

## Exhibit B-Rhoads

### Interview – chronological order

Some time after 12:05pm, during Rhoad's recorded interview with Detective McColgin, she mentions a mask multiple times, but states that she knew it was Nathan Medina. Whenever asked about facial features, she keeps mentioning the neck.

The following is directly taken from her recorded interview which Petitioner's family acquired through an insurance company in 2014. It was transcribed by Zandonella Reporting Service on February, 14, 2014. The relevant parts are included that have to do with identification.

The parts in **bold** are taken directly from the transcribed interview of Beverly (Sam) Rhoads by Detective McColgin, Page, line number. Underline Petitioner's own emphasis.

The first thing she says after spelling her last name to Detective McColgin is: **I couldn't really see. Is my son alive?** Page 2, Line 4,5

After some formalities she says: **I'm a single mom. This guy did the lot – he did an addition on my house, and there's a lot of problems. So we're involved in a lawsuit, and I guess they were mad. They already – earlier they threw a – had a report – I know Nathan threw that river rock through my front plate glass window and the back of my car.** P 3, L 6-12

P 5, L 2 (**Break taken.** )

After break Rhoads talks about construction job and civil suit from P 5, L 21 – P 6, L 24

P 7, L 11 (**Break taken.** )

P 7, L 16 (**Break taken.** )

**...my son was saying somebody came in the front door and I went to look to see who it was, and it was him. And he came in spraying me with this stuff, and he chased me down the hall. I started screaming –** P 9, L3-7

**McColgin: Right out of the shoot without saying anything he just started –Sam; Without saying a word, yeah. Well, because he was masked. You know he had his black – that knitted thing on his head.** P 9, L 8-12

**How could you tell it was him? I know him. I've known him. You have no idea. I know who it is. There's no doubt in my mind who it was.** P 9, L13-16

Did you recognize any other parts of his body that you would – Yeah. His neck, everything. You know I know him. P 9, L 17-20

Q: So you know him so well. But even though he was wearing a mask, you clearly recognized him? Oh I clearly recognized him. So did my son. P 9, L 21-23

P 11, L 3-4 It's 1235 hours (Break taken.) Stopped interview to go to the hospital.

Resumed at 1245 at John Muir Hospital.

Q: Let's go over that one more time. He was wearing a mask over his head and he had a hat on? He had a black hat – like, a black hat on him? I think the – there was – I think it was, kind of, masked. I mean, it was Nathan. I know who it was. I mean, I know. P 13, L 6-11

But what I mean is you could see portions of his face? She says “yeah. You could see portions of his face. I could see his neck and his –you know—” P 13, L 12-15

And has he ever done anything to you in the past – A. Yes. Well, I filed a complete police report with – Walnut Creek Police... they threw a river rock through my front plate glass window and through the back window of my car... it was clearly obvious to me, you know. Nathan... Nobody saw it. P 14, L 9-25, P 15, L 1-8

Regarding 911 call Did you have difficulty dialling the number because you were pepper sprayed? Yes P 17; 2-4

... -- he broke the door, like, in half, so I couldn't get out of the laundry room. I couldn't even see. P 18, L 13-15

Q: Describe what he was wearing for me again today when he came in your house. He had on a – you talked about a hat or a mask or something like that? A. “yeah. He had a – I'm not – see, I just don't – I just knew it was him. P 21, L11-15

Q. Okay.

A. He had a black hat on and, you know, that – with a roll up thing.

Q. Roll up front?

A. Yeah and I'm not sure –

Q. Like a knit cap?

A. Like a knit cap.

Q. Okay.

**A Yeah. And I don't know – I can't remember if it was all the way down or just down about here (she is clearly gesturing how far she thinks a mask in going down the perpetrator's face.)**

**Q. Okay**

**A. You know what I mean like that?**

**Q. How about covering his mouth though? “ no. I mean, I don't remember – I just don't – its like, kind of—it happened all so fast and I got sprayed so fast that it was hard for me to see. But I clearly knew it was him. I saw his neck and his – and he had a round collar – a round shirt – T-shirt on long sleeves but like dark like either a jacket or sweatshirt that probably zipped up It wasn't a pull over” P 21; 16-25, P 22; 1-17**

