Even assuming the truth of Liz's statement to Officer Magana, it is insufficient as
22 a matter of law to support a section 136.1 conviction. As stated in *People v. Foster*
23 (2007) 155 Cal.App.4th 331, 335, "The prosecution must prove that 'the defendant's acts
24 or statements are intended to affect or influence a potential witness's or victim's
25 testimony or acts' (*People v. McDaniel* (1994) 22 Cal.App.4th 278, 284.) Where a
26 defendant has this intent and 'performs an act that "go[es] beyond mere preparation . . .
27 and . . . show[s] that the perpetrator is putting his or her plan into action" . . . , the

1 defendant may be convicted of criminal attempt.’ (*People v. Toledo* (2001) 26 Cal.4th
2 221, 230, citation omitted.)”

3 The defendant told Liz to call the police, and she did exactly that seconds later.
4 Where is the specific and malicious intent to discourage? Where is defendant’s act that
5 goes beyond mere preparation? Defendant did not threaten her, he made no attempt to
6 take away her phone or prevent her from calling, and she called the police moments
7 later while still at his residence.

8 This section was enacted to punish individuals who *proactively threatened*
9 people from making reports. Where is that threat here? Defendant’s statement was
10 simply his opinion that nothing would come of her complaint, and that she was FREE to
11 call the cops notwithstanding his opinion. As a matter of law, the section 136.1
12 violation has not been proven and a new trial or dismissal of this count is warranted.

13 **B. New Trial Based on New Evidence**

14 Section 1181(8) provides that “When new evidence is discovered material to the
15 defendant, and which he could not, with reasonable diligence, have discovered and
16 produced at the trial. When a motion for a new trial is made upon the ground of newly
17 discovered evidence, the defendant must produce at the hearing, in support thereof, the
18 affidavits of the witnesses by whom such evidence is expected to be given, and if time
19 is required by the defendant to procure such affidavits, the court may postpone the
20 hearing of the motion for such length of time as, under all circumstances of the case,
21 may seem reasonable.”

22 Attached is the affidavit and addendum A of Vagram Gegdzhyan, the co-
23 defendant in this case, along with the two pictures he took the night of the incident.
24 (Exhibit D.) He did not testify, and was represented by different counsel. Because he
25 was a represented defendant, and he declined to testify at the trial, this information was
26 not available to defendant until after the trial was complete. In *People v. Shoals* (1992)
27 8 Cal.App.4th 475, 487-488, the Court of Appeal held that where a co-defendant

1 exercised his right not to testify, statements the codefendant made *after* the trial
2 constitute “new evidence” under section 1181(8).

3 In considering newly discovered evidence, in order to warrant a new trial, the
4 evidence must be “such to render a different result probable on a retrial of the cause.”
5 (*People v. Martinez* (1984) 36 Cal.3d 816, 821.) Penal Code section 1181, subdivision
6 8, requires a defendant making a motion for a new trial on the ground of newly
7 discovered evidence must produce affidavits of the witnesses by whom such evidence is
8 expected to be given. This provision has been held to prohibit the trial court from
9 conducting an evidentiary hearing at which such witnesses would be permitted to
10 testify. (*People v. Pic'l* (1981) 114 Cal.App.3d 824, 878-879, disapproved on other
11 grounds in *People v. Kimble* (1988) 44 Cal.3d 480, 498.)

12 Here, Mr. Gedzhyan has provided an affidavit clearly stating that the incident, as
13 testified to by the three girls, did not occur as they stated. Among other things, he stated
14 that there was to be a party at Joe’s residence, there was an incident in the vehicle where
15 one of the girl’s acted out, but it was resolved; once at Joe’s home, he served the girls’
16 drinks, that Joe was outside with Sheila, the girls hung out at the house, Joe went
17 upstairs with the new guests, Liz was talking to Mark, he observed them kissing, that he
18 called a cab for the girls, Nicole asked to use his phone, the girls started yelling at each
19 other, Joe never touched them, that Liz knocked over several objects and slapped Mr.
20 Gedzhyan twice; and that the girls completely lied to the jury and that the only truthful
21 testimony was when they stated their names.. He even took pictures of the items Liz
22 knocked to the floor.

