

DEC 13 2005

ALAN SLATER, Clerk of the Court

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ORANGE, HARBOR JUSTICE CENTER**

11 THE PEOPLE OF THE STATE OF CALIFORNIA,)
12 Plaintiff)
13 vs.)
14 ADAM STUART ZUCKERMAN,)
15 Defendant.)
16

CASE NO. 01HF1383
PEOPLE'S OPPOSITION TO P.C. §§
17(B) & 1203.4 MOTIONS.

18 **STATEMENT OF THE CASE**

19 Defendant was originally charged in November, 2001, along with two codefendants,
20 Henderson and Rigsby, with violating Penal Code sections 245(b) (Assault With A Semi-Automatic
21 Firearm), 243(d) (Battery With Serious Bodily Injury), 245(a)(1) (Assault By Means of Force Likely
22 To Produce Great Bodily Injury), 236 (False Imprisonment By Violence) and 422(Criminal Threats).
23 He ultimately pleaded guilty to only the last count, the violation of Penal Code section 422, was
24 sentence to 60 days in jail, and given formal probation on the condition that he not contact the victim
25 and pay restitution. He now moves to have his felony conviction reduced to a misdemeanor pursuant
26 to Penal Code section 17(b) and have the case dismissed pursuant to Penal Code section 1203.4. The
27 People oppose both motions.

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1 cell phone and that defendant had answered. She said that defendant had threatened to kill Brown
2 and his family. She also said there was a handgun inside the business.

3 At this point victim Brown walked out of the business and approached the officer. He
4 initially denied what was going on, but upon further questioning said that he was having trouble
5 talking because he thought his jaw was broken. He said he had been beaten up by two Black males
6 because defendant thought he had taken his money. He asked the officer to handcuff him and take
7 him away from the business because he was "scared to death of them." The officer did so.

8 The police ultimately interviewed defendants Henderson, Zuckerman and Rigsby. Henderson
9 and Rigsby had left the business before the police arrived and were apprehended later elsewhere.
10 Henderson said that he had gone to defendant's business, learned that defendant Zuckerman
11 suspected Brown of theft, heard Brown deny it, and accompanied Brown to Buena Park along with
12 defendant Rigsby. He said he did so because defendant Zuckerman "did not want anything to
13 happened to Brown." He denied having a gun at the business in Irvine. When asked why Rigsby
14 had hit Brown in the face, Henderson initially said he didn't know, then said "Did he do it? I don't
15 know." He then said he "heard about" Rigsby hitting Brown, but had been in the hallway of the
16 business when it happened. Henderson initially denied knowing anything about a gun but, when told
17 that DNA testing would reveal whether he had touched it, then said he had in fact touched a gun
18 belonging to defendant Zuckerman about a week earlier.

19 Defendant Zuckerman said that he had borrowed from a friend named "Scott" weeks ago.
20 He admitted that the gun was inside the business, but claimed that he had not seen it for about a
21 week. He said he usually keeps it unloaded in his desk in his bedroom. He said he had no idea
22 whether defendant Henderson had taken the gun at some point in time. He said that both defendants
23 Henderson and Rigsby had been in the bedroom where the gun was kept earlier that day.

24 Defendant Zuckerman admitted that he had accused Brown of stealing the money at the
25 business that day but, like defendant Henderson, denied being in the room when defendant Rigsby
26 hit Brown in the jaw. He said that Brown ultimately told him he knew who had stolen the money
27 that Brown wanted Henderson and Rigsby to accompany him to retrieve it. He denied using violence
28 against Brown or threatening him.

1 Defendant Rigsby admitted working for defendant Zuckerman and said that defendant
2 Henderson was his cousin. He said that Brown came to a nearby strip club where Rigsby and
3 Henderson were talking to some girls and asked them to help him retrieve some money that he was
4 owed. He said that he, Henderson and Brown then drove to Buena Park.

5 Rigsby then admitted that he was lying. He admitted that he was at Zuckerman's business
6 when Brown had denied stealing the money and that he (Rigsby) had hit Brown in the fact. He
7 admitted that defendant Henderson had pointed the gun at Brown's head, but said that the gun was
8 not loaded and that Henderson had only done so as a "scare tactic." He said he did not clearly recall
9 defendant Zuckerman threatening to take Brown out to the desert, but did recall Zuckerman making
10 threatening statements such as, "I will kick your ass!"

