1 GARY WINDOM, PUBLIC DEFENDER State Bar No. 086775 R. ADDISON STEELE II, DEPUTY PUBLIC DEFENDER 2 State Bar No. 192534 DEC 28 2007 County of Riverside 3 4200 Orange Street Riverside, Čalifornia 92501 4 Telephone: (909) 955-6000 5 Attorney for the defendant Robbie Catchings 6 7 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF RIVERSIDE 8 9 PEOPLE OF THE STATE OF CALIFORNIA, No. SWF006186 10 Plaintiff. 11 MOTION TO DISMISS COUNT ONE **PURSUANT TO PENAL CODE § 995** 12 VS. 13 Date: January 7, 2008 8:30 a.m. ROBBIE CATCHINGS DOB 02.20.69. Time: 14 61, Judge Couzens Dept: Defendant. 15 ROD PACHECO, DISTRICT ATTORNEY FOR THE COUNTY OF RIVERSIDE; TO: 16 DEPUTY DISTRICT ATTORNEY DAVID TAHAN; AND THE CLERK OF THE ABOVE-17 **CAPTIONED COURT:** 18 PLEASE TAKE NOTICE that on January 7, 2008, at 8:30 a.m., or as soon thereafter as the 19 matter may be heard in Department 61 of the Riverside Superior Court, the defendant, 20 Robbie Catchings, through his attorney the Public Defender by Deputy Public Defender 21 Addison Steele will move for an order dismissing count one, an alleged violation of Penal 22 Code § 243(d), pursuant to Penal Code Section 995(a). 23 Respectfully submitted, DATED: December 28, 2007 GARY, WINDOMI, PUBLIC DEFENDER 24 25 26 Deputy Public Defender Attorney for Robbie Catchings 27 Time estimate: 30 minutes 28

STATEMENT OF THE CASE

In November of 2003 Mr. Catchings was an inmate in the Riverside County Southwest Detention awaiting trial on his case in which he was acquitted of all counts. The Southwest jail is racially segregated and the correctional officers have developed an informal trustee system where they assign one inmate from each racial group in each pod to keep the peace within each racial group. Mr. Catchings had been so designated. On November 10, 2003, Mr. Catchings engaged in an argument with Bryant Griffin over Mr. Griffin staying on the telephones for too long because one person using more than his allotted time on the telephones can lead to violence between inmates in the pod. The telephones are right in front of the correctional officers' booth about twenty to twenty-five feet away. The argument was so subdued that none of the correctional officers even noticed it.

After the argument, Mr. Griffin went to take a shower. While he was in the shower he fell and hit his forehead causing a small cut above his left eye. He also had bruising on his left elbow and left leg which would be consistent with falling on his left side in the shower and inconsistent with being hit on the left side of his face and falling on the right side of his body from the force of the blow. Another inmate, Michael Washington, saw Mr. Griffin enter the shower uninjured, saw him fall, and saw that he had the injury over his eye when he left the shower. Mr. Griffin then went to Correctional Officer Alonso Tovar and reported that he had fallen in the shower and needed medical attention. C.O. Tovar then took Mr. Griffin aside and asked him if something different had happened. Mr. Griffin then realized that he could take over Mr. Catchings' job as the informal trustee by reporting that Mr. Catchings had hit him—causing Mr. Catchings to be moved to a different pod, and at the same time get revenge because a "homeboy" of Mr. Catchings' was snitching on his (Mr. Griffin's) brother. In order to accomplish these two ends Mr. Griffin told C.O. Tovar that Mr. Catchings had hit him a single time and that "he did not want to testify in the case."

C.O. Tovar wrote in his Report that he then talked to Mr. Griffin's cellmate, Jasper Bates. He wrote in his report that he personally talked to Mr. Bates and that he said he saw a

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

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

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

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

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¹ Mr. Catchings has two five year serious prior conviction enhancements pursuant to Penal Code § 667(a) alleged 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. Catchins 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.

POINTS AND AUTHORITIES

I.

STANDARD OF REVIEW:

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

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

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

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

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

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

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

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

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

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

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

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

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

If the evidence presented to the magistrate leads to two inferences, the reviewing court is bound by the magistrate's conclusions and cannot grant a Penal Code § 995 motion simply because the evidence is also susceptible of another, equally reasonable, interpretation.

(People v. Superior Court (Bolden) (1989) 209 Cal.App.3d 1109, 1112-1113.)

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The inferences drawn from the evidence must be reasonable. If they are speculative, it is the superior court judge's duty to discard those inferences that derive their substance from guesswork, speculation, or conjecture. (Birt v. Superior Court (1973) 34 Cal.App.3d 934, 938.) The evidence presented at the preliminary hearing may be insufficient because it is not enough to connect the defendant with the crime. (*Ibid.*)

II.

THE PROSECUTION MUST PRESENT EVIDENCE OF SERIOUS BODILY INJURY WHICH IS DEFINED AT PENAL CODE § 243(f)(4).

A showing of "serious bodily injury" as required for a conviction, or a holding order, for a violation of Penal Code § 243(d) is quite different from its more common counterpart of "great bodily injury" that is found in the sentencing enhancement pursuant to Penal Code § 12022.7. "Serious bodily injury" requires a much more serious degree of injury. There is no opaque definition that is left to the jury for "serious bodily injury" because it is clearly defined in the Penal Code at section 243(f)(4), which reads as follows:

"'Serious bodily injury' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

The statute at first look may appear to have some ambiguity with the "including, but not limited to" language. However there is no ambiguity, the statute clearly means that if there is another type of injury that is at the same level seriousness as, for example, bone fracture or serious disfigurement. The statute also clarifies what degree of suturing is necessary to meet the element of "seriously bodily injury" and it sets that degree at "extensive suturing" which is clearly more than the four sutures used in this case to treat the small cut that is alleged in this case.

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

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

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

hyperbole, that in fact had minor suturing. There is only one conclusion and that is that four sutures is in fact minor suturing. By stretching the imagination, four sutures could possibly be considered moderate suturing, but in no circumstance is four sutures "extensive suturing." ٧. CONCLUSION Because insufficient evidence was presented at the preliminary hearing, the charge of a violation Penal Code § 243(d) must be dismissed. DATED: December 28, 2007 Respectfully submitted GARY WINDOM, PUBLIC DEFENDER Deputy Public Defender Attorney for Robbie Catchings

PROOF OF SERVICE

I am a citizen of the United States and an employee of the County of Riverside; I am

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I, Addison Steele, declare:

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.

Steele, Declarant Attorrey for Robbie Catchings