23 Clearly, there was overwhelming evidence presented at trial that the girls
24 materially lied, which has been discussed earlier in this motion; specifically that the
25 girls had no cell phone service, when their own phone records prove otherwise; and of
26 course, how the “attack” occurred, if at all, based on the significant differences in the
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1 varying stories Liz told to police, medical personnel, and on the stand; as well as the
2 fact the medical records and expert testimony completely belie her testimony.

3 “When a defendant makes a motion for a new trial based on newly discovered
4 evidence, he has met his burden of establishing that a different result is probable on
5 retrial of the case if he has established that it is probable that at least one juror would
6 have voted to find him not guilty had the new evidence been presented.” (*People v.*
7 *Soojian* (2010) 190 Cal.App.4th 491, 521.) Under the facts here, this new testimony, in
8 combination with the other lies the girls told at the trial, if it had been offered to the
9 jury, is such that it is probable at least one juror would have voted not guilty.

10 **C. A New Trial Based on Prosecutorial Misconduct**

11 In the prosecutor’s rebuttal argument, he stated that the defense paid off the taxi
12 driver to offer testimony, and the prosecutor also told the jury that the defense had
13 suborned perjury with witness Nicholas Carbone, who had remembered the color of the
14 outfit Liz was wearing that evening. The prosecutor told the jury that the defense had
15 tipped him off to her color clothing and then had him testify to the same to the jury.
16 Both arguments were inflammatory, were made in bad faith as they are completely
17 untrue, undermined the integrity of defense counsel to the jury, and are independent
18 grounds for reversal.

19 As stated by our Supreme Court in *People v. Sandoval* (1987) 4 Cal.4th 155, 183-
20 184: It is “improper for the prosecutor to imply that defense counsel has fabricated
21 evidence or otherwise to portray defense counsel as the villain in the case. It is not
22 necessary to find that such implication impinges upon defendant’s constitutional right to
23 counsel. [Citation.] Instead it is sufficient to note that defendant’s conviction should
24 rest on the evidence, not on derelictions of his counsel. [Citations.] Casting uncalled
25 for aspersions on defense counsel directs attention to largely irrelevant matters and does
26 not constitute comment on the evidence or argument as to inferences to be drawn
27 therefrom.”

1 Joe Francis's media image is unlikeable and that he did not attend his own trial is not a
2 substitute for credible evidence.


3 Similarly, Liz's wholly inconsistent description of her attack to medical
4 personnel, the very people whose job it is to treat her injuries and assist her, as
5 compared to her statement in the police report, coupled with her utter lack of injury
6 given her testimony that her head was slammed to the ground 16 times, creates more
7 than a reasonable doubt that such an attack EVER occurred. Again, that Joe Francis is
8 not likeable and did not attend his own trial is not a substitute for credible evidence.

9 Finally, Joe's statement, that Liz should "go call the police," but that they will
10 not do anything because he "owns" them is NOT a crime, especially where Liz called
11 the police within seconds of the statement. Joe did not threaten her, and he made no
12 effort whatsoever to prevent her from calling the police. That Joe Francis made a rude
13 remark is not a violation of a criminal statute that requires a genuine threat.

14 These verdicts, while a genuine expression of the jury's opinion of Joe Francis,
15 are not supported by credible evidence, and a new trial or dismissal is warranted on this
16 basis alone.

17 In addition, if the jury (and court) had considered the additional facts contained
18 in Mr. Gedzhyan's affidavit, it is reasonably probable that at least one juror would have
19 found reasonable doubt and voted not guilty. In the court's traditional role as the "13th
20 juror," a new trial is warranted on this separate basis as well.

