

DA
18

CLERK
DEP.
FILED

95 MAY -3 PM 3: 31

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)
)
 Respondent,)
)
 v.)
)
 SAMUEL VILLEGAS LOPEZ,)
)
 Petitioner.)
 _____)

No. CR 163419

(Assigned to the Honorable
Peter T. D'Angelo, Judge)

SUPPLEMENTAL PETITION FOR
POST-CONVICTION RELIEF

Law Offices of Robert W. Doyle
By Robert W. Doyle
Attorney for Petitioner

**SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES**

Table of Contents

- I. Ineffective Assistance of Counsel - Trial
 - A. Failure to Exclude Stricken Juror
 - B. Failure to Request a Change of Judge

- II. Conclusion

- III. Exhibits

I INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL

A Failure to Exclude Stricken Juror

On the first day of trial, a venire panel was called to the courtroom. That panel included Norman White, who was present. (Record of Transcript, 4/16/87, pg. 38). During jury voir dire, the judge asked the following question,

"Have any of you or any members of your family or close personal friends ever served as law enforcement officers?"

(R.T., 4/16/87, pg. 57)

Several jurors answered this question affirmatively. One of them was juror Norman White. The court spoke to Mr. White on this issue as follows:

The Court: "Mr. White?"

A Juror, "A cousin, 12 years on the police department, and close friends retired police officers."

The Court: "Anything about those relationships that would lead you to believe you'd give any more or less credence to the testimony of the police officer simply because he or she were a police officer?"

A Juror: "I feel in the line of work police do, I'd have to be partially influenced by their good, solid police work."

The Court: "You don't think you could judge that testimony objectively and on the same standards as you would any other witness?"

A Juror: "I believe I could do that."

The Court: "Well, let's make sure. You're not telling me that you would believe a police officer more than you would a civilian witness?"

A Juror: "I'd have more faith in the police officer."

The Court: "Well, we'll get back to the other question then. You think you would give more weight to the testimony of a witness simply because he was a police officer?"

A Juror: "I believe I would."

The Court: "You couldn't judge that testimony objectively, on the same standard as you would any other witness?"

A Juror: "I believe I would have to judge in the favor of police officer's testimony."

The Court: "All right, sir, I'll excuse you, please report back to the jury commissioner. The clerk will call the name of another juror. "

(R.T., 4/16/87, ppg. 57 - 59)

Despite having been excused by the court, there is evidence that juror Norman White remained on the jury. Later during voir dire, juror Norman White provided information about his background. (R.T., 4/16/87, pg. 80) Eventually, Norman White was one of the people who ultimately sat as a juror at Petitioner's trial. (R.T., 4/16/87, pg. 88) Mr. White was a juror who voted for the final verdicts. (R.T., 4/27/87, pg. 58)

Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms, and that the deficient performance resulted in prejudice to the defense. Strickland v. Washington, 66 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984), State v. Atwood, 171 Ariz. 576, 832 P.2d. 593 (1992). The record indicates that juror Norman White remained after being excused and sat on the trial jury in this case. At this trial, a large number of police officers testified, all for the prosecution. No police officers were called to testify for the defense. Norman White's recorded answers to the court's questions shows that he was predisposed to believe police officers more than any other witness. Counsel was ineffective for failing to see that this juror did not leave the court. Counsel was also ineffective for failing to call this matter to the court's attention. In the alternative, Petitioner's appellate counsel

was ineffective for having failed to see this issue during appellate review. Petitioner is prejudiced because someone predisposed to believe the police more than other witnesses remained on the jury for a trial where a large part of the State's case was proven by police officer testimony.

B. Failure to Request a Change of Judge

In 1986, Petitioner's brothers were before this same trial judge for trial on murder charges. Jose Lopez pled guilty for first degree murder and was sentenced for life imprisonment pursuant to a plea agreement. George Lopez went to trial and was sentenced to death. George's case was overturned and George was resentenced to life by a different trial judge.

