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GARY WINDOM, PUBLIC DEFENDER
State Bar No. 086775
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 28 2007

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Attorney for the defendant Robbie Catchings

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

ROBBIE CATCHINGS DOB 02.20.69,

Defendant.

No. SWF006186

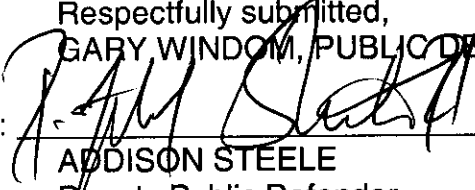
MOTION TO DISMISS COUNT ONE
PURSUANT TO PENAL CODE § 995

Date: January 7, 2008
Time: 8:30 a.m.
Dept: 61, Judge Couzens

**TO: ROD PACHECO, DISTRICT ATTORNEY FOR THE COUNTY OF RIVERSIDE;
DEPUTY DISTRICT ATTORNEY DAVID TAHAN; AND THE CLERK OF THE ABOVE-
CAPTIONED COURT:**

PLEASE TAKE NOTICE that on January 7, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 61 of the Riverside Superior Court, the defendant, Robbie Catchings, through his attorney the Public Defender by Deputy Public Defender Addison Steele will move for an order dismissing count one, an alleged violation of Penal Code § 243(d), pursuant to Penal Code Section 995(a).

DATED: December 28, 2007

Respectfully submitted,
GARY WINDOM, PUBLIC DEFENDER
By: 
ADDISON STEELE
Deputy Public Defender
Attorney for Robbie Catchings

Time estimate: 30 minutes

1 single punch from Catchings on Mr. Griffin. Mr. Bates was subsequently called at the
2 preliminary hearing in this case and testified that he never even talked to C.O. Tovar, but that
3 he had talked to a different correctional officer that suggested that he say that he witnessed
4 Mr. Catchings punch Mr. Griffin and that he would be rewarded for telling that story with extra
5 commissary items. Mr. Bates then declined the correctional officer's offer to make a false
6 witness statement and went about his business only to find out at the preliminary hearing that
7 statements were attributed to him that he did not make.

8 Another inmate, Robert Evans, talked to Mr. Griffin after the incident and asked him
9 what had happened to his eye. Mr. Griffin told Mr. Evans that he had fallen in the shower but
10 that the correctional officers thought that Mr. Catchings had hit him. When Mr. Evans further
11 inquired as to why the correctional officers had false information, Mr. Griffin told him that a
12 "homeboy" of Mr. Catchings "is snitching on his brother" and therefore, "Fuck him," referring to
13 Mr. Catchings. Mr. Griffin was subsequently sent to prison and until recently was living in a
14 secured housing unit at Pelican Bay State Prison. He gave a statement to a defense
15 investigator that he intends to refuse to testify if called as a witness by the prosecution.

16 Mr. Catchings has been charged with one count of a violation of Penal Code § 243(d),
17 battery with serious bodily injury and one count of a violation of Penal Code § 245(a)(1) with a
18 special allegation of great bodily injury. There are also two prison priors, two five year serious
19 offense priors and two strikes alleged. Mr. Catchings is facing a sentence of thirty-five years
20 to life for this incident.¹

21 Deputy District Attorney David Tahan has informed defense counsel that the photos of
22 the alleged injury to Mr. Griffin were destroyed. There are now only grainy black and white
23 photocopies of the injuries.

24 ////

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26 _____
27 ¹ Mr. Catchings has two five year serious prior conviction enhancements pursuant to Penal Code § 667(a) alleged
28 that are also alleged as strike priors, as well as alleged as one year prison prior enhancements pursuant to Penal
Code § 667.5(b). However the two prison prior allegations are from the same prison sentence as the two serious
priors and the court cannot sentence Mr. Catchings for both of the priors, *People v. Jones* (1993) 5 Cal.4th 1142.
Therefore his maximum sentence is thirty-five years to life, not thirty-seven years to life as it would appear with a
cursory look at the charges.

1 POINTS AND AUTHORITIES

2
3 I.

