

Talamantez defense opens at San Quentin

More holes in state case

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Several important holes were shot into the prosecution case at the San Quentin Six trial here last week.

Luis Talamantez, one of six Black and Latin prisoners accused of killing San Quentin guards the day revolutionary prisoner George Jackson was shot, opened his defense by scoring some strong points against the "official" version of the events of Aug. 21, 1971. The indictment against Talamantez was based on the testimony of San Quentin guard Kenneth McCray, one of those injured in the prison uprising during which Jackson was killed. McCray had testified for the prosecution that Jackson had taken control of the maximum security Adjustment Center after pulling a gun from under a wig. McCray said he was then led to cell number six, where he was placed on the floor face down, bound hand and foot, with his head covered by a towel. Another guard, Paul Krasenes, was similarly bound and lay on the floor next to him. Krasenes died of a slashed throat on that day.

McCray accused Talamantez and codefendant Hugo Pinell of having participated in the slashing and wounding of Krasenes and himself, although he was unable to see either prisoner. He claimed he heard two voices speaking in Spanish—which he understands—and said he recognized them to be those of Pinell, a Nicaraguan; and Talamantez, a Chicano. One of the two voices, according to this testimony, had said, "We should have made the knots tighter."

The defense claimed that, at the time, McCray was in shock, drifting in and out of consciousness, and was too confused to know what was going on or who was involved. But Broderick would not allow them to use statements by another guard confirming this during their cross-examination of McCray, since the other guard had not been called as a witness.

This guard, Doyle Scroggins, became the first witness attorney Robert Carrow called to the stand in Talamantez' defense.

Scroggins, a young officer who regularly commuted to and from San Quentin with the older McCray, accompanied the wounded guard to the hospital when officers retook the Adjustment Center, and remained in the hospital with his friend for some time. Later that day, he gave a taped report of what had happened, including what officer McCray had told him. According to this report, McCray, after hearing one or two shots, believed himself to have been shot in the head. Thinking that he was going to bleed to death, he lay still, "waiting to die." The report described McCray as telling Scroggins there was a great deal of confusion, he could hear prisoners running up and down, coming in and out of the cell where he was bound. The report goes on: "He had no idea what was going on around him. He just knew that he'd been shot and that he was bleeding bad."

Neither Kenneth McCray nor any of the other officers in the cell with him were ever shot. All suffered knife wounds.

CONTRADICTIONS

Further examination of Scroggins by other defense attorneys brought out additional contradictions between his initial report and the testimony given in court by various officers. Although officers Rubiaco and Breckenridge—both injured on that day—had implicated Hugo Pinell, Scroggins' report revealed that Rubiaco had named another prisoner, not Pinell, as his attacker. That prisoner was not indicted along with the six. Although McCray had testified that Pinell assaulted Breckenridge, the report indicated that McCray "had no idea who assaulted Breckenridge."

Defendant Fleeta Drumgo's attorney, Mike Dufficy, scored another point when Scroggins admitted that the statement officer Rubiaco gave the night of August 21, 1971 never mentioned Fleeta Drumgo in any way. Rubiaco's testimony that he saw Drumgo kicking officer Krasenes in the face, while the latter was tied on the ground, is the only testimony relating the former Soledad Brother to this case. (Testimony by a prosecution

pathologist revealed Krasenes could not have been kicked in the way described by Rubiaco.)

Attorney Frank Cox, continuing the offensive, was able to bring out that Rubiaco's report similarly omitted any reference whatsoever to his client, David Johnson, although the guard had testified that Johnson had been involved in escorting and tying up officers.

District Attorney Jerry Herman's cross-examination of the witness—who was quite cooperative with the DA although he had been very hostile to the defense—did not even attempt to refute the points made by the defense attorneys. Instead, he used Scroggins as his own witness, to repeat and reconfirm various prosecution testimony about the events of the day. This included a recounting of the prison version that George Jackson pulled a gun from under a wig and took over the AC, with gory emphasis on the stabbings of the guards, and a great deal of testimony against defendant Johnny Larry Spain. Scroggins reported that he and another officer took two vials of explosives from Spain's pockets, after the prisoner was captured in the bushes of the prison courtyard. The prison maintains that Jackson and Spain were hoping to escape from the prison yard, although it is completely ringed by a 20-foot wall topped by armed guards.

Earlier in the week Spain's key defense witness, psychiatrist Jane Oldden, had disputed the prosecutor's contention that Spain had been consciously engaged in a viable escape attempt. Referring to the fact that the vials did not in fact contain any explosives, as well as the impregnability of the walled courtyard, Dr. Oldden called the various elements of the so-called "escape plan" pure fantasy.

Oldden had earlier gone into some details of Johnny Larry Spain's life, in an attempt to show that the prisoner was psychologically incapable of having formed the intent and knowingly participated in the events of August 21. Spain contends that he had a mental blackout and was unaware of what went on from the time the cell doors were open until he found himself running in the courtyard. At that point, suddenly realizing he could be shot, he dove into the bushes.

According to California law, if a defendant was suffering from "diminished capacity" as a result of impaired consciousness (whether the cause be physical or psychological), he or she cannot be found guilty of forming the intent necessary to be convicted of a crime.