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Superior Court of California
County of Mendocino

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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

The People of the State of California,
Plaintiffs,

vs.

KEVIN PATRICK MURRAY,
Defendant.

Docket No. SCUk CRCR 21-37371-01

THE PEOPLE'S SENTENCING STATEMENT AND
STATEMENT IN AGGRAVATION; POINTS AND
AUTHORITIES.

Hearing Date: August 30, 2022
Time: 9:00 AM
Dept.: G (Moorman)

The People of the State of California, by and through their District Attorney, David Eyster, and his deputy prosecutor, Deputy District Attorney Heidi Larson, respectfully submit the following combined sentencing statement and statement in aggravation as it relates to the above-named criminal defendant. In brief, the defendant's change of plea on July 7, 2022 was an "open plea"¹ to a felony Strike offense² and a separate misdemeanor offense³.

¹ The phrase "open plea" in this criminal context means defendant Murray admitted criminal responsibility to the two charges without any promise from the District Attorney as to what sentence the prosecution would seek when the case returns to court for judgment and sentencing.

² Penal Code § 136.1(b)(1), Unlawful Intimidation of a Victim. This conviction is a serious felony, and thus a Strike offense for future use, within the meaning of Penal Code § 1192.7(c)(27). As set forth in CALCRIM 2622, the elements that must be proven beyond a reasonable doubt to convict a defendant of this offense

1 Pursuant to the change of plea, the court may consider the facts underlying any and all
2 dismissed counts that are "transactionally related," meaning, in this case, the court may,
3 again, consider the original charges against defendant Murray in assessing criminal
4 responsibility and imposing an appropriate sanction.

5 I.

6 **SUMMARY OF PROCEEDINGS**

7 By felony complaint filed in January 2021, the defendant was charged with burglary
8 in the first degree and sexual battery, said offenses committed while the defendant was on-
9 duty as a Ukiah Police Department sergeant.

10 The defendant was arraigned in-custody with retained defense counsel on January
11 27, 2021. His bail was set at \$200,000 with terms and conditions if posted.

12 A preliminary hearing (probable cause hearing) was conducted on February 11, 2021
13 and the defendant was held to answer for trial.

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17 are: (1) the defendant maliciously tried to prevent or discourage a victim from making a report that she was
18 a victim to the original charges: motel room burglary (entering an inhabited motel room with the intent to
19 commit a felony (sexual assault) therein), a felony, and/or sexual battery, also a felony; (2) the complaining
20 witness was in fact a victim; and (3) the defendant knew he was attempting to prevent or discourage her
21 from reporting to law enforcement her victimization and he intended to prevent or discourage her from doing
22 so. As used in the CALCRIM jury instruction, a defendant acts maliciously when he unlawfully intends to
23 interfere in any way with the orderly administration of justice. **Thus, by definition of the required
24 elements of the offense, the court is required to consider the crimes originally charged and
25 factor in those facts in crafting an appropriate criminal sanction.** The defendant's conviction by plea
26 of this serious crime opens up the possibility of a state prison sentence of 16 months, 24 months, or 36
27 months, though the Legislature has mandated that the presumptive term (the maximum in the instant case
28 because of legislative changes that favor felony defendants) is 24 months. Other sentencing choices include a
grant of supervising probation, again limited by the Legislature to not exceed 24 months, with possible
county jail time up to 364 days and other terms and conditions. A suspended state prison sentence is also
possible, a sentence that would be hand-in-glove with supervised probation. A third option would be to deny
probation and sentence the defendant up to 364 days in the county jail. This third option, by operation of
law, would reduce the defendant's felony conviction immediately to a misdemeanor.

3 Penal Code § 236, Unlawful False Imprisonment. As set forth in CALCRIM 1242, the elements that must be
proven beyond a reasonable doubt to convict a defendant of this offense are: (1) the defendant intentionally
and unlawfully restrained and confined the victim; and (2) the defendant did so against the victim's will. The
defendant's conviction by plea of this crime opens up the possibility of a county jail sentence up to 364 days,
a fine of up to \$1,000, or both.

1 The defendant was arraigned on the resulting information on and between March 1,
2 2021 and August 10, 2021. This case was in trailing status while other charges caught up
3 and were eventually consolidated into one accusatory pleading. The charges eventually
4 added by consolidation involved aged allegations of off-duty sexual misconduct by the
5 defendant.

6 On August 10, 2021, a trial date of December 6, 2021 was finally calendared.

7 On November 18, 2021, a defense motion to continue the jury trial date was granted
8 and the December trial date was vacated. A new trial date of March 14, 2022 was
9 calendared.