21
22 DATED: August 13, 2013

23 
24 _____
25 STEVEN GRAFF LEVINE
26 Attorney for Defendant
27 Joseph Francis
28

TMZ

LIZ DIRECT

21 WE WANNA GO."

22 Q WHO WAS SAYING THAT?

23 A UH, A MIX OF ALL THREE OF US.

24 Q WERE YOU SAYING -- WERE YOU YELLING?

25 SCREAMING? CRYING?

26 A WE ACTUALLY WEREN'T LOUD BUT WE WERE TRYING --

27 WE ARE TRYING TO ARTICULATE TO HIM THAT WE WANTED TO LEAVE.

28 Q I'M SORRY?

25

(ROUGH DRAFT-NOT FINAL COPY)

1 A WE WERE TRYING TO ARTICULATE TO HIM THAT WE

2 WANTED TO LEAVE, WE DID NOT WANT TO STAY.

3 Q DID YOU HAVE ANY IDEA WHERE YOU WERE?

4 A NO IDEA.

5 Q AT THAT POINT DID YOU USE YOUR CELL PHONE OR

6 ATTEMPT TO USE YOUR CELL PHONE?

7 A WE HAD NO SERVICE.

8 Q DID YOU ATTEMPT AND IT DIDN'T WORK OR YOU KNEW

9 YOU DIDN'T HAVE SERVICE?

10 A WE ATTEMPTED. WE DEFINITELY ATTEMPTED.

11 Q YOU DID PERSONALLY?

12 A I DID PERSONALLY.

13 MS. PRICE: OBJECTION. SPECULATION.

14 THE COURT: SUSTAINED.

15 MR. FOX, CLEARED IT UP.

16 Q BY MR. FOX: DO YOU KNOW IF NICOLE OR SHEILA

17 TRIED?

18 A THEY ALSO TRIED.

19 Q HOW DO YOU KNOW THIS?

20 A I SAW THEM.

21 Q NOW, YOU'RE IN THE DRIVEWAY.

22 A YEP.

23 Q WHAT OCCURRED?

24 A SO JOE MAKES A COMMENT ABOUT, "I HAVE

25 NEIGHBORS, I HAVE NEIGHBORS. WE CAN'T BE LOUD. WE HAVE TO

26 GO INSIDE. WE HAVE TO GO INSIDE."

27 Q DID YOU GO INSIDE?

28 A YEAH. SO AFTER OUR ATTEMPTS, WE WENT INSIDE.

TMZ

EXHIBIT B

Sheila Direct

A Yeah.

Q And where is he positioned at the table?

A Furthest to the right.

THE COURT: Identifying the defendant.

Q BY MR. FOX: Okay. And this is the individual you saw that night as the driver?

A Yes.

Q And that's the individual with the badge?

A Yeah.

Q Okay.

Now, was he ever hanging around you and your sister and Liz during this evening?

A Not a lot. Not the whole time. I mean, he was kind of around the vicinity but kind of keeping, I guess, an eye on things. We weren't really discussing much with him.

Q okay. But he was about?

A He was about.

Q Okay.

Did you ever ask him to leave at this point?

A Yes.

Q Did you ever ask him to call a cab?

A Yes.

Q Did he call you a cab that you're aware of at this point?

A No.

Q Did you ask to use his cell phone?

A I didn't. I know Liz did.

Q And did he let Liz use his cell phone?

A I'm not sure. I don't know.

Q Did you have a cell phone this night?

A Yes.

Q Did you attempt to use your cell phone this night when you were at Joe's house?

A Yes.

Q Were you successful, able to use your phone?

A No. None of us had service there.

Q And how do you know the other two didn't have service?

A We all tried calling and all of us were frantically trying to look for another way. We were asking everyone else there for phones because our phones weren't able to dial out and we were having issues. Every time we'd call and we'd get a little service and it would kind of make one ring, then it would turn off.

Q Okay. Did you look for a house phone to use?

