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Superior Court of California  
County of Los Angeles

MAY 23 2023

David W. Slayton, Executive Officer/Clerk of Court

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

8 PEOPLE OF THE STATE OF CALIFORNIA,

Case No. BA490599

9 Plaintiff,

PEOPLE'S MOTION IN SUPPORT OF A  
TRUE FINDING OF CIRCUMSTANCES  
IN AGGRAVATION PURSUANT TO  
PENAL CODE SECTION 1170(b)(1)-(2)

10 v.

11 H

DAYSTAR PETERSON, H

12 Defendant. AL

Date: June 13, 2023

Time: 10:30 AM

Court: 132

14  
15 TO THE HONORABLE DAVID HENRY FORD, CLERK OF THE ABOVE ENTITLED  
16 COURT, MATTHEW BARNHART, JOSE BARRAZA, AND CHRISTINE BENAVENTE COUNSEL FOR  
17 THE DEFENDANT, DAYSTAR PETERSON.

18 I.

19 INTRODUCTION

20 RRI JUD

21 On December 23, 2022, a jury found Defendant guilty of Count 1, Assault with a Semiautomatic  
22 Firearm in violation of Penal Code §245(b); Count 2, Having a Concealed Firearm in Vehicle  
23 Unregistered in violation of Penal Code §25400(a)(1); and Count 3, Discharge of a Firearm with Gross  
24 Negligence in violation of Penal Code §246.3(a). Additionally, the jury found true that Defendant  
25 personally used a firearm in violation of Penal Code §12022.5(a) and personally inflicted great bodily  
26 injury upon the victim in violation of Penal Code §12022.7(a).

27 Following amendments to Penal Code §1170 by way of Senate Bill No. 567, the Court in its  
28 discretion may impose a sentence not to exceed the middle term except when there are circumstances in



1 aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term,  
2 and the facts underlying those circumstances have been found true beyond a reasonable doubt at trial. The  
3 People filed an amended information alleging circumstances in aggravation pursuant to California Rules of  
4 Court §§4.421(a)(1)-(a)(3) arising out of the same operative facts related to the crime which were proven  
5 beyond a reasonable doubt at Defendant's jury trial. Defendant requested to bifurcate and waive jury as to  
6 the factors in aggravation. (December 6, 2022 *Reporters Transcript* at pgs. 63-65). People intend to file  
7 our sentencing memorandum which will outline additional circumstances in aggravation for the purposes  
8 of sentencing. For the purposes of satisfying the requirements outlined by Penal Code § 1170(b)(1)-(2),  
9 only the aggravating factors which were alleged and proven at trial will be discussed below.

10  
11 This motion will be based on this motion, the pleadings in this case, the evidence adduced at the  
12 jury trial including testimony and exhibits, and any further arguments made at Defendant's trial related to  
13 circumstances in aggravation.

## 14 II.

### 15 CIRCUMSTANCES IN AGGRAVATION

#### 16 (1) **California Rules of Court, Rule 4.421(a)(1)**

17 The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts  
18 disclosing a high degree of cruelty, viciousness, or callousness.

19 On July 12, 2020, Defendant shouted at Victim to "Dance Bitch", pointed a gun at her and fired  
20 multiple rounds, striking both of her feet. (December 13, 2022 *RT* at pgs. 18-20). Defendant was upset that  
21 Victim had insulted his music career (December 13, 2022 *RT* at 21, 20-28 and at 21, 1-6). Without any  
22 justifiable provocation or reason, Defendant fired several rounds at Victim in the middle of a residential  
23 neighborhood during the late evening hours. Victim suffered gunshot wounds to both of her feet and was  
24 bleeding profusely (December 13, 2022 *RT* at 27, 15-26). Bullet fragments penetrated both of her feet.  
25 Victim was placed under general anesthesia and the fragments were removed during surgery. Removal of  
26 the foreign bodies (bullet fragments) by Dr. Little and Dr. Haruno required additional cutting into to the  
27 victim for adequate debridement of the fragments and cleaning of the tissue (December 15, 2022 *RT* at 12,  
28



1 7-12). From Victim's right foot, Victim had a one-and-a-half centimeter wound from which doctors were  
2 able to remove a large bullet fragment (December 15, 2022 *RT* at 11, 16-28 and at 12, 1-3). From Victim's  
3 left foot, doctors removed two fragments from a four-by-four centimeter wound (December 15, 2022 *RT* at  
4 12, 13-22). Given the extent of her injuries to her left foot, Victim was missing the top layer of her skin  
5 (December 15, 2022 *RT* at 13, 23-27). The injuries and resultant surgery would produce permanent scarring  
6 to both of her feet (December 15, 2022 *RT* at 14, 18-22). Smaller metallic shrapnel or fragments that could  
7 not be removed without risking greater harm to the victim are now permanently embedded in her feet  
8 (December 15, 2022 *RT* at 17, 1-10). The seriousness of the injuries required overnight post-operative  
9 monitoring at the hospital. Had the wounds been left untreated and larger fragments unremoved, there was  
10 a risk Victim would be symptomatic and suffer persistent pain and/or infection. (December 15, 2022 *RT* at  
11 9, 5-9 and at 15, 2-12).