It was ineffective assistance of counsel for Petitioner's counsel to fail to move for a new trial judge. Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms and that the deficient performance resulted in prejudice to the defense. Strickland v. Washington, 66 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984), State v. Atwood, 171 Ariz. 576, 832 P.2d. 593 (1992). Petitioner has previously raised portions of this argument in the Petition for Post-Conviction Relief (See Petition for Post Conviction Relief, filed December 19, 1994, Section II). There is new evidence that the conduct of Petitioner's counsel fell below prevailing professional norms. After Petitioner's request, it would have been reasonable action of counsel to look into the circumstances surrounding the sentencings of George and Jose. In Jose's presentence report, there is a disturbing reference. One of the persons contacted by the presentence report writer was an acquaintance of the victim, Marcario Suarez. Ms. Rita Castellanos related Mr. Suarez's popularity in the community and indicated her poor opinion of Jose Lopez and his brothers. The presentence report writer even quoted this person's detrimental comments concerning how worthless the Lopez brothers were (See Exhibit 1, Presentence Report in State v. Jose Villegas Lopez, pg. 6, Attached). The trial judge in this matter saw this report and read this comment in April of 1986, only fifteen months before sentencing Samuel Villegas Lopez to death in June of 1987.

There were also disturbing matters contained in the presentence report for George Lopez. The last comment by the presentence report writer characterizes the "defendant and his brother as extremely dangerous individuals." (See Exhibit 2, Presentence Report of George V. Lopez, pg. 4, Attached). The trial judge also read this comment in April of 1986.

It must be noted that it would not have taken any great amount of investigation to discover these problems. Jose Lopez was represented by the Maricopa County Public Defender's Office at trial, as was Petitioner. As a Deputy Public Defender, Petitioner's trial attorney would have had easy access to the file of Jose Lopez, including this presentence report. The presentence report for George Lopez was available to anyone who asked to see the court's file kept by the Clerk of the Court. Failure to listen to Petitioner's request and to conduct even a cursory examination into the matter falls below prevailing professional norms. Petitioner is also prejudiced because the impact of this statement can not be discounted. These comments were not only prejudicial to Jose and George Lopez, but later to Petitioner as well. It was ineffective assistance of trial counsel to fail to call this problem to the court's attention and to proceed to trial with yet another "worthless and extremely dangerous" Lopez brother before the same trial judge.

II. CONCLUSION

For the foregoing conclusions, Petitioner is entitled to a new trial.

RESPECTFULLY SUBMITTED this 2nd day of May, 1995.

By Robert W. Doyle
ROBERT W. DOYLE
Attorney for Petitioner

COPIES of the foregoing
delivered this 4th day of
May, 1995 to:

Hon. Peter T. D'Angelo
Judge of the Superior Court
201 W. Jefferson
Phoenix, AZ 85003

Ms. Dawn Northup
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85003

Mr. Samuel V. Lopez
Petitioner

By Robert W. Doyle
ROBERT W. DOYLE
Attorney for Petitioner

III. EXHIBITS

1. Presentence Report for Jose Lopez
2. Presentence Report of George Lopez

STATE OF ARIZONA -- COUNTY OF MARICOPA -- ADULT PROBATION DEPARTMENT

P.O.: PATRICK HEALY

PROB. #

NAME JOSE VILLEGAS LOPEZ

RACE Mex SEX MJ 5'7"

RESIDENCE

EYES Bro HAIR B1k WT 140

DOB 1-6-65 AGE 21

PHONE MESSAGE PHONE None

CITIZEN OF USA

AKA OR MAIDEN None

BIRTHPLACE Phoenix, AZ

ID MARKS Tattoos-R-arm; R ankle

DRIVER'S LIC. NO. Unknown

EMPLOYER/ADDRESS/PHONE Unemployed

S.S. NO.

