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## **Teeth and Teamwork ‘Root Out’ the Juvenile Who Wasn’t**

By Bruce Foremny

On an August afternoon in 2007, United States Border Patrol agents stopped a vehicle on a rural Arizona highway near the Arizona-Mexico border. The vehicle, occupied by two suspects, contained 289 pounds of marijuana. The passenger promptly identified himself to the officers as a 15-year-old Mexican citizen with the name Jose Reyes-Dominguez. The subject provided a date of birth of 12/19/1991 and his physical appearance of 5’6”, 140 pounds was consistent with that of a teenager. Neither of the suspects had identification.

By agreement, the case was turned over to narcotics investigators from the Pima County Sheriff’s Office. The juvenile suspect exercised his right to remain silent and was not questioned. The adult driver, who was a co-conspirator, admitted that they were transporting the marijuana from Mexico to Phoenix, Arizona. Reyes-Dominguez was subsequently arrested and referred to the Juvenile Division of the Pima County Superior Court on a class 2 felony possession/transportation of marijuana for sale charge. The juvenile was detained because he refused to provide information on his family and could only provide a vague description of where he lived in Mexico.

Throughout his detention, trial, and pre- and post-trial evaluations, Reyes-Dominguez maintained that he was 15 years old and from Mexico. He never attempted to communicate with family nor did any family attempt to ascertain his whereabouts or status. In the world of juvenile detention this is an unusual set of circumstances.

In September, Reyes-Dominguez was adjudicated as a delinquent by the Juvenile Division of the Pima County Superior Court and committed for a minimum of 12 months to the Arizona Department of Juvenile Corrections (ADJC).

When he arrived at the intake unit of the Adobe Mountain School, Reyes-Dominguez blended in with the other teenage boys in the facility but quickly, the staff at the facility started to notice a difference.

Jose Reyes-Dominguez was quiet, courteous and respectful to staff. He had no visitors, no incoming or outgoing mail, and made no phone calls to family. He did not interact with his peers, did not engage in normal conversation and more importantly, did not try to establish himself in the hierarchy of the secure care culture normally found in a juvenile prison. Reyes-Dominguez spoke only Spanish in the institution but did not try to “click up” with other Hispanic or Mexican national youth. It was the unit psychologist who first questioned why Reyes-Dominguez did not fit in.

At a multi-disciplinary team meeting, the psychologist asked the agency dentist, Dr. Roger Sears, to take a second look at Reyes-Dominguez to see if the youth’s teeth might aide the agency in determining if the young man was the age he claimed. After examining the dental x-rays, Dr. Sears estimated that the young man’s age was between 18 and 20. Dr. Sears based this estimate on Reyes-Dominguez’s advanced wisdom tooth development.

Now, the Department of Juvenile Corrections suspected that they might have an adult living among its juvenile population. Special Investigator Todd Hammerschmidt was assigned to conduct a criminal investigation into Reyes-Dominguez’s true age and identity. Hammerschmidt is a career corrections employee but had only three years experience as a criminal investigator.

He had, however, spent a year on the Arizona Identity Theft Task Force where he learned valuable skills in detecting and identifying those living under an alias with fake identification.

The fingerprints of Reyes-Dominguez were obtained in Pima County at the time of his arrest. They were entered in the Automated Fingerprint Identification System (AFIS) system and when compared to the national data base, no contradictory matches were found. Using his contacts at the Identity Theft Task Force, Hammerschmidt had the photograph of Reyes-Dominguez compared to arrest photos, MVD photos, and nationwide intelligence database for facial recognition. Again, no matches were found.

Armed with a search warrant, Special Investigator Hammerschmidt seized the dental x-rays of Reyes-Dominguez. Those same x-rays used by Dr. Sears were taken to Dr. John Piakis, a nationally recognized expert in forensic odontology. Dr. Piakis concluded that the root development in Reyes-Dominguez's wisdom teeth was closed, indicating he was between 18 and 20 years of age. Dr. Piakis based his opinion on studies found in the Manual of Forensic Odontology, Molar Development as an Estimator of Chronologic Age. These studies provided an 85 percent certainty as to the age of the person in question and while this is of great value in missing person cases and other disciplines, only 100 percent certainty could be used in a criminal court.

Dr. Piakis made a second observation that would later prove useful in Hammerschmidt's interrogation of Reyes-Dominguez. Dr. Piakis noted that this young man had no tooth decay and in fact had received quality dental care. Dr. Piakis has provided services to the U.S. Border Patrol, ICE and Customs over the years and noted that Reyes-Dominguez dental health was superior to others he had examined.

On October 19, 2007, Hammerschmidt conducted a criminal interview with Reyes-Dominguez. During this interview Hammerschmidt confronted Reyes-Dominguez with the observations of the Adobe Mountain School staff, Dr. Sears and Dr. Piakis. He even used the x-rays and portions of the Manual of Forensic Odontology as props to convince Reyes-Dominguez that his lies had come to light. Reyes-Dominguez confessed to his true name of Seth Palma Gutierrez and his correct date of birth as December 19, 1987.

Seth Palma Gutierrez told Hammerschmidt that he gave the false name and date of birth to the U.S. Border Patrol agents because he expected them to deport him as a juvenile illegal alien. He did not expect to be tried and convicted as a juvenile and did not want to give his real name and date of birth because he did not want to go to adult prison.

Using information provided by Seth Palma Gutierrez, Hammerschmidt was able to contact Gutierrez's family in Mexico. They verified his identity and provided a Mexican birth certificate which verified Gutierrez as a **19-year-old citizen of Mexico**.

Gutierrez's confession came late in the day on Friday the 19<sup>th</sup> of October. ADJC now knew that **they had a 20-year old in their juvenile population**. However, the department was powerless to remove the youth without the sentence being vacated by the sentencing court; it could not even petition the court without going through the Pima County Attorney's Office. This problem was solved by Peter Hochuli, the Deputy County Attorney who prosecuted Gutierrez under the name of Jose Reyes-Dominguez. The soonest Hochuli could bring the matter before a Pima County Superior Court judge was Tuesday, October 23, 2007, leaving Gutierrez with ADJC for at least five more days.

ADJC is not equipped with sight and sound separation to keep juvenile and adult inmates separated. A courtesy hold was arranged between ADJC Director Michael Branham and Pima County Sheriff Clarence Dupnik. This allowed the Department of Corrections to maintain custody while housing the adult prisoner separate from juvenile offenders.

Because Gutierrez lied about his name and age during his initial contact with the Juvenile Division of the Pima County Superior Court, the court dismissed the charges without prejudice, clearing the way for the Pima County Attorney to pursue adult charges. Ultimately, Gutierrez was convicted of possession of marijuana for sale, a class 4 felony, and sentenced to two years with the Arizona Department of Corrections.

Although law enforcement, probation and corrections suspected that Gutierrez might be providing false information, it was the medical/dental community that broke the case. The information provided by Dr. Sears led to a criminal investigation that ultimately took an adult offender out of the juvenile justice system.

#### *About the author*

Bruce Foremny came to ADJC with over 25 years of law enforcement experience in Arizona. His career has included service with the United States Air Force, Arizona Department of Public Safety and over 21 years with the Glendale Police Department. Investigator Foremny has a strong background in training, and investigating violent crimes involving children homicide. Bruce Foremny has lectured nationally and internationally on the subject of physical and sexual abuse of children. He is a member of the Adjunct Faculty at Glendale Community College and was a participant in the development of the interagency protocol on the investigation of physical and sexual abuse of children.