10 On March 11, 2022, the trial date was again continued. A new trial date of May 16,
11 2022 was calendared.

12 On May 4, 2022, the parties joined in a joint request to continue the May 16, 2022
13 trial date and a new trial date of July 18, 2022 was calendared. A mandatory settlement
14 conference was ordered to held on July 7, 2022.

15 On July 7, 2022, an open plea disposition was agreed upon (as already noted
16 above).⁴ That said, the settlement judge gave an "indicated sentence"⁵ of probation with no
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18 ⁴ Before resolving the defendant's cases, efforts were undertaken by the assigned attorney and her
19 investigators, as required by law, to discuss the possible resolution with both charged victims. While one of
20 victims was available for this discussion and was agreeable at that time to resolving the case so she would
21 not have to make the trip and have to openly testify, the other victim, also living out of the area, could not be
22 found nor reached by telephone to engage in trial preparation and/or to discuss the possible resolution. Calls
23 to her Bay Area civil attorney were always taken and would end with him saying he would ask her to call back
24 those working on the case. Assuming she received these messages from her Bay Area attorney, she never
25 followed through on his requests by initiating a return call. The motel room victim had not been available for
26 trial prep in Ukiah prior to trial and the last office communication ended with a demand to stop bothering her
27 with calls. To a different point, while some incorrectly believe charges were filed against defendant Murray for
28 an alleged assault by the defendant on a third female, that is incorrect. While a separate case was submitted
for the District Attorney's review in March 2021, it was concluded that the Statute of Limitations had expired
for bringing any criminal charge based on the conduct described in the submitted reports. It is believed that
this possible third victim may have a civil lawsuit currently pending against the defendant or his former
employer and may still have her day in court.

⁵ When a defendant pleads guilty to all charges anticipated by a negotiated plea, the court may indicate the
sentence it will impose "if a given set of facts is confirmed, irrespective of whether guilt is adjudicated at trial
or admitted by plea." (*People v. Superior Court (Smith)* (1978) 82 Cal.App.3d 909, 916.) When the sentence
itself is not unlawful or in excess of the court's jurisdiction, the court's "statement of intention is not

1 additional jail time for the defendant, an indicated sentence that was not joined in by the
2 prosecution. The defense also wanted the prosecution to agree that the felony conviction
3 would be reduced to a misdemeanor after two years (the new maximum term of supervised
4 probation) if the defendant has suffered no violations of probation. The prosecution
5 declined this proposal and stated it would adamantly oppose any future attempt to reduce
6 the felony Strike conviction to a misdemeanor.⁶

7 On July 7, 2022, the defendant's cases were referred to the Mendocino County Adult
8 Probation Department for a background study and sentencing recommendation. In turn,
9 Mendocino County Adult Probation Department referred the matter to the Sonoma County
10 Adult Probation Department to avoid any appearance of bias or legal conflict. A sentencing
11 hearing was calendared for August 24, 2022.

12 Without input from the prosecution or the defense, as far as the prosecution knows,
13 the defendant's sentencing hearing was continued on the court's own motion to August 30,
14 2022.

15 II.

16 CALIFORNIA RULES OF COURT

17 **Rules of Court, Rule 4.410: General Objectives of Sentencing**

18 Rule 4.410, subd. (a), of the California Rules of Court, outlines the general objectives
19 of sentencing:

20 "General objectives of sentencing include:

21 (1) Protecting society;

22 (2) Punishing the defendant;

23 (3) Encouraging the defendant to lead a law-abiding life in the future and deterring
24 him or her from future offenses;

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26 something that can be reviewed or set aside." (82 Cal.App.3d at 916; see also *People v. Superior Court*
27 (*Ramos*) (1991) 235 Cal.App.3d 1261.)

28 ⁶ The disposition also required the defendant to waive his right to appeal any legal issue(s) that defense
perceives could have or may have arisen during the course of the overall criminal proceedings.

- 1 (4) Deterring others from criminal conduct by demonstrating its consequences;
2 (5) Preventing the defendant from committing new crimes by isolating him or her for
3 the period of incarceration;
4 (6) Securing restitution for the victims of crime; and
5 (7) Achieving uniformity in sentencing."

6 **Rules of Court, Rule 4.414: Criteria Affecting Probation**

7 Rule 4.414(a)(1): Weighs Against Probation -- The nature, seriousness, and
8 circumstances of the two crimes as compared to other instances of the same crimes are
9 above average.