TMZ

17 IF YOU COULD LAY SOME FOUNDATION FOR THAT.

18 MR. FOX: SURE.

19 Q WHAT I'M ASKING IS, WAS THERE SOMEBODY
20 PHYSICALLY CLOSING IT OR WAS IT AUTOMATICALLY BEING CLOSED?

21 A IT WAS AUTOMATICALLY BEING CLOSED.

22 Q AND YOU GOT DOWN TO THE GATE AND IT WAS
23 CLOSED?

24 A YEP.

25 Q DID YOU TRY TO OPEN IT, OR DO YOU REMEMBER,
26 YOU OR YOUR SISTER?

27 A WE DIDN'T TRY TO OPEN IT.

28 Q DID YOU TOUCH THE GATE AT ALL? DO YOU

431 (ROUGH DRAFT-NOT FINAL COPY)

1 REMEMBER?

2 A NO.

3 Q WHAT DID YOU DO AT THAT POINT?

4 A WE STOOD THERE FOR AWHILE AND TRIED TO GET --

5 TRIED TO CALL OUT ON OUR CELL PHONES BUT WE COULDN'T.

6 Q DID YOU ASK THEM TO OPEN THE GATE?

7 A YES.

8 Q DID YOUR SISTER ASK TO OPEN THE GATE?

9 A YES.

10 Q WHERE WAS LIZ?

11 A SHE WAS AT THE TOP OF THE HILL, STANDING THERE

12 WAITING AND WATCHING.

13 Q DID SHE -- DID YOU HEAR HER ASK TO -- TO

14 LEAVE?

15 A I DIDN'T AT THAT TIME.

16 Q OKAY. HOW FAR AWAY WERE YOU FROM LIZ AT THIS

17 POINT DISTANCE? IS THERE SOMETHING IN THIS ROOM FROM WHERE

18 YOU'RE SITTING TO A LOCATION IN THIS ROOM OR IS IT A GREATER

19 DISTANCE?

20 A THAT -- THE WOOD BEHIND YOU.

21 Q RIGHT HERE, THE BANISTER?

22 A YES. UH-HUH.

23 THE COURT: I DON'T BELIEVE I HAVE AN EXACT

24 MEASUREMENT TO THAT. IT'S TWENTY FEET AND NINE INCHES TO THE

25 CHAIRS IN FRONT OF YOU. SO PERHAPS ANOTHER THREE FEET BEHIND

26 THAT.

27 MR. FOX: YOU SAID 20 WHAT?

TMZ

1 DAVID R. HOUSTON
2 STATE BAR: 2131
3 432 COURT STREET
4 RENO, NV 89501
5 775-786-4188
6 775-786-5091 FAX
7 dhouston@houstonatlaw.com

8
9 Attorney for Defendant Joe Francis

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 JOSEPH FRANCIS,

17 Defendant.

Case Number: 1WA02269

**DECLARATION OF VAGRAM
GEDZHYAN**

18
19
20 **DECLARATION**

21 I, Vagram Gegdzhyan, declare:

22 I was the Co-Defendant in the case of City of Los Angeles v. Joseph Francis and
23 Vagram Gegdzhyan. 2) That I was employed by Mr. Francis on the evening of January
24 29, 2011.

25
26 That my employment required me to act as not only a driver but also assist with
27 security.

1 That on this evening, Mr. Francis had invited three young ladies to come with us
2 to an after party at the house.

3 That I was aware Mr. Francis had also invited several other people according to
4 his advisement to me.

5
6 That we took the three young ladies to the house and on the ride there, one of the
7 young ladies became very unruly and started acting out to the point it appeared as
8 though she was going to start breaking things or hurting someone in the car.

9 That the young lady in particular appeared to be fighting with or attacking one of
10 her friends and/or her sister.

11 That on the way to the house, I stopped the vehicle due to the disruption created
12 by the young lady in the back area. The partition had gone down and Mr. Francis had
13 advised me to stop the vehicle.

14 It was at this point all of the young ladies were told if they could not behave they
15 would have to exit the vehicle immediately. They were told if they could not stop
16 fighting, they would have to get out of the vehicle.

17
18 Mr. Francis was assured the young ladies would behave themselves and get
19 themselves under control. I at that point started to drive towards Mr. Francis' house
20 again.

21 After about 10 minutes, we arrived at Mr. Francis' house and everyone got out of
22 the vehicle. As we exited the vehicle, the girl named Liz that had been fighting with the
23 girl named Shelia, became upset with the girl named Shelia and took her phone and
24 started trying to figure out a way to disable the telephone.