FBI NO. 446 505 EAO

OCCUPATION Laborer

EDUCATION 9

BOOKING NO. 810629

MARITAL Single

RELIGION Catholic

CHILDREN: 0

MANUAL FILED 1985 APR 7 11 11: 29

CURRENT OFFENSE

CAUSE NO. 152231B OFFENSE DATE 10-4-85 NCIC 0949D

CHARGE Count II: Murder First Degree, a Class 1 Felony

A.R.S. NOS. 13-1105, 1101, 703, 301, 302, 303, 304

DATE OF ARREST 10-7-85

ARRESTING AGENCY PHPD

DATE INCAR. 10-7-85

REL. DATE

REL. STATUS Jail

DAYS IN JAIL THIS ARREST 175

REMAND JUVENILE COURT/DATE--NO

DEFENSE COUNSEL Spencer Heffel, DPD

PROSECUTOR John Birkemeier

GUILTY BY/DATE Alford 3-3-86

SENTENCING JUDGE PETER T. D'ANGELO

DATE OF SENTENCE 4-2-86

CODEF/DISPOS Gerge Villegas Lopez

CRIMINAL HISTORY

WARRANTS OUTSTANDING

NO. CONVICTIONS: FEL MISD 1 JUV
NC. INCARCERATIONS: PRISON JAIL
ESCAPE OTHER
NO. SUPERVISIONS: PROB PAROLE

CASE NO. CHARGE STATE
OTHER:

GENERAL INFORMATION

NARCOTICS/ALCOHOL HISTORY U-Alcohol, PU-Marijuana

TREATMENT/PROGRAMS None

MILITARY HISTORY: NOT APPLICABLE

PROBATION:

BRANCH TYPE DISCH. DISCH. DATE
ENTRY DATE

PROB. TERM. DATE TYPE TERM. CLASS

SPOUSE/RELATIVES/CHILDREN

NAME RELATION AGE ADDRESS PHONE

1148N/03-28-86/Barbara

26

THE STATE OF ARIZONA
Plaintiff

vs.

JOSE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231B

HONORABLE PETER T. D'ANGELO

CRIMINAL DIVISION 10

SUPERIOR COURT

PRESENTENCE INVESTIGATION

PRESENT CHARGE: Count II: Murder First Degree, a Class 1 Felony; originally charged as Count I: Armed Robbery, a Class 2 Felony and Count II: Murder in the First Degree, a Class 1 Felony.

PLEA: March 3, 1986 (Alford).

DEFENSE COUNSEL: Spencer Heffel, Deputy Public Defender.

PRESENT OFFENSE:

The following information is taken from Phoenix Police Departmental Report #85-120652:

On October 4, 1985, between 8:00 and 9:00 p.m., the victim, Macario Suarez (M/M, nineteen years old) was murdered by George Lopez and Jose Lopez in a vacant lot at 2500 West Polk, during an apparent robbery attempt. Cause of death was multiple stab wounds to the body, and multiple blows to the head. George Lopez and Jose Lopez then tied the victim's hands and feet, and put the victim in the trunk of the victim's vehicle and drove to 3500 West Durango, where they threw the body into a canal, retaining the victim's wallet, money and vehicle. The body of Macario Suarez was found in the canal at 800 South Sixty-seventh Avenue, on October 5, 1985, at approximately 1:30 p.m.

On October 5, 1985, Detective M. Rea was assigned to conduct the homicide investigation. The following information is taken from reports by Detective Rea, Detective Lott, Officers Kowalz and Lustig, all of the Phoenix Police Department.

A subsequent coroner's report noted: five stab wounds in the body by a one-half-inch wide knife blade, approximately three inches in length. There were contusions on the right forearm, consistent with an attempt to defend, also contusions on the upper abdomen and lips. An upper

tooth was missing. On the left inner elbow there was a contusion and a stab wound, consistent with defensive injury. The victim had seven lacerations on the side of the head, from eyebrow to top of the head, caused by a long, narrow blunt object. Also, there was a large abrasion on the right elbow inflicted after death. The doctor concluded that death had occurred before the body was placed in the water. The investigating officers found carpet fibers at the left wrist when they removed the T-shirt binding.