10 Rule 4.414(a)(2): Weighs Against Probation -- The defendant was armed with his
11 duty weapon during both crimes.

12 Rule 4.414(a)(3): Weighs Against Probation -- The motel victim was particularly
13 vulnerable given that the defendant acted under color of law. The home victim was also
14 vulnerable because the defendant took advantage of his perceived friendship to gain access
15 to her home.

16 Rule 4.414(a)(4): Weighs Against Probation -- While no physical injury was inflicted,
17 the defendant inflicted emotional injury on both victims.

18 Rule 4.414(a)(5): Weighs in Favor of Probation -- It is not believed that either victim
19 suffered a monetary loss during the course of either crime.

20 Rule 4.414(a)(6): Weighs Against Probation -- Not only was the defendant an active
21 participant in each crime, he was the only participant.

22 Rule 4.414(a)(7): Weighs Against Probation -- Neither crime was committed because
23 of an unusual circumstance, such as great provocation, which is unlikely to recur.

24 Rule 4.414(a)(8): Neutral -- Neither crime demonstrates criminal sophistication or
25 professionalism on the part of the defendant. The defendant believed his law enforcement
26 position of authority would deter the two victims from coming forward against him, and that
27 belief is neither sophisticated nor professional.
28

1 Rule 4.414(a)(9): Neutral -- The facts do not show that the defendant took
2 advantage of any position of trust or confidence as to the hotel victim. He did take
3 advantage of a position of trust or confidence regarding the home victim.

4 Rule 4.414(b)(1): Weighs in Favor of Probation -- The defendant has no prior record
5 of criminal conduct. That said, there are *Harvey* waived charges that need to be factored in.

6 Rule 4.414(b)(2): Weighs in Favor of Probation -- The defendant has not previously
7 been on probation or parole.

8 Rule 4.414(b)(3): Weighs in Favor of Probation -- It is presumed that the defendant
9 is willing to comply with terms of probation.

10 Rule 4.414(b)(4): Weighs in Favor of Probation -- It is believed that the defendant
11 has the ability to comply with reasonable terms of probation.

12 Rule 4.414(b)(5): Weighs in Favor of Probation -- The likely effect of imprisonment
13 on the defendant can be assumed to be adverse to his family and above average.

14 Rule 4.414(b)(6): Weighs in Favor of Probation -- Given his law enforcement
15 background that is now forfeited, the adverse collateral consequences on the defendant's
16 life resulting from a felony conviction is above average.

17 Rule 4.414(b)(7): Weighs Against Probation -- It is not believed that the defendant is
18 remorseful for the crimes committed; though, he is remorseful he was caught, charged, and
19 convicted.

20 Rule 4.414(b)(8): Weighs Against Probation -- Imprisoned or not, the People assert
21 the defendant continues to be a danger to others through learned behaviors of dominance
22 and deceit.

23 **Rules of Court, Rule 4.421: Circumstances in Aggravation**

24 Rule 4.421(a)(2): The defendant was armed with his duty weapon at time of each
25 crime.

1 Rule 4.421(a)(3): At least the home victim was particularly vulnerable. Given the
2 defendant's misconduct under the color of law, it is also argued that the motel victim was
3 also vulnerable.

4 Rule 4.421(a)(6): By definition, the defendant attempted to illegally interfere with
5 the criminal justice system and the judicial process.

6 Rule 4.421(a)(7): The defendant has been convicted of crimes for which consecutive
7 sentencing could be imposed but for which concurrent or no further jail sanction has been
8 indicated.

9 Rule 4.421(a)(8): The manner in which the motel crime was carried out (returning
10 to the room) definitely indicates planning.

11 Rule 4.421(a)(11): In regards to the home victim, the defendant took advantage of
12 a position of trust or confidence to commit the crime.

13 **Rules of Court, Rule 4.423: Circumstances in Mitigation**

14 Rule 4.423(b)(1): The defendant has no prior criminal record.

15 III.

16 **ANALYSIS**

17 The prosecution respectfully agrees with the crimes and Rules of Court analyses
18 performed by the Sonoma County Adult Probation Department. The People believe the
19 sentencing recommendation, as submitted, is a just result, given all the crime and personal
20 factors that must and should be considered.⁷

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23 ⁷ Some might find it easy to pander to howling voices and the protests of a few that, in part, demand
24 uninformed and crude revenge on this defendant versus constitutional and reasoned justice. Some might find
25 it easy for the prosecution to simply argue for and demand an aggravated state prison sentence and then sit
26 down. But that will not be the case in this or any other criminal case in Mendocino County. As has always
27 been emphasized by the current District Attorney during his terms in office, and as further codified in formal
28 and informal rules of professional behavior, a "prosecutor should not make, cause to be made, or authorize
or condone the making of, a public statement that the prosecutor knows or reasonably should know will have
a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of
the accused...." Prosecutors have special and heightened professional responsibilities to the criminal justice
system, to victims, and to defendants. As noted in the official comments to California State Bar Rule 5-110,
"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."