25 The two girls were yelling and screaming at one another to the point that they
26 had to be told to stop fighting yet again. They were told if they did not stop fighting
27 they had to leave right now.

1 Mr. Francis advised them that he had neighbors and he could not disrupt his
2 neighbors with their behavior.

3 The girls agreed to calm down and once calmed voluntarily entered the
4 residence. Mr. Francis entered first and the girls followed.

5 Upon their arrival inside, I personally mixed drinks for the three girls and gave
6 the girls the drinks.

7 I am uncertain as to whether or not the girls drank the drinks; all that I know is
8 that I gave them to them.

9 Everything seemed to be normal for a period of time. Joe Francis actually had an
10 opportunity to go outside with the young lady named Shelia.

11 He was outside with Shelia for about a half an hour having a pleasant
12 conversation. Nicole and Liz were inside the house with me and another party of guests
13 arrived.

14 The other party of guests arrived and they were also people who testified at Joe
15 Francis' trial as to having been present that evening.

16 When the other party arrived, I went out and notified Mr. Francis that his other
17 guests had arrived. Mr. Francis came inside with Shelia and volunteered to show the
18 new party of guests around the house. They said they were anxious to see the house and
19 Mr. Francis walked them around the first floor and then walked them upstairs.

20 When Mr. Francis left upstairs with the other guests, myself, Shelia, Liz and
21 Nicole were left downstairs with Mark Rousso.

22 Mark Rousso and Liz appeared to be engrossed in a conversation while the other
23 two seemed to be talking amongst themselves.

1 I was going back and forth between the outside and the inside at this time,
2 because part of my job is to clean the vehicle and get it ready for when guests are ready
3 to leave.

4 On one occasion when I came back inside to get cleaning supplies, I noticed that
5 Mark Rousso and Liz were kissing.

6 The other two girls were talking between themselves still and did not appear to
7 be upset in any way.

8 When I came back inside, Nicole asked me if I could call a cab for the group. I
9 agreed and I placed a telephone call for a taxi cab.

10 After I called the taxi cab for the Nicole and her group, Nicole asked me if she
11 could use my phone because her battery to her cell phone was either dying or dead.

12 I said yes and let her use my phone. She used my phone I believe to call her
13 boyfriend in that it seemed it was that type of conversation.

14 I felt very awkward because I wanted my phone back, but I did not want to leave
15 her standing there using my phone so I just stood there and waited for her to finish.

16 In that I had already called for a cab and I got my phone back from Nicole, I
17 went outside to finish cleaning the car.

18 I knew at that point since I had called a taxi cab for the girls that I would not be
19 taking them anywhere.

20 As I am cleaning the car, I can hear the raised voices of the girls once again. I
21 did not hear a male voice and I certainly did not hear the voice of Mr. Francis. Just the
22 girls yelling at one another.

23 I could not tell what they were yelling about; it was just high pitched yelling.

1 As I entered the house, I saw Mr. Francis coming down the staircase at the same
2 time I came in the front door.

3 I never saw Mr. Francis have any physical contact with any of the girls. I never
4 saw Mr. Francis lose his temper with any of the girls.

5 I heard Mr. Francis tell the girls "if you cannot behave yourself, get out of my
6 house".

7
8 Mr. Francis was not violent. Mr. Francis did not cuss at them. As I entered the
9 house and saw Mr. Francis on the staircase and heard him tell the young ladies to get
10 out of the house, I saw Liz put her hand down on a table that sits next to the couch and
11 swipe her hand across the table knocking several objects on to the floor.

12 At that point, Mr. Francis addressed me and asked me to escort the women from
13 the house.

14 I did not want the girls to break or damage any property in the house and I tried
15 to walk around to get in front of them. It was at this point that the girl named Liz
16 slapped me in the face.

17 I am really uncertain what she was saying because she appeared to be mumbling,
18 but for no reason she hit me.

19
20 The girls left and started to walk outside. As we were walking out the door, my
21 cell phone rang and I checked my cell phone. It was the cab company calling to say they
22 had arrived.

23 As we were walking out the door, Liz stopped in her path and I told her she had
24 to keep going and she slapped me a second time.