4 STANDARD OF REVIEW:

5 **A CRIMINAL DEFENDANT MAY CHALLENGE A MAGISTRATE'S HOLDING ORDER ON**
6 **GROUNDS THAT DEFENDANT WAS COMMITTED WITHOUT REASONABLE OR**
7 **PROBABLE CAUSE**

8
9 The legal principals applicable to defendant's motion are well established.

10 A defendant may file a motion in the superior court under Penal Code section 995 to
11 dismiss an Information on the ground that he was committed by a magistrate without
12 reasonable or probable cause. (Penal Code section 995, subdivision (a)(2)(B).)

13 A Penal Code § 995 motion may challenge one or more counts of an Information.
14 (*People v. Hudson* (1917) 35 Cal.App.234, 237.)

15 When an Information charges a misdemeanor as well as a felony offense, a Penal
16 Code section 995 motion may be utilized to challenge both types of offenses. (*Kellet v.*
17 *Superior Court* (1966) 63 Cal.2d 82, 826, fn. 3.) Penalty enhancement allegations may also
18 be challenged by a Penal Code § 995 motion. (*People v. Superior Court (Mendella)* (1983) 33
19 Cal.3d 754, 785-763.)

20 A Penal Code § 995 motion is based, and decided, exclusively on the transcript of the
21 preliminary hearing. Matters addressed by a magistrate that are outside of the transcript of
22 the preliminary hearing cannot be considered. (*People v. Brice* (1982) 130 Cal.App.3d 201,
23 208-209.) A superior court judge hearing a Penal Code section 995 motion sits strictly as an
24 appellate judge reviewing the magistrate's ruling. (*People v. Laiwa* (1983) 34 Cal.3d 71, 718.)

25 "A reviewing court may not substitute its judgment as to the weight of the evidence for
26 that of the magistrate, and, if there is some evidence to support the information, the court will
27 not inquire into its sufficiency [citations omitted]. Every legitimate inference that may be drawn

28 ////

1 from the evidence must be drawn in favor of the information.” (*Rideout v. Superior Court*
2 (1967) 67 Cal.2d 471, 474.)

3 Reasonable or probable cause sufficient to hold a defendant to answer in superior court
4 is that state of facts as would lead a person of ordinary caution or prudence to conscientiously
5 entertain a strong suspicion of the guilt of the accused. (*Ortega v. Superior Court* (1982) 135
6 Cal.App.3d 244, 256.)

7 “An information will not be set aside...if there is some rational ground for
8 assuming the possibility that an offense has been committed and the accused is
9 guilty of it [citations omitted].” (*Rideout v. Superior Court, supra*, 67 Cal.2d 471,
10 474.)

11
12 The magistrate does not decide whether the defendant committed the crime, but only
13 whether there is some rational ground for assuming the possibility that an offense has been
14 committed and the accused is guilty of it. (*People v. Slaughter* (1984) 35 Cal.3d 629, 637.)

15 A preliminary hearing transcript must contain some evidence to support each element
16 of the charged offense. (*Garabedian v. Superior Court* (1963) 59 Cal.2d 124,127 ; *People v.*
17 *Caffero* (1989) 207 Cal.App.3d 678, 684.) If an element of a crime is missing, a Penal Code §
18 995 motion should be granted as to that crime. (*People v. Martin* (1973) 9 Cal.3d 687; *People*
19 *v. Monson* (1967) 225 Cal.App.2d 689.)

20 Evidence which will justify a prosecution in superior court need not be sufficient to
21 support a conviction. A defendant seeking to set aside an Information on the ground that the
22 evidence is insufficient must show that there is not evidence, direct or circumstantial, from
23 which any reasonable inference supporting the charge might be drawn. (*Williams v. Superior*
24 *Court* (1969) 71 Cal.2d 1114, 1147-1148.)

25 If the evidence presented to the magistrate leads to two inferences, the reviewing court
26 is bound by the magistrate’s conclusions and cannot grant a Penal Code § 995 motion simply
27 because the evidence is also susceptible of another, equally reasonable, interpretation.
28 (*People v. Superior Court (Bolden)* (1989) 209 Cal.App.3d 1109, 1112-1113.)