On October 7, 1985, Jose and George Lopez were stopped by police who had been searching for them. The officer noted blood stains on George's tennis shoes, and a large blood stain on George's undershorts.

In subsequent questioning, George admitted that he and Jose had stabbed the victim, beat him over the head with a tire iron, tied his hands and legs and threw him in the canal. He identified a photo of the victim. He went with the investigating officers to 2500 West Polk and indicated the place of the killing, an empty lot. He also showed the section of the canal where the body had been thrown in. He also pointed out the trash container at 3129 West Melvin where he had put the victim's wallet. The wallet was found with identification in it for a Hugo Munoz, a name found to be used by the victim as an alias. It is noted the victim was an illegal alien. The knife used in the murder was also found at in the empty lot 2500 West Polk. It had blood stains on it.

After being confronted with George's story, the defendant, Jose, admitted the crime. He explained to the officers that they had originally met the victim at the Rainbo Paint and Body Shop. He admitted that he and George had murdered the victim and placed his body in a canal.

The police investigated at the Rainbo Body Shop and spoke to Rita Castellanos and her husband, Placido. They are the owners of the business. Ms. Castellanos said she was calling the hospitals in a search for a missing employee. She described the victim's vehicle, and identified the photo of the body the police had as picture of the missing employee named, Macario Suarez. The officers spoke to the victim's brother, Jaime Suarez, a friend, Pedro Zabala, and the owner Placido Castellanos. All identified the photo. All agreed that the defendant was an illegal alien who had been living in Phoenix for at least six years under the name Hugo Munoz. From the interview the police received the following details: the victim was to meet two men who matched the description of George and Jose Lopez on October 4, 1985, to attend a party. He had first met them on October 1, 1985, at Fred's Market on Van Buren. The victim had explained to his co-worker's that these two men approached him and suggested that if he would provide the car they would fix him up with some young girls and furnish the beer for a party on

Friday, October 5, 1985. The employees also described a couple of visits by the Lopez brothers to the Rainbo Auto Body Shop. These visits were to remind Macario of the planned party.

Meanwhile in the investigation the victim's car was located at the police impound. It had been found at 5:30 on October 5, 1985, at 3139 West Polk. It was abandoned and had been burned extensively.

In returning to the police questioning of George Lopez, the following is noted: George originally denied knowing the person in the photo and told the story of attending a party at a friend's house with his brother Jose. Finally, he did admit knowing the person in the photo and said that that person had tried to stab him. He described riding around with brother and the victim. He said that all three were drinking. He stated that they drove to South Mountain Lookout and rode around for an hour or so. He then said the victim started speaking weird Spanish and explained that the victim was "wetback." He said that they then stopped somewhere and it was dark and at this time the victim got a big knife and "he came at me. I hit him in the face and he still came at me, and we fought for a couple of minutes." He then took the blame for the entire stabbing incident and claimed that he had hit the victim on the head with a jack handle. He said he tied the victim's hands with strips of his own T-shirt, and put the victim in the trunk. He took responsibility for driving with the car, dumping the body in the canal and throwing the wallet in the trash can container. He then explained that he returned to the party at the house of their friend Keith, leaving the keys in the car in the alley behind Keith's house. He claims he took nothing from the wallet. He does not make any comment about the destruction of the car.

