

# Roy Summers' attorney asks for dismissal of case

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SAN BERNARDINO — The attorney for Roy Summers, who is accused of murdering his ex-wife and kidnapping her two children here in 1977, asked the Superior Court on Thursday to dismiss the charge against his client.

Attorney Timothy Guhin argued that Summers, 40, was denied a "substantial constitutional right" because Municipal Court Judge John Kennedy denied Guhin's request that a witness be recalled for cross-examination during the preliminary hearing last November.

Following the two-month hearing, Summers was ordered to

stand trial on one charge of murder and two of kidnapping and felony child concealment.

Superior Court Judge William Pitt Hyde took Guhin's request under submission on Thursday and may rule on it during a hearing April 3. Guhin said he plans to make other requests of the court at that time.

Beverly Wise, 26, was stabbed to death March 30, 1977, at her Alto Drive home. When her body was found, her children — Brandi Jondell Summers, then 5, and Tiffani Wise, then 2 — were missing, apparently taken by the killer. Summers is Brandi's father.

The children have not been

found, but persons in Idaho, northern California and Nevada have reportedly seen the girls — sometimes with Summers — since the crimes occurred, investigators said.

In arguing his point Thursday, Guhin said the prosecution told him some information too late to properly cross-examine prosecution witness Richard Emery.

Emery testified at the preliminary hearing that when he and Summers shared a jail cell in Oregon in late 1979 and early 1980, Summers admitted killing Wise and abducting the girls. Emery then returned to Oregon.

Based on the new information, Guhin had wanted Emery recalled from Oregon so he could be asked some more questions at the preliminary hearing — primarily whether law officers offered Emery a deal on possibly reducing the punishment for his Oregon crime if he cooperated in the Summers case.

On Thursday, Guhin contended that Emery's testimony was the only proof the prosecution offered during the preliminary that connected Summers with the murder.

And that testimony was mentioned by Kennedy at the end of the hearing when he said, "... if I just disregard everybody else, I

hold him (Summers) to answer just on what Emery's testimony is."

In response to that point, Judge Hyde noted that Kennedy never said that Summers would not have been held to answer without Emery's testimony.

In his remarks to the court Thursday, Chief Deputy District Attorney Joseph Canty contended that the normal remedy when a defendant has been denied adequate opportunity for cross-examination is to strike the witness's testimony.

But even were that testimony deleted, Canty argued, there is enough evidence pointing to Summers' guilt in the murder because

of testimony by several persons that he was seen with the missing children.

In addition, Canty contended that Guhin had the opportunity to ask Emery any questions he wanted and that the preliminary hearing transcript is "replete with questions" by Guhin of Emery about whether any deals were made with law officers.

Responding to Canty, Judge Hyde said it did not necessarily follow that if Summers was seen with the children, that meant he had murdered their mother.

Hyde set Summers' trial for April 20.