1 III.

2 **NO EVIDENCE WHATSOEVER WAS PRESENTED AT THE PRELIMINARY HEARING OF**
3 **INJURIES THAT MEET THE REQUIREMENTS OF PENAL CODE § 243(f)(4).**
4

5 The evidence of the alleged injuries to Mr. Griffin is not even close to establishing
6 serious bodily injury. Evidence was presented on direct examination from Correctional Officer
7 Alonso Tovar that Mr. Griffin, "Had a cut above his left eye by his eyebrow and bruising on his
8 elbow and left knee." (Reporter's Transcript (RT) 6:27-28 & 7:1.) C.O. Tovar went on to say
9 that the medical attention that he got for Mr. Griffin was that he "pulled [Mr. Griffin] out to see
10 the nurse." (RT 7:7-9.) When asked about what type of medical attention Mr. Griffin received
11 from the nurse, C.O. Tovar responded that, "The nurse cleaned up his wounds, and they took
12 him to intake, where they hold inmates for booking." (RT 7:12-15.) Clearly the wound was
13 minor. No ambulance was called, nor was there any type of call made for emergency
14 treatment of what can only be described as a boo boo above Mr. Griffin's eye. The only
15 mention of sutures is C.O. Tovar's testimony that the cut, "Required four sutures done at the
16 hospital." (RT 7:16-18 & 8:1-2.)

17 The described injuries are not close to what Penal Code § 243(f)(4) requires to meet
18 the element of the extent of the injury. The code requires "extensive suturing" which four
19 sutures are clearly not. Although "extensive suturing" is not defined in the Penal Code a
20 simple extrapolation can only conclude that four sutures is not it. The question becomes, what
21 is minor suturing and what is moderate suturing. The plain language has to be examined.
22 Minor suturing would be five or six stitches, and moderate suturing would be maybe ten to
23 twenty stitches, which in turn would leave "extensive suturing" to a very large wound that
24 required, well, extensive suturing. If a person were to say, "I had some minor suturing," the
25 natural response would be, "So how many stitches, about a half dozen?" If a person were to
26 say, "I had extensive suturing," the natural response would be, "Wow, what was it, fifty or a
27 hundred stitches?" If a person were to say, "I had extensive suturing," and it was found out
28 that it was in fact four sutures, that person could only be seen as someone prone to extreme

1 hyperbole, that in fact had minor suturing. There is only one conclusion and that is that four
2 sutures is in fact minor suturing. By stretching the imagination, four sutures could possibly be
3 considered moderate suturing, but in no circumstance is four sutures "extensive suturing."
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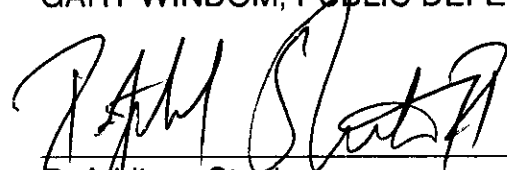
5 V.

6 **CONCLUSION**
7

8 Because insufficient evidence was presented at the preliminary hearing, the charge of a
9 violation Penal Code § 243(d) must be dismissed.
10

11 DATED: December 28, 2007

12 Respectfully submitted
13 GARY WINDOM, PUBLIC DEFENDER

14 

15 R. Addison Steele
16 Deputy Public Defender
17 Attorney for Robbie Catchings
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PROOF OF SERVICE

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I, Addison Steele, declare:

I am a citizen of the United States and an employee of the County of Riverside; I am over the age of eighteen years and not a party to the within-entitled action.

That on December 28, 2007, I served a copy of the within:

MOTION TO DISMISS COUNT ONE PURSUANT TO PENAL CODE § 995

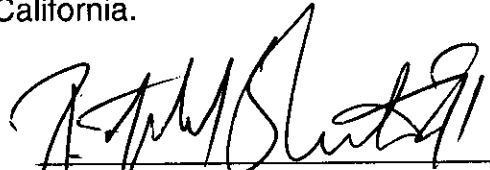
To be served on the following:

Executive Officer/Clerk
Riverside Superior Court
Riverside, California 92501

Rod Pacheco
4075 Main Street
Riverside, California 92501

I declare under penalty of perjury that the foregoing is true and correct:

Executed December 28, 2007, at Riverside, California.



Addison Steele, Declarant
Attorney for Robbie Catchings