Jose's story to the police was as follows: they met the victim at the Rainbo Paint and Body Shop. They went for a ride. He said they had never met him before and did not know why they went with him. Jose claimed that he, Jose, "only had two or three beers." He stated that the victim got drunk, talked and drove weird, and told them to get out. He said they were standing around when a fight started between the victim and George. He said he did not know if the victim had a weapon but maybe he had a knife. Jose had no weapon. When asked who stabbed the victim he answered, "I don't know." He claimed he hit the victim once in the head but not hard. He said he got a tire iron from the open trunk of the car because the victim was fighting his brother with a knife. He claimed that, seeing the victim fighting his brother, he got the iron, hit the victim once and the knife dropped. A big fight followed in which he was rolling around on the ground with the victim and the victim had the knife. He does not know who did what. He claimed the victim had the knife while on the ground. Jose says he kicked

at the victim, his foot hit the knife, and maybe drove it into the victim's side. They tied up the victim and threw him in the canal because of panic. He also said he did not know if the victim was dead. He claimed to the police that scratches found on his arms were from prior incidents.

In the police interview with Pedro Zabala at Rainbow Auto Shop, Pedro reported that on October 2, 1985, one of the Lopez brothers came and sold a bike to victim Suarez. Pedro says that Suarez had at least two \$100.00 bills in his wallet at that time. Pedro continues that both brothers came on Friday with a young girl and sold another bike to Jaime Suarez, the brother of the victim. Pedro says that at 5:00 p.m., on October 4, 1985, the brothers came again with the young girl whom he described as "White" to remind Macario of the party. Pedro described Macario as an "easy going and law-abiding person."

The police interviewed Ms. Tracie Fulkerson, sixteen years old, the girlfriend of Jose Lopez. She said that she was with Jose on Friday at about 4:00 at the Rainbow Garage. She said she remained with him until about 9:30 or 10:00 that night, when she went home and found her mother there. At this point Mrs. Fulkerson, Tracie's mother, claimed that she came home at 9:30 and Tracie was not home yet.

On October 9, 1985, Kathy Patterson, a lawyer handling Mrs. Fulkerson's divorce, called the police to report a letter that Mrs. Fulkerson had given to her. Mrs. Patterson turned over to the police an envelope containing two letters, a photo and a newspaper clipping. This envelope was addressed to Sammy Lopez, brother of Jose and George, and was addressed to the Madison Avenue Jail. It contained a photo of Tracie and a newspaper clipping referring to the discovery of a body in the canal.

The first letter is dated "Friday p.m. 10:00." In the letter she tells Sammy that Jose "has got this totally outrageous idea. I'll tell you if he goes through with the plan he has or if he doesn't over the phone. He is thinking crazy."

The second letter, dated "Sunday p.m. 10:00," tells the story as Jose related it to Tracie. She says Jose told her on Friday he intended to "shank that wetback" and return with the victim's car.

Jose told Tracie the victim resisted the theft of his car and he, Jose, stabbed and killed the victim.

DEFENDANT'S STATEMENT:

The defendant did not write a statement for this officer and the following is his statement as dictated to this officer: "It was sudden and unplanned. I was trying to defend myself. I felt my life was in danger. Macario wanted to party. We went to South Mountain and I had two beers. We started getting drunk and we were coming home. Macario drove crazy. Macario said, "Let's go over here (Buckeye near the canal)" I got out to take a piss. I heard arguing and I looked back to see the victim on my brother. I saw something shiny. The victim had a knife. He cut my brother on the back of his left arm. I ran back and told George to get away. I started fighting him on the ground. George went off to the side. We were rolling around and I felt something against my stomach that was hard. It must have been the knife. I didn't know which way the knife was pointed. I heard a noise, like gasping. I looked at my stomach and saw blood. I had hold of his wrist while he held the knife. After that everything stopped. He was on the ground moaning. I checked his pulse and neck. He was breathing. Then when I wanted to take him to the hospital I tried to pick him up. I checked and he wasn't breathing. I don't know when he died." "I did not deliberately kill him but my defense attorney said take the Alford plea."

The defendant declined to answer my question of why the victim was tied. He states that the stabbing took place in a fight over the knife. He states very definitely it was not premeditated.

COMPANION ACTION:

George Lopez, the brother and codefendant in this case was found guilty in this Court on March 27, 1986. His sentencing is set for April 25, 1986, with a presentence hearing on April 18.

