

Jail mix-up prompts big lawsuit

By Elias Castillo
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When Joseph Batallo Gutierrez began serving a six-month sentence in county jail for drunken driving on March 1, 1983, he wasn't supposed to end up in the state prison system.

Thirty days later, however, a puzzled and fearful Gutierrez was chained, handcuffed and put on a bus to the California Medical Facility in Vacaville.

Santa Clara County sheriff's deputies, Gutierrez says, paid no attention to him as he tried to convince them that they were making a terrible mistake. Once in Vaca-

ville, he says, officials continued to ignore his pleas, and one guard told him: "You're going to be here for a long, long, long time."

Unknown to Gutierrez, now 60, officials at the Elmwood Rehabilitation Center in Milpitas had erroneously matched his jail

booking number with that of a convicted felon with the same first and last name who was scheduled to leave for Vacaville that day. The Vacaville facility is where convicted felons are sent for physical and psychological testing to determine which

See MISTAKE, Page 2B

Ex-inmate files \$1.2 million suit after he was sent to state prison

MISTAKE, from Page 1B

state penitentiary they will be assigned to.

It took more than a week and a half before prison officials corrected the mistake committed by jail officials and returned a shaken Gutierrez to the county facility.

These days, Gutierrez is spending much of his time in the courtroom of Santa Clara County Superior Court Judge Homer Thompson. The county is defending a \$1.2 million suit alleging that Gutierrez suffered "serious mental and emotional distress" from the Vacaville experience.

The Gutierrez who was supposed to be sent to Vacaville — Joseph John Gutierrez, then 34 — had received a 4-year sentence for receiving stolen property. He is now at the Deuel Vocational Institution in Tracy.

Thompson is expected to render a decision in the non-jury trial within the next several days.

Gutierrez and his family say the incident aged him, turning much of his hair white. In reports submitted as evidence at the trial, a psychiatrist and psychologist say it drove him to the brink of madness.

The suit seeks \$107,000 for lost earnings, \$100,000 for medical care and \$1 million for mental and emotional distress.

On Feb. 2, the county offered \$3,500 to settle the case, but the opposing side scoffed at the offer. "That won't even pay for his (Gutierrez's) medical bills," said his attorney, Jessie Serna.

During the trial, which began on

Monday, county deputy attorney William Mayfield has admitted that a mistake was made when jail records were mixed up. But he has argued that Gutierrez was already suffering from mental illness before his experience at Vacaville. Mayfield cited a 1979 incident in which Gutierrez suffered head injuries from a beating by a burglar while he was a janitor at San Jose State University, causing him to later experience moods of depression and headaches.

During the trial, Mayfield has stated flatly that Gutierrez never told anyone — either in county jail or Vacaville — that a mistake had been made.

In an interview before the trial started, Gutierrez, speaking softly and sometimes weeping, had difficulty describing what happened to him four years ago. "It was so confusing that I started hearing voices and people laughing at me," he said.

Gutierrez has an IQ of 70, which some mental health experts say indicates mild retardation. For most of his life, he has done simple farm and janitorial work.

He has not worked since the incident occurred and has been living with his brother in Gilroy.

Gutierrez recalls arriving at the Vacaville facility and being asked by a prison guard whether he wanted to give away his civilian clothes or send them home. "I told him I'd need them when I got out, and he said, 'You're not going to get out, you're going to be here for a long, long, long time.'"

As the days passed, he began

staying in his cell all the time, ignoring mealtimes. At one point, he said, some convicts began feeling sorry for him because of his depressed appearance, so they stole food from the dining room for him.

Other convicts, however, brushed aside his story that he was there by mistake, telling him he was going crazy.

"They told me prisoners forget what (crime) they did and go hysterical," he said.