1 In evaluating what is an appropriate and just sentence for this defendant, it cannot
2 be understated his abuse of a significant position of power and authority. It also cannot be
3 understated his lack of honor and honesty, as evidenced by the deceit he has demonstrated
4 by seeking to hide an illegal assault weapon with a relative, a charge that has been *Harvey*
5 waived and should be considered; the methamphetamine hidden away in his duty locker at
6 UPD, a charge that has been *Harvey* waived and should be considered; and his willing
7 submission of false documentation to the court regarding firearms, a charge that has also
8 been *Harvey* waived and should be considered.

9 The Court's "indicated" sentencing was not a sentence bargain entered into with the
10 concurrence of the People of the State of California. If, as expected on further reflection
11 and consideration of all available information and rules of court, the Court decides the
12 "indicated" should not be honored, the People assert the defendant entered into open pleas
13 and sentencing should proceed, as outlined and recommended in the probation report and
14 recommendation.

15 IV.

16 **CONCLUSION**

17 As was the case on July 7, 2022 and continuing to the present, the People
18 respectfully disagree with the Court's indicated sentencing for the reasons set forth herein
19 and as may be supplemented during the upcoming sentencing hearing.

20 The People do agree with the sentencing recommendation proposed by the Sonoma
21 County Probation Department.

22 The People are respectfully moving the Court to honor and follow the general
23 objectives of sentencing previously set forth above. In particular, the People believe this
24 defendant is deserving of additional punishment and the sentence to be imposed provides
25 an excellent opportunity to encourage this defendant to lead a law-abiding life in the future
26 and deter him from him from future offenses. Moreover, this case also presents as an
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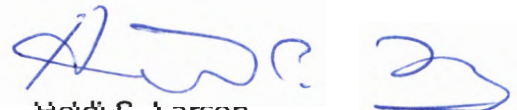
1 opportunity to deter others so inclined from the same or similar criminal misconduct by
2 demonstrating its consequences.

3 The hard-working, honest, and ethical law enforcement officers here in in Mendocino
4 County and those beyond our boundaries support the bench in making an example of this
5 former law enforcement officer so others don't stray from the straight and narrow good of
6 public safety-oriented policing. While the law requires that the court factor in impacts on the
7 defendant and his family, it cannot be overlooked that defendant Murray's serial misconduct
8 taints and has long-term consequences for all who wear a law enforcement badge. His
9 misconduct unfortunately diminishes the trust of some in the community willing to paint
10 distrust with a broad brush on all law enforcement officers and agencies.

11 In conclusion, the People further pray for any additional relief that the court deems just
12 and proper.

13 DATED this 29th day of August 2022.

14 Respectfully submitted,

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16 Heidi C. Larson
17 Deputy District Attorney
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PROOF OF SERVICE

I the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. I am employed by the Mendocino County District Attorney, Courthouse, State and Perkins Streets, Ukiah California.

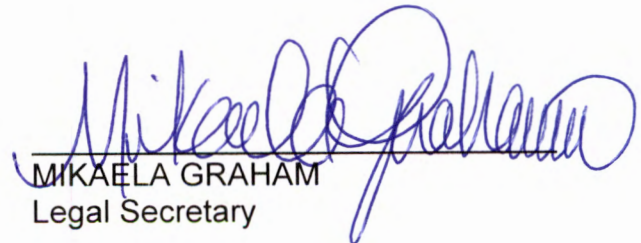
On the date indicated below, I served a true copy of the following document People's Sentencing Statement and Statement in Aggravation; Points and Authorities in the manner described below to:

Stephen Gallenson
1100 Mendocino Avenue
Santa Rosa, CA 95401

- ☒ BY MAIL: The above-referenced true copies were placed in a sealed envelope with postage thereon fully prepaid addressed to the above party and such envelope was placed for collection and deposit with the United States Postal Service on the date listed below at Ukiah, California.
- ☐ PERSONAL SERVICE: By personally delivering a true copy thereof to the person and/or representative listed above.
- ☐ FACSIMILE: In addition to above, a courtesy copy was faxed to the party listed above.

Executed on August 29, 2022 in Ukiah, California.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.


MIKAELA GRAHAM
Legal Secretary