STATEMENT OF REFERENCES AND INTERESTED PARTIES:

The victim's widow, Blanca Suarez and the victim's brother, Jaime Suarez, both returned to Mexico following the murder of Macario Suarez. As of the date of this report, this officer has been unable to contact Jaime Suarez for a statement or comments.

Placido Castellanos, the employer of Macario Suarez, was contacted and had the following comments to make: the victim was about twenty-one or twenty-two years of age, was very short, approximately 5'2" in height and weighed about 100 pounds. He was know by many people as a very gentle, quiet and retiring person. Mr. Castellanos employed the victim for

the last "six or eight years." He says that Mr. Suarez was the sole support of his mother in Mexico. During six years of employment he never missed one day.

Mr. Castellanos says, "Even though Macario was an illegal alien, the community lost a very productive citizen, worth 100 Jose Lopezes."

Regarding sentencing, Mr. Castellanos says this was a vicious crime which was done because Jose and his brother believed that no one would notice an illegal alien's disappearance. Mr. Castellanos recommends as heavy a sentence as possible in the case of Jose Lopez. He points out that Jose and George kept following Macario and Jaime around for the last few days. "It was obvious they were planning to steal his car, and they brought a young White girl around to tempt Macario into going out with them."

Ms. Rita Castellanos, the co-owner of Rainbo Garage, cites the outpouring from the community following the murder. She says people came "in droves" to express their sympathy. She also says that many of them, especially older people, commented on how worthless the Lopez brothers were.

Detective Dave Lott of the Phoenix Police Department comments that he believes the plea agreement calling for life imprisonment of a minimum of twenty-five years is suitable.

Detective Rea points out that one of the head blows and three of the stab wounds were each considered fatal blows. He states this is a terrible example of unnecessary "overkill."

Mr. Spencer Heffel, Deputy Public Defender recommends acceptance of the plea agreement. He indicated he will reserve any other comments until the day of sentencing.

Mr. John Birkemeier, Deputy County Attorney, recommends the plea agreement be accepted. He notes that the coroner concluded that three of the wounds inflicted would be fatal wounds. He commented on the brutality involved in this murder, which can only be appreciated by looking at the photos of the body. He notes there were seven wounds on top of the head, plus the stab wounds.

PRIOR RECORD:

JUVENILE:

Family: The defendant gave very little information referring to his family and background. He did say he is the son of Ronald and Elaine Lopez and resides in the family home. He claims that he has two brothers and two sisters. It is noted by this officer that in this investigation the police indicated that there were, in addition to his brother George, two other brothers. It appear the defendant is estranged from his family.

The defendant claims that he was born in Mesa and lived in Ohio for five years at some point in his life, but came back for his health. He says he attended Dobson High School until the ninth grade. He does not explain why he left school but he claims that he then got a G.E.D. He claims that his school career was free of problems. It is noted by this writer that various people connected with the case have indicated that the defendant and his brother were transients, living at times out of a car and at other times in a graveyard. The defendant has never been married, nor has he served in the armed forces.

Employment: The defendant listed only one job at JPTA in Phoenix, where he claims he did janitorial work from May, 1985 until August of 1985. In addition, he says, he does odd jobs.

Health: The defendant states that his health is good except for a problem with asthma.

Substance Use: Referring to drug and alcohol use, the defendant says he experimented with marijuana but did not keep up with it. He states he never

JOSE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231B

even tried cocaine, having tried marijuana only twice. He declined to mention his drinking habits.

FINANCIAL STATUS AND EVALUATION:

The defendant made no claim of having any money or any source of income.