**That's the only thing that – I mean, if he had know that I was – I don't know how he didn't know I was up there. P 23, L 8-10**

**You know, so – and I could only see my son's foot out of the corner of my eye because I couldn't see – and I saw this red on the floor, and I just – P 25; 2-3**

**All right. Was he wearing gloves? Do you remember? He might have been P 25, L 5-7**

**Q: Now, since your thinking about that, let me go back to his description again. You know he had the hat on with the bill – a knit cap with the bill rolled up?**

**A: Uh – huh.**

**Q: Do you remember now because you saw his chest? A. And his neck. P 25 L 10-17**

**Q: you could see his neck and chest. Do you remember now whether or not his entire face was covered. Were there certain facial features that you recognized? I absolutely – yea. It hit the profile of his face. I just knew. (She is still clearly referring to a mask when she says) “it” hit the profile of his face. I just knew. P 25, L 18-24**

**Q: So his face might not have been covered with a mask? “Yeah it might not have been, but – see, he sprayed me so fast that my vision just” -- OK. So it may have – P 25; 25, P26; 1-4**

**P 27, L 17 (Break taken)**

**And I was on the phone and I couldn't see. P 29; 14**

**... but did you also see his face or his body? No. I couldn't see his – I just saw the hand, the arm. P 30; 17-20**

**Okay. But, again, you recognized – Oh, I know it was – there's no doubt. There's no doubt that that's who it was. P 30, L 21-24**

Notice that Rhoads not once ever described being able to see a face, nose, mouth, or chin. That she kept referring to a neck. She never mentioned sunglasses and that when she is talking about her vision being affected it is when the intruder was there and not later. Keep in mind that throughout this interview and through it's completion Rhoads is the one who consistently says the intruder was wearing a mask.

Also during this interview, Rhoads is asked to describe Petitioners vehicle. She describes it as a blue jacked up truck. (P 14, L 1-3) (Petitioner had sold this truck around a year prior to this incident, Petitioner currently had a two wheel drive black Ford Harley Davidson edition truck.) However when asked during trial if she remembers describing Petitioners vehicle she says yes and accurately describes Petitioners black Harley Davidson edition truck. This too was never corrected, giving her more false credibility.

### **Rhoads Trial Testimony**

Because this recorded interview was kept from the jury, Petitioners family, and Petitioner until 2014 after Petitioners trial, Rhoads was able to testify during the trial that she immediately recognized who she said was Petitioner without a mask. When asked about a mask at trial Rhoads said, "**I remember the detective asking me about a mask, but I never mentioned one. I just remember telling him I could see his nose, and his mouth, and his chin, and sunglasses with a rolled up beanie, that's what I remember**". This was repeated to the jury many times. It was never rebutted, objected to, or had any evidence presented to challenge it. So this stood as a fact.

Counsel even corroborated it during his closing statements

Counsel did not transcribe or play the parts of this interview which you have read above where she mentions a mask. He played small parts which corroborated the prosecutions case. This is Counsel during closing:

**"And then when they are talking about it and the detective is going so he had a mask on, and she goes, well, maybe not a mask, maybe not quite a mask, but I know it was him. I know it was Nathan Medina" RT 2781, L20-**

**I saw a bad man in my house and it's Nathan Medina. I don't know if it's a mask, I couldn't see him that well. I know it's him, I know it's him.**

This cemented in the mind of the jury that what Rhoads claimed was true. That it was the detective that asked about a mask and her just answering his question.

At trial Rhoads made two separate claims regarding when she couldn't see: One, she stated that whenever she mentioned during her interview that she couldn't see, she meant that it was much later after the fumes from the pepper spray that hit her chest and not her face got into her eyes. Two, she claimed that when she couldn't see it was while McColgin was interviewing her. not before she saw who she knew to be Nathan Medina.