11 On November 20, 2001, all three defendants were charged by felony complaint as set forth
12 above. Attorney Paul Meyer appeared for defendant Zuckerman on December 5, 2001, and within
13 a short time attorney Meyer began producing signed declarations from various people. One was
14 from one of defendant Zuckerman's employees, Corey Dennen, who swore that victim Brown had
15 actually threatened *him*. One was from defendant Rigsby stating that what had "really happened"
16 was that there never was a gun and that he had gone along with the Brown's "story" because Brown
17 had threatened him. Another was from a person named Boas Peres, who swore that he had heard
18 *Rigsby* threatening to steal from defendant Zuckerman. One was from another employee of
19 defendant Zuckerman, Adam Tomeo, stating that he was present at Zuckerman's business the day
20 of the alleged offenses while victim Brown was there and did not "hear anyone threaten Paul Brown,
21 nor . . . see a gun. At no time did I hear Mr. Zuckerman or anyone else suggest or order anyone to
22 threaten, commit a battery upon anyone, nor detain or kidnap any individual." Another was from
23 another employee of defendant Zuckerman, David Klepinger, stating that he was present in his office
24 at Zuckerman's business the day of the alleged offenses and hadn't heard anything. He said he saw
25 victim Brown leaving with defendant Henderson and Rigsby, but he looked normal. He opined that
26 there was nothing preventing Brown from asking him for help. Contradicting Zuckerman's own
27 statement to police, another person swore that he had loaned Zuckerman a gun, but had retrieved it
28 prior to the alleged offenses. Finally, in February, 2002, Zuckerman's employee Corey Dennen

1 may suggest inconsistent dispositions, the sentencing judge shall consider which
2 objectives are of primary importance in the particular case. [P] The sentencing judge
3 should be guided by statutory statements of policy, the criteria in these rules, and the
4 facts and circumstances of the case.”

5 Here, an evaluation of the factors set forth in Alvarez militates strongly against reducing
6 defendant’s conviction for violation of Penal Code section 422 to a misdemeanor pursuant to Penal
7 Code section 17(b). First, the nature and circumstances of the offense are extremely serious. Despite
8 the flurry of “declarations” submitted by defense counsel prior to the plea to massage the case, the
9 victim, Brown’s, version of the events was essentially corroborated by the three codefendants. (1)
10 Defendant admitted to threatening to kill the victim, Brown, in his guilty plea; (2) codefendant
11 Rigsby admitted striking Brown in his police interview; and (3) codefendant Henderson admitted
12 handling a handgun, which codefendant Rigsby told police Henderson had pointed at Brown in his
13 police interview.

14 Second, defendant makes absolutely *no* showing that he has any “appreciation of” the gravity
15 of the offense. If he has an appreciation of anything based on this case, it is an appreciation of the
16 leniency of the justice system. Rather than going to prison for threatening Brown and having him
17 kidnaped as he probably should have by rights, defendant pleaded guilty to only one offense. Then,
18 instead of serving his sixty day sentence in jail, defendant’s attorney first went back to the court after
19 the plea secured the court’s permission for defendant to do a work program in lieu of jail, then
20 somehow was able to do voluntary community service instead of CALTRANS work. Indeed,
21 defendant’s only “attitude toward the offense” seems to be one of denial and avoidance of the
22 consequences of his conduct.

23 Third, reducing the conviction to a misdemeanor would, in the People’s view, hardly serve
24 the objectives of sentencing set forth in California Rule of Court 4.410. It would not ensure that
25 defendant was appropriately punished. It would not encourage defendant to lead a law abiding life
26 and deter him from future misconduct. To the contrary, it would seem to condone his conduct and
27 send him a signal that he was somehow justified in his felonious conduct. It would hardly deter
28 others from criminal conduct by demonstrating its consequences. In summary, the defendant is
 simply not deserving of a reduced charge.

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CONCLUSION

For the foregoing reasons, the People respectfully request that the court deny defendant motions to reduce the felony conviction to a misdemeanor pursuant to Penal Code section 17(b) and then dismiss it pursuant to Penal Code section 1203.4.

Dated this 6th day of December, 2005.

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BY: 
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