DISCUSSION AND EVALUATION:

Before the Court is a twenty-one-year-old transient who has entered an Alford plea to a charge of murder in the first degree. The police report, including a coroner's report, photos of the victim's body and statements of people interviewed, prove that this was a most brutal murder. Evidence and testimony indicate that the defendant and his brother, over a few days time, persuaded and enticed the victim to accompany them on a date. Interested parties are unanimous in claiming that the defendant intended at the very least to steal the victim's car and possibly to steal his money. A letter written by the defendant's girlfriend, intended in complete confidence to the defendant's brother, indicates that the defendant planned to kill the victim before there was any disturbance or fight among the men. There has been no proof presented that the defendant and his brother did in fact steal hundreds of dollars from the victim, nor has there been proof that the defendant and his brother in fact blew up the victim's car, as described by the defendant to his girlfriend. However, this officer concludes that the defendant, with premeditation, and excessive, unnecessary brutality participated in the killing of the victim. The brutal murder was followed by the binding of the victim's hands and feet and the disposal of his body. After the crime, the defendant and his brother clearly made efforts to sell parts of the victim's car. They also very casually announced that the killing had occurred. It is likely, but unproven, that they destroyed the car that might have been a motive for their actions.

This officer believes that the defendant committed the crime without remorse. His only concern as of this date seems to be the length of time he will be punished for the crime. While the plea agreement calls for parole after twenty-five years, this writer believes the defendant will always present a threat to society.

It must be noted that in addition to being a productive person, although an illegal alien, the victim was such a passive person that his employer stated he would have given his car to anybody who threatened to beat him unless he did so. The employer stated, and this officer concurs,

JOSE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231B

that the murder was entirely unnecessary, even to accomplish the theft intended.

In making the recommendation below, the following factors were considered:

1. The plea agreement.
2. The brutality of the crime.
3. Premeditation and lack of remorse.
4. Statements of interested parties.

RECOMMENDATION:

It is respectfully recommended that the defendant be sentenced in accordance with the law. The defendant has served 175 days of presentence incarceration, not including today's sentencing date.

Respectfully submitted,

H. C. Duffie
Chief Probation Officer

I have reviewed and considered
the probation officer's report.

By: Patrick Healy
Patrick Healy
Deputy Adult Probation Officer
262-3326

Judge: Paul J. D'Angelo
Date: 4/1/86

PH:bc:1147N
March 28, 1986

THE STATE OF ARIZONA
Plaintiff

vs.

GEORGE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231A

HONORABLE PETER T. D'ANGELO

CRIMINAL DIVISION 10

SUPERIOR COURT

PRESENTENCE INVESTIGATION

PRESENT CHARGE: Count I: Armed Robbery, a Class 2 Felony; Count II: Murder, First Degree, a Class 1 Felony.

JURY VERDICT: March 27, 1986.

DEFENSE COUNSEL: Tom Foster, court appointed.

PRESENT OFFENSE:

The following information is taken from Phoenix Police Departmental Report #85-120652:

On October 4, 1985, the defendant and his brother, Jose Lopez, murdered Macario Suarez

The investigative report indicates that the victim's body was found in a canal near 800 South Sixty-seventh Avenue.

The investigative report notes that the victim's hands and feet were tied, probably before the murder.

The medical examiner's report sited the cause of death as, "multiple stab wounds with fracturing of skull." The report noted that the body showed multiple lacerations to the left side of the scalp, contusion of the nose and the left cheek, and multiple stab wounds in the front and back of the victim's chest.

The murder weapon and a brown leather wallet containing the identification for Hugo Munoz (an assumed name used by the victim) was found in a vacant lot. The presence of the wallet at this location indicate that the motivation for the attack on the victim might have been robbery.

GEORGE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231A

DEFENDANT'S STATEMENT:

In the presentence questionnaire the defendant wrote, "It's very simple, I was in the wrong place at the wrong time, and I'm innocent on my charge!"

COMPANION ACTION:

Jose Lopez entered into a plea agreement wherein he pled guilty to first degree murder and was sentenced in this Court to life imprisonment.