25 She then turned around and walked out with the two sisters, Nicole and Shelia
26 and there was a lot of yelling going on back out in the driveway once again.

1 The girls proceeded to walk down the driveway to where the cab was located.
2 As I was walking behind them and they were walking toward the cab, I heard Liz say
3 "no one can treat me like this, I am calling the police".

4 I at that point said something to the effect of why don't you just call it a night
5 ladies, it is time to go.

6
7 There was absolutely nothing I saw to suggest that Joe Francis had any physical
8 contact with these girls contrary to their testimony that he had repeated physical
9 encounters with Liz.

10 I can say without a doubt, Liz's story as to what Joe Francis did is an absolute
11 lie.

12 The girls had many opportunities to use the phone in the house; they were never
13 guarded nor prevented in their movement. Also, the girls were consistently on their cell
14 phones during the period of time they were at the house.

15 This is why I was surprised when Nicole asked to use my phone until she
16 explained that her phone battery was either dying or had gone dead.

17
18 That I sat through the trial and I listened to the girls testify. There was very little
19 they said that was true other than their names.

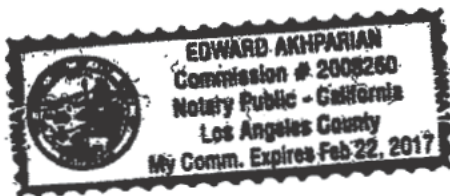
20 That I did not feel I could testify at the trial, but at the same time I do not feel it
21 right that Joe Francis is convicted on the lies of these three girls.

22 I was there and I saw what happened. Nothing that they testified to concerning
23 Joe Francis hitting or hurting any of them ever occurred.

24
25
26 I declare under the penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct to the best of my knowledge.

1 Dated this 24th of JULY, 2013

2
3 
VAGRAM GEDZHYAN



8 07/24/2013

9
10 NOTARY PUBLIC

11 EDWARD AKHPARIAN

12
13
14 
15
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ACKNOWLEDGMENT

State of California
County of Los Angeles)

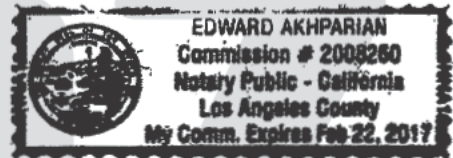
On July 24, 2013 before me, Edward Akhparian/Notary Public
(insert name and title of the officer)

personally appeared Vagram Gegdzhyan
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



1
2 ADDENDUM A

3 I, Vagram Gegdzhyan, declare:

- 4
- 5 1. I was the Co-Defendant in the case of City of Los Angeles v. Joseph Francis and
6 Vagram Gegdzhyan.
 - 7 2. That I was employed by Mr. Francis on the evening of January 29, 2011.
 - 8 3. I took the attached photos as proof of the damage caused by Liz after for no
9 reason she struck me.
 - 10 4. I wanted to be sure there was documentation of the damages caused by her and in
11 order to protect myself from any false allegation.
12

13
14 I declare under the penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct to the best of my knowledge.

16 Dated this 12 of 08, 2013

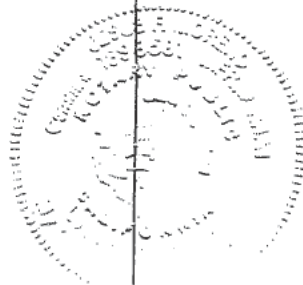
17
18 
19 _____
20 VAGRAM GEDZHYAN

21 State of: _____

22 County of: _____

23
24
25 Notary Stamp

26 _____
27 Notary Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

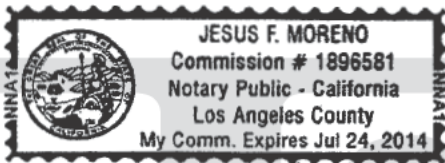
State of California

County of Los Angeles

On Aug. 12, 2013 before me, Jesús F. Moreno, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Vagram Gedzhyan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Addendum A

Document Date: Aug 12, 2013 Number of Pages: 2

Signer(s) Other Than Named Above: n/a

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