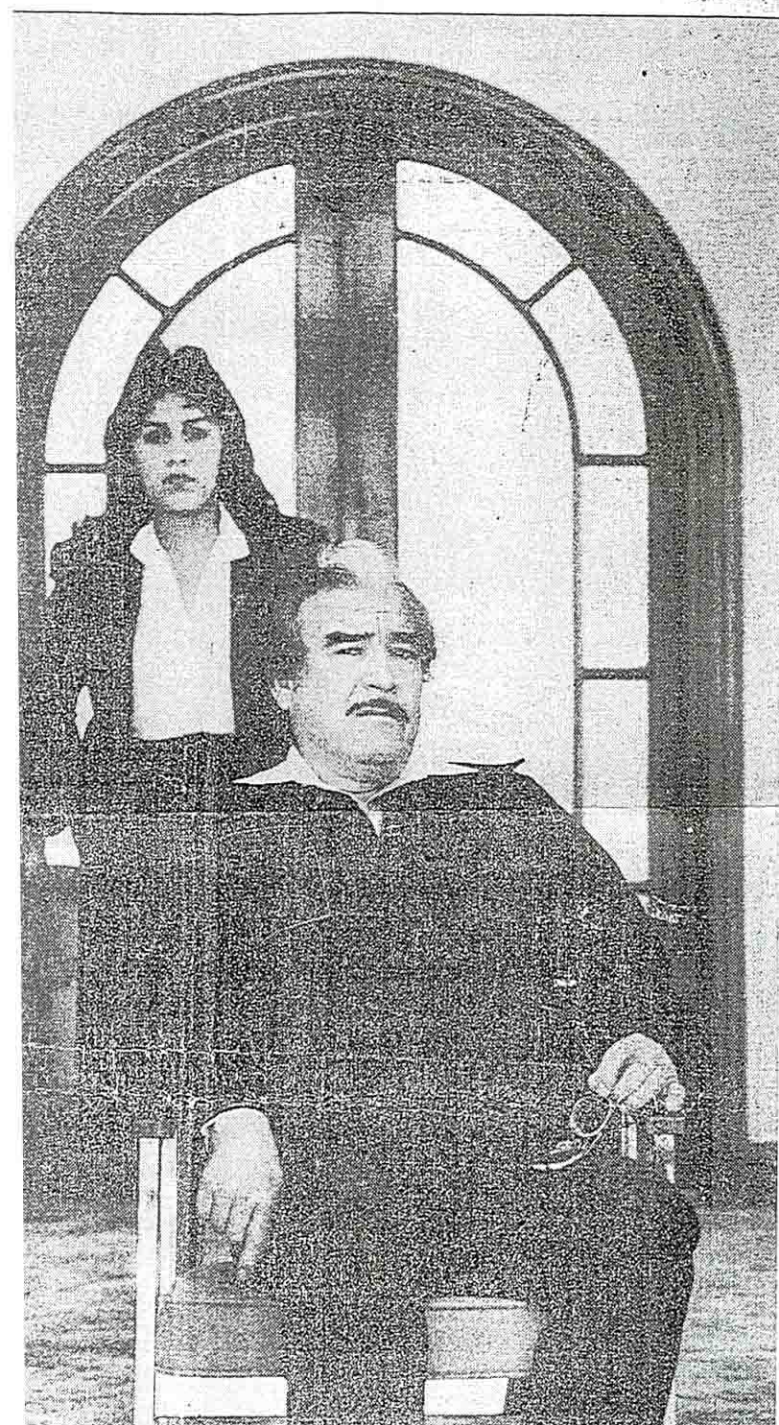
Finally, a prison employee met with Gutierrez because of his weakened and withdrawn condition. "She read me these convictions and that's when I believed that really was me. ... Then she looked at some more records and slapped her head and said, 'Oh my God, what have we done here!'"

Gutierrez was quickly returned to Santa Clara County to serve out the remainder of his sentence.

When he was released after his six-month sentence, relatives say, they were shocked at his appearance.

When she first saw her brother at her son's house in Milpitas, "I started crying. I couldn't believe my eyes," Marcelina Arechiga, of San Jose, testified at the trial.

Not only did his hair go from mostly black to mostly white, she said, his weight plunged from 205 pounds to 135 pounds during his six months in county jail and Vacaville. Under questioning by Serna, Arechiga said she asked Gutierrez, "What happened?" His only answer was "I don't want to talk about it," she said.



Karen T. Borchers — Mercury News

with lawyer Jessie Serna, says his transfer turned his hair white