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Attorney for Defendant
DANNY FANELLI

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff,
v.
DANNY FANELLI
KATHERINE CARRENO
Defendant

MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO
SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS THE
INFORMATION UNDER C.P.C. 995

Date: January 22, 2008
Court: Dept. F

Defendant DANNY FANELLI, through his attorney of record PATRICK K. BROWN, Esq., respectfully submits the following MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS THE INFORMATION UNDER C.P.C. 995.

I.

The People’s pedantic reliance on *People v. James*, 148 Cal.App.4th 446 (2007) is misplaced. The People rely on *James* because it is allegedly logical, and *People v. Hoard* 103 Cal.App.4th 599 (2002) is illogical; ignoring Oliver Wendell Holmes’ observation, “The life of the law has not been logic; it has been experience ... it cannot be dealt with as if it contained only the axioms and

1 corollaries of mathematics.” W.O. HOLMES, THE COMMON LAW 1 (1881). The People not only
2 commit the informal fallacy of false analogy, but experience shows that their reliance on *James* is
3 misplaced.

4 In *James*, the Court of Appeal upheld the charge of kidnaping for robbery as to victim Jesus
5 Gonzales only. Mr. Gonzales was outside the business cleaning the parking lot and was forced at
6 gunpoint to facilitate the robbers access to the business. In the process he was moved from the
7 outside of the premises to the inside. Once inside the premises, Mr. Gonzales was thrown to the
8 floor and held while the robbers completed their crime, he was then forced into a bathroom while the
9 robbers escaped. *Id.* at 449-451, 456-457. The Court of Appeal only addressed the issue of Mr.
10 Gonzales’ kidnaping and found, correctly, that moving Mr. Gonzales from outside the premises to
11 inside was *not* incidental to robbing the Bingo Club, and that moving Mr. Gonzales substantially
12 increased the risk of harm to him. *Id.* at 457-458; *see also People v. Daniels*, 71 Cal.2d 1119 (1969).
13 The Court did not address the movements of Ms. Hines, another employee of the Bingo Club and
14 victim of the robbery.

15 The movements of Ms. Hines are much more like the movements of Ms. Maldonado, the
16 victim in the instant case. Unlike Mr. Gonzales, Ms. Hines was forced to move through the premises
17 to remove or otherwise disable a security camera, and then to a bathroom in which the victim was
18 held while the robbers made their escape. Escape to a place of temporary safety is an element of
19 robbery and therefore any act of the robbers to perfect their escape, including removing or disabling a
20 security camera which would provide a photographic record crime and aid the procedution, is part of
21 the crime. *See People v. Barnett*, 17 Cal.4th 1044 (1998). The *James* Court of Appeal did not
22 address the facts that pertain to Ms. Hines, and therefore the holding of *James* is completely
23 irrelevant to instant case, and this court should not bother to consider it.

24 II

25 THE PEOPLE HAVE MISREAD *PEOPLE V. HOARD* AS WELL; *HOARD* CORRECTLY
26 APPLIES THE *DANIELS* STANDARD TO FACTS SIMILAR, BUT NOT IDENTICAL, TO THE
27 INSTANT CASE

28 The People claim that the Court of Appeal “applied faulty logic” in the case *People v. Hoard*,

1 103 Cal.App.4th 599 (2002). Supp. memo., p. 2, l. 16. In *Hoard*, the Court of Appal “decline[d] to
2 apply the reasoning of [*People v.*] *Salazar* [33 Cal.App.4th 341 (1995)] and [*People v.*] *Shadden* [93
3 Cal.App.4th 164 (2001)] and analyze the facts of this case under *Daniels*, [*In re.*] *Earley* [14 Cal.3d
4 122 (1975)] and [*People v.*] *Rayford* [9 Cal.4th 1 (1994)].” *Hoard*, 103 Cal.App.4th at 607. More
5 specifically, the Court distinguished *Shadden* and *Salazar* on their facts; *Shadden* and *Salazar* both
6 involved a kidnaping to commit rape, while *Hoard* and the instant case involved an alleged
7 kidnaping to commit robbery. Also, the Court in *Hoard* held “incidental and necessary do not mean
8 the same thing.” *Id.* at 606.