STATEMENT OF VICTIMS:

The victim in this offense was a Mexican National who was in this country illegally. Therefore, most of his family lives in Mexico. He and his brother, Jaime Suarez, were employed together at the Rainbow Paint and Body Shop, 2726 West Van Buren. Jaime Suarez continues to be employed there. This officer contacted Rita Castellanos who, along with her husband, owns the Rainbow Paint and Body Shop. Jaime Suarez speaks no English. This officer asked Rita to act as interpreter which she said she would. This officer, then, left a message for Jaime Suarez with Mrs. Castellanos. She stated that she would contact him as soon as possible. As of the filing of this report, this officer has had no contact from Mr. Suarez or Mrs. Castellanos.

STATEMENT OF REFERENCES AND INTERESTED PARTIES:

This officer contacted Homicide Detective Mitch Rae, who stated that this was a "brutal, senseless murder."

Defense Council Tom Foster stated that it was his opinion that the defendant was frightened of the events perpetrated by his brother. He feels that George did not mean for the murder to happen. With regard to the sentencing in this matter, he feels that his client should receive the same sentence as did Jose.

Deputy County Attorney John Birkmeier states that he feels the defendant is the one most responsible for the victim's death. Mr. Birkmeier stated that he will file a sentencing memorandum asking for the death penalty.

PRIOR RECORD:

JUVENILE:

A query to the Juvenile Court revealed that the defendant has no file there.

ADULT:

SOCIAL HISTORY:

Family: The defendant was born June 16, 1966, in Phoenix, Arizona. He is one of eight children born to his natural parents. He states that his natural parents were separated when he was approximately age five and his mother was left with the responsibility of raising the children. He states that she worked in order to maintain them. The defendant left home when he was sixteen years of age.

Education: The defendant states that he completed the eleventh grade at Carl Hayden High School.

Marital: The defendant has never been married.

Military: The defendant has had no military service.

Employment: The defendant cites his employment history as follows:

| <u>EMPLOYER</u> | <u>CITY/STATE</u> | <u>KIND OF WORK</u> | <u>DATES FROM/TO</u> |
|---------------------------------|-------------------|---------------------|----------------------|
| on | Phoenix, AZ | Machine operator | 1983 to 1985 |
| Phoenix Tent and Awning Company | Phoenix, AZ | Installation | 1980 to 1983 |
| Hurley Trucking Company | Phoenix, AZ | Loader | 1980 to 1982 |

Health: The defendant is in good health and has no physical disabilities. He is NOT presently under doctor's care or taking prescription medication. He indicates he has never been treated for mental or emotional disorders.

GEORGE VILLEGAS LOPEZ
Defendant

CAUSE NO. 152231A

Substance Use: The defendant indicates he consumes a six-pack of beer per week and that he has no drinking problem. He states that he has used marijuana "a few times." He states he has never used or abused any dangerous or narcotic drug.

FINANCIAL STATUS AND EVALUATION:

The defendant has indicated that he is unemployed at the present time and, therefore, has no income or assets of note or expenses or liabilities of note.

DISCUSSION AND EVALUATION:

The most important aspect of this case is, of course, that the defendant participated in the deliberate murder of an individual unknown to him. Whatever the motivation for the attack on the victim, it was apparent from the condition of the victim's body and the wounds inflicted that force far in excess of what was necessary to accomplish their "task" was used. This, of course, renders the defendant and his brother as extremely dangerous individuals.

RECOMMENDATION:

Count I: it is respectfully recommended that the defendant be sentenced to the Arizona State Prison for a term in excess of the presumptive. Count II: it is respectfully recommended that the defendant be sentenced as prescribed by law.

The defendant should be given credit for 203 days already served in the Maricopa County Jail. This figure does not include the date of sentencing.

Respectfully submitted,

H. C. Duffie
Chief Probation Officer

I have reviewed and considered
the probation officer's report.

By: Neal Nicolay s/s
Neal Nicolay
Deputy Adult Probation Officer
262-3843

Judge: Steven F. D. Angeles

Date: 4/25/86

NN:dvc:0033n
April 18, 1986