### **Rhoad's Trial testimony**

**RT 818 L 20 how do you know the front door opened and closed? Because I heard it, I thought it was Sean.**

**RT 819 L 7 and who did you see? I saw Nathan Medina.**

**RT 819 L 22 Did he spray you before you had to see who it was? No**

**RT 834 L 10 How far away from you was the suspect at that moment? Three feet maybe, he was standing there and he started spraying me with pepper spray.**

**RT 845 He had on a black beanie cap on that was rolled up and dark sunglasses and an open jacket or coat or something.**

**RT 846 L 2 Recognized him by his nose and his mouth and his chin.**

**RT 846 L 3 When did you figure out it was the defendant? Immediately, it was almost instant.**

**RT 846 L 8 Did you figure out it was the defendant before he sprayed you? Yes**

**RT 846 L 12 Do you remember describing to the detective that he might have been wearing a mask? I don't remember.**

**RT 846 L 15 Do you remember describing to the detective that you could see portions of his face? Yeah his nose and mouth and chin that was not covered.**

**RT 846 L 20 Do you remember saying at one point that you really couldn't see? I don't remember**

**RT 846 L 22 Do you remember telling the detective that because he pepper sprayed you, that you had trouble seeing? After a while I did yea. I didn't- I could see clearly who it was before that happened.**

**RT 847 Were you able to get a thorough description of the defendant and all his clothing before you were sprayed? Waist up yes.**

**If you told the detective at some point that you couldn't really see, were you trying to imply to him that you really didn't know who it was? No (played part of 911 tape)**

**RT 850 Did you have any problem recognizing him? Absolutely not**

**Did you hesitate at all? No because I know who it was.**

**RT 851 (Rock incident) Do you recall telling the police I know it was Nathan Medina? No I do not recall that.**

### **Counsel**

**You got a little bit around the corner and saw the person standing just inside the front door? That's correct**

**RT 867 You're holding your left hand with your index finger? Yes, that is the hand I was sprayed with.**

**How quickly did the spraying occur? Shortly after I came into the living room**

**So, when you came around that corner the person was already in the house, obviously? Right, I got sprayed several times before I reached the laundry room...**

**RT 873 So on the day of the incident you weren't sure, you thought that maybe they could have been wearing gloves, right? Right, I don't remember what I told him, but I do remember that it was later on that I remembered the vision of gun and the gloves, so that's when I knew there were no gloves.**

**And as you sit here now and as when you were telling the officer back then, you're sure the person wasn't wearing gloves? Positive**

**Safe to say you are as positive of that as you are of anything you testified to? Yes**

**RT 887 L 24 Well, they weren't spraying yet. They were holding it and then after I got there they started spraying.**

**RT 888 L 1 Okay so by the time you got around the corner the persons arm was up, though, in the manor you showed? Correct**

**And it was your testimony that immediately upon coming around the corner you recognized the person? That's correct,**

**RT 898 L 18 I was surprised to see who was standing there. I was expecting to see Sean.**

RT 898 L 20 Now you testified earlier that you thought the person had forgot that you were in the laundry room? Yes

RT 899 L 2 And the reason you say forgot is because you specifically remember the person looking at you when you were in the laundry room? Absolutely, I walked right in front of him behind my son into the laundry room

RT 900 L 28 So the sole call you made during the entire time you were in that laundry room was the one call to 911? That's the sole call I made.

RT 901 L 12 Do you recall any other description about that truck? I know it's black, Harley Davidson or something, that's all I know

RT 902 L 4 Do you recall him (McColgin) asking you about or being able to describe the person; do you recall that? I don't remember. I remember describing the person.

RT 902 L 9 And do you remember telling that detective on several occasions that you couldn't really see? At that point I couldn't really see, not when I saw the person come in the door.

RT 902 L 14 Do you remember telling the police that you knew it was Nathan Medina who threw the rocks through your window at the earlier--? I don't remember saying that. Do you remember saying to the detective that you knew it was Nathan Medina who was involved in the shooting? Yes

RT 902 L 24 And do you remember telling him that it had to be him because you didn't think you had any enemies? No, I don't remember saying that. We don't have any enemies.

RT 903 L 1 Do you recall talking to the detective about whether or not the person was wearing a mask? I remember them asking me.