13 Victim went through physical therapy for several months, received stitches and was in significant  
14 pain. Nearly a year-and-half later at trial, Victim testified that she continues to suffer from nerve damage  
15 and experience soreness, particularly when she has to perform as part of her work (December 13, 2022 *RT*  
16 at 32, 11-27 and at 34, 5-23).

17 Exhibits introduced at trial in People's 26, 27, 34 (A-C), 35 (A-B), and 36 (A-B) further proved  
18 Victim's extensive injuries, surgery, and post-operative treatment plan. The evidence that Defendant's  
19 crime involved either the threat of great bodily harm or actual great bodily harm was overwhelming and  
20 ultimately the jury agreed when they found true that Defendant personally inflicted great bodily injury to  
21 Victim beyond a reasonable doubt.

23 Defendant's actions also demonstrated a high level of callousness. As victim began to walk away  
24 from Defendant wearing only a bikini and no shoes, Defendant mocked Victim with "Dance Bitch" as  
25 opened fire in her direction. With no justifiable reason, Defendant fired not just one but up to five rounds  
26 in the direction of Victim in the middle of a residential neighborhood. The act not only directly inflicted  
27 great bodily injury to the victim but posed a significant danger to everyone (witnesses and neighbors) in  
28 the vicinity of this shooting. The brazenness of Defendant's conduct is alarming but the



1 conscious disregard for the well-being and safety of all those around him signifies a high degree of  
2 indifference for human life.

3  
4 **(2) California Rules of Court, Rule 4.421(a)(2)**

5 The defendant was armed with or used a weapon at the time of the commission of the crime.

6 Defendant fired a semi-automatic firearm in the direction of Victim five times. Immediately after  
7 the shooting, the gun was found at his feet, warm to the touch and in a slide lock position, indicating  
8 Defendant had fired every round from that gun. (December 12, 2022 RT at 101, 13-28 and at 102, 1-27)

9  
10  
11 **(3) California Rules of Court, Rule 4.421(a)(3)**

12 The victim was particularly vulnerable.

13 In *People v. Smith* (1979) 94 Cal.App.3d 433, the Court held that “particularly vulnerable” is not  
14 vague and “particularly” means in a special or unusual degree, to an extent greater than in other cases.  
15 “Vulnerable” is defined as defenseless, unguarded, unprotected, accessible, assailable, or one who is  
16 susceptible to defendant’s criminal act. *Id.*

17 In *People v. Eades* (1979) 95 Cal.App.3d 688, the Court found no error in aggravating a sentence  
18 on the basis that “victim was ‘particularly vulnerable’ where defendant without apparent motivation or  
19 provocation, from a rear seat in a moving vehicle, shot the victim twice at point-blank range, and where  
20 victim was unaware of defendant’s possession of a weapon and could not protect himself from defendant’s  
21 actions, even though victim was a healthy police officer with firearms within reach”. *Id.* The court rejected  
22 a narrow interpretation of “particularly vulnerable” to be applied only where victim’s personal  
23 characteristics (age, handicap, etc...) make them vulnerable. Rather the Court has found that circumstances  
24 surrounding the crime, including the time of day or location of the offense, may render a victim particularly  
25 vulnerable.  
26

27 Victim was dressed in only a bikini, shoeless and on foot in a neighborhood completely foreign to  
28 her. It was late at night. She was unarmed and completely defenseless. She was not in possession of her



1 phone or her belongings. As she walked away from Defendant, unaware he was armed with a firearm,  
2 Defendant fired multiple rounds at Victim striking her bare feet. She was afforded no opportunity and was  
3 in no position to defend herself, find cover, or shield herself in anyway. Besides an argument in the car,  
4 there was no justifiable provocation or event that would have signaled to her that Defendant would have  
5 fired a gun at her, not just once but five times. Victim was taken entirely by surprise. Given the surrounding  
6 circumstances, she was particularly vulnerable.

7  
8 **III.**

9 **CONCLUSION**

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11 Based on the foregoing, the People respectfully request that the Court find true, beyond a  
12 reasonable doubt, the circumstances in aggravation pursuant to California Rules of Court 4.421(a)(1)-(3)  
13 as to Defendant.

14  
15 Dated this 22nd day of May, 2023

16 Respectfully submitted,

17  
18 GEORGE GASCÓN  
District Attorney of Los Angeles County

19 By   
20 KATHY TA  
Deputy District Attorney

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23 Attorney for Plaintiff  
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