9 In *Hoard*, the defendant ordered two employees of a jewelry store at gun point into the rear
10 office. There, he bound them with duct tape and left them while he ransacked the store’s showroom.
11 The defendant told any legitimate customers who entered the store during the robbery that the store
12 was “closed for maintenance or performing inventory.” 103 Cal.App.4th at 602. In analyzing these
13 facts, the Court found that “movement of the two women served only to facilitate the crime with no
14 other apparent purpose.” *Id.*, at 607. In addition, the Court found that “the victims may have been at
15 less risk tied up in the back office where they could not try to thwart the robbery than had they
16 remained at gunpoint in the front of the store.” *Id.*

17 In the instant case, the alleged kidnaping consisted of the robbers, not necessarily the
18 defendants here, forcing Ms. Maldonado, at gunpoint, to move “behind something at the store that
19 would have placed her out of view of from anyone at the front of the location” (RT, 14: 9-24) much
20 as in *Hoard*, and to “walk[] to the rest room” from where the robbers took the security tape, (RT, 16:
21 16-23), much as in *James*, but only as to Ms. Hines. All of these movements were within the Check-
22 Into-Cash business premises and were part of the robbery. There is no testimony that Ms.
23 Maldonado moved or was moved beyond the premises or placed in any greater danger than the
24 danger inherent in an armed robbery.

25 Far from applying faulty logic, the *Hoard* Court rejected two distinguishable and irrelevant
26 Court of Appeal cases and rigorously applied the precedents set down by the California Supreme
27 Court to the facts before it.

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1 IV.

2 THE PEOPLE’S RELIANCE ON *SHADDEN* IS INAPPROPRIATE

3 The People’s reliance on *Shadden*, and for that matter *Salazar*, is inappropriate because these
4 cases involved a kidnaping to commit rape. As the Court in *Salazar* correctly observed, “Whereas
5 the commission of a robbery may frequently require that a victim be moved to the property which is
6 the object of the robbery, a rape involves sole an attack on the person and does not necessarily require
7 movement to complete the crime.” *Salazar*, 33 Cal.App.4th 348n8; *see also Shadden*, 93
8 Cal.App.4th at 169. Indeed, the application of the holdings in these two rape cases to robbery cases
9 was considered by the Court of Appeal in *People v. Washington*, 127 Cal.App.4th 290 (2005), and
10 rejected. The Court of Appeal held, “*Salazar* and *Shadden* both rely on the proposition that rape is
11 different than robbery for purposes of aggravated kidnaping. Because this case [*Washington*]
12 involves robbery, *Salazar* and *Shadden* are distinguishable.” *Id.* at 303.

13 V

14 CONCLUSION

15 The movements of Ms. Maldonado from the front of the business to a more secluded area in
16 premises and to the bathroom where the security camera was kept in order to disable it were
17 necessary and incidental to the robbery. First, by moving Ms. Maldonado to a more secluded place,
18 the robbers were free to loot the business without fear of interruption by Ms. Maldonado or passers-
19 by. Ironically, movement in this case may have decreased Ms. Maldonado’s risk of harm, as the
20 court found in *Hoard*.. Second, moving Ms. Maldonado to the bathroom in order to steal the
21 security camera tape was clearly intended to aid the robbers’ getaway and therefore incident to the
22 crime, as in *James*, but only as to Ms. Hines. Therefore, the movement in this case was clearly
23 within the parameters of *Daniels* and the exception to the aggravated kidnaping statute found at
24 Penal Code section 209(b)(2). The motion should be granted.

25 Respectfully submitted,

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27 Patrick K. Brown, Attorney for Defendant

28 Dated: January 22, 2008