RT 903 L 5 And do you remember telling them that you're not sure, but you knew it was Nathan Medina?

RT 903 I remember what he had on. I don't remember everything at the time. I remember seeing his nose and his mouth, and I remember the glasses and the rolled up beanie hat that he had on. That's what I remember.

(This was the last question Counsel asked Rhoads regarding ability to see. Here Counsel is helping to corroborate the prosecutions case)

RT 913 L 8 Ms. Roads, as I understand it, its your testimony that when you were in the ambulance telling the detective that you couldn't see, that you're referring to at the time when you are talking to the detective, not about the time of the incident? That's right I had been on the counter for several hours.

## Rhoads Interview - Ability to see – References to time

During closing the Prosecutor pointed out Counsel's ineffectiveness regarding Rhoads recorded interview. By stating that Counsel only played you a part of a tape that gave no reference to time.

RT 2832 – 2833 Counsel played you a tape of Ms. Rhoads and this is the other point I was getting to about the three dimensional versus the two dimensional. Plays you a tape, a portion of a tape where she says I really couldn't see, I couldn't really see, is my son alive?

What does she say on the stand? She says as I was laying in laundry room the odor from the pepper spray was getting to me and I couldn't see.. RT 2833

RT 2833 L 6 What are we missing from that quotation on that tape? Reference to time. She said that when I was laying on that counter top for an hour, that's when I couldn't see. Could you see the man who sprayed you with pepper spray? Yes. Did you have trouble? No.

## Interview

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... -- he broke the door, like, in half, so I couldn't get out of the laundry room. I couldn't even see. P 18, L 13-15

Q. How about covering his mouth though? "no. I mean, I don't remember – I just don't – its like, kind of—it happened all so fast and I got sprayed so fast that it was hard for me to see. P 22; 4-8

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... but did you also see his face or his body? No. I couldn't see his – I just saw the hand, the arm.  
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### Re: Mask – Interview

McColgin: Right out of the shoot without saying anything he just started –

A: Without saying a word, yeah. Well, because he was masked. You know he had his black – that knitted thing on his head. P 9; 8-12

Q: So you know him so well. But even though he was wearing a mask, you clearly recognized him? P 9; 21-22

Q: Let's go over that one more time. He was wearing a mask over his head and he had a hat on? He had a black hat – like, a black hat on him? I think the – there was – I think it was, kind of, masked. I mean, it was Nathan. I know who it was. I mean, I know. P 13; 6-11

Q: Describe what he was wearing for me again today when he came in your house. He had on a – you talked about a hat or a mask or something like that? A. “yeah. He had a – I'm not – see, I just don't – I just knew it was him. P 21; 11-15

Q. Okay.

A. He had a black hat on and, you know, that – with a roll up thing.

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Q. Like a knit cap?

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Q. Okay.

A Yeah. And I don't know – I can't remember if it was all the way down or just down about here (she is clearly gesturing how far she thinks a mask in going Down the perpetrator's face.)

Q. Okay

A. You know what I mean like that?

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clearly knew it was him. I saw his neck and his – and he had a round collar – a round shirt – T-shirt on long sleeves but like dark like either a jacket or sweatshirt that probably zipped up It wasn't a pull over" P 2; 16 – P 22; 17

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## Trial

### Prosecutor

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RT 846 L 15 Do you remember describing to the detective that you could see portions of his face? Yeah his nose and mouth and chin that was not covered.

### Counsel

RT 903 L 1 Do you recall talking to the detective about whether or not the person was wearing a mask? I remember them asking me.

**Counsel Closing** - (Misquoted Rhoads, and used the only part of her interview that was misleading, making her lie about not mentioning a mask seem true. Rhoads had told the 911 operator and Detective McColgin that she could not see, she did not say that she couldn't see that well.)

Counsel: And then when they are talking about it and the detective is going so he had a mask on, and she goes, well, maybe not a mask, maybe not quite a mask, but I know it was him. I know it was Nathan Medina RT 2781, L20-

I saw a bad man in my house and it's Nathan Medina. I don't know if it's a mask, I couldn't see him that well. I know it's him, I know it's him. RT 2783-2786