

1 JEFFREY F. ROSEN
District Attorney
2 DAVID R. BOYD
Deputy District Attorney
3 California State Bar No. 184614
County Government Center, West Wing
4 70 West Hedding Street
San Jose, California 95110
5 Telephone: (408) 792-2968

6 Attorneys for Plaintiff

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DAVID H. YAMASAKI
Clerk/Deputy Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

11 THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

12 Plaintiff,)

13 v.)

14 ANTOLIN GARCIA-TORRES,)

15 Defendant.)
16)
17)

Criminal Case No. 213515

PEOPLE'S RESPONSE AND
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS SAFEWAY
COUNTS FOR VIOLATION OF DUE
PROCESS (SPEEDY TRIAL)

18 Defendant claims that he has suffered actual prejudice – due to the passage of time between
19 March 2009 and the People's filing of charges in Juvenile Court on August 17, 2012 – sufficient
20 to shift the burden to the People to justify the delay.^{1/} The defendant bases his allegations of actual
21 prejudice on two claims. First, the death of witness Arnold Ting on April 24, 2010, and second,
22 the alleged loss of video from the Dunne Avenue Safeway attack of Cythnia Lundy on March 19,
23 2009.

24 The defendant's characterization of either or both facts as sufficiently material to justify
25 shifting the burden to the People, much less the "draconian" remedy of outright dismissal, fails to
26 address significant relevant facts. For example, Mr. Ting did not say that the attacker was white,

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28 ^{1/} A finding of unfitness in juvenile court resulted in the charges being brought in Superior
Court under complaint docket C1233134 in November 2012. The complaint charges were
dismissed in lieu of the indictment on February 13, 2014.

1 but gave an estimate based upon observations at night, and from over 30 feet away, when the
2 attacker was wearing a hood to obscure a clear view. With respect to defendant's second claim,
3 there is no support for the theory that the video, even if the crime would have been captured, would
4 have shown the identity of the attacker. Of course for the video to be material, the attacker must
5 also not have been the defendant. On this point, despite his burden, he provides no evidence.

6 As it is the defendant's burden to show actual and substantial prejudice before the burden
7 shifts to the People, we await their proof. Regardless, the People will provide facts relevant to the
8 reasons for the delay as part of this response, despite the reality that the showing by the defense is
9 inadequate to shift the burden.

10 A. The Law

11 The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the
12 right to a speedy and public trial" Consequently, a person is entitled to the protection of this
13 amendment only after becoming an "accused." *United States v. Marion* (1971) 404 U.S. 307, 313.
14 One becomes an "accused" in a felony case upon either (1) the filing of an indictment or
15 information, or (2) actual restraint by arrest and being held to answer. *Id.* at 320; *People v.*
16 *Martinez* (2000) 22 Cal.4th 750, 755, 759-762. The defendant has not asserted a violation of this
17 right, rather, he has claimed a violation of Federal Due Process under the Fifth Amendment, as well
18 as State Due Process under Ca. Const., Art. I, sec. 7.

19 1. Fifth Amendment Due Process Right

20 Under the United States Constitution, before the federal Sixth Amendment speedy trial
21 constitutional right is triggered, a defendant is protected against prejudicial pretrial delay by the
22 federal right to due process of law under the Fifth Amendment. *United States v. Lovasco* (1977)
23 421 U.S. 783; *People v. Cowan* (2010) 50 Cal.4th 401, 430; *see also People v. Catlin* (2001) 26
24 Cal.4th 81, 107; *People v. Butler* (1995) 36 Cal.App.4th 455, 463-464; *People v. Belton* (1992) 6
25 Cal.App.4th 1425, 1429.

26 The United States Supreme Court explained the "limited role" the Due Process Clause plays
27 in protecting against oppressive delay prior to indictment:

1 In *United States v. Marion*, 404 U.S. 307 (1971), this Court considered the
2 significance, for constitutional purposes, of a lengthy preindictment delay. We held
3 that as far as the Speedy Trial Clause of the Sixth Amendment is concerned, such
4 delay is wholly irrelevant, since our analysis of the language, history, and purposes
5 of the Clause persuaded us that only ‘a formal indictment or information or else the
6 actual restraints imposed by arrest and holding to answer a criminal charge . . .
7 engage the particular protections’ of that provision. *Id.* at 320. [footnote omitted].
8 We went on to note that statutes of limitations, which provide predictable,
9 legislatively enacted limits on prosecutorial delay, provide ‘the primary guarantee,
10 against bringing overly stale criminal charges.’ *Id.* at 322, quoting *United States v.*
11 *Ewell*, 383 U.S. 116, 122, (1966). But we did acknowledge that the “statute of
12 limitations does not fully define (defendants’) rights with respect to the events
13 occurring prior to indictment,” 404 U.S. at 324, and that the Due Process Clause
14 has a limited role to play in protecting against oppressive delay.

15 *United States v. Lovasco*, *supra*, 431 U.S. at 788-89.

16 The defendant states that the test for federal due process in this regard is not clear, implying
17 that a defendant’s federal due process can be violated without intentional delay. Federal due
18 process requires dismissal only “if it were shown at trial that the preindictment delay in [the] case
19 caused *substantial prejudice* to [the defendant’s] rights to a fair trial and that the delay was an
20 *intentional* device to gain tactical advantage over the accused.” *Marion*, *supra*, 404 U.S. at 324
21 (emphasis added); *see also Lovasco*, *supra*, 431 U.S. at 795. “A claim based upon the federal
22 Constitution also requires a showing that the delay was undertaken to gain a tactical advantage over
23 the defendant.” *People v. Catlin* (2001) 26 Cal.4th 81, 107, citing *People v. Frazer* (1999) 21
24 Cal.4th 737, 774. *Also see People v. Nelson* (2008) 43 Cal.4th 1242, 1251 (“Regarding the federal
25 constitutional standard, we have stated that ‘[a] claim based upon the federal Constitution also
26 requires a showing that the delay was undertaken to gain a tactical advantage over the defendant.’”)
27 *Nelson* analyzed the federal due process cases and concluded that the United States Supreme
28 Court’s latest cases required that the delay be a deliberate device to gain a tactical advantage. *Id.*
at 1253-1254.

The defendant has not alleged, and indeed will not find because it does not exist, any
evidence of intentional delay, much less intentional delay to secure a tactical advantage. The
simple fact is that the People wish the defendant would have been caught, prosecuted and
incarcerated before he kidnapped and murdered Sierra LaMar. Because it is the defendant’s

1 burden, the People ask this Court to direct the defense to produce their evidence of intentional
2 delay in order to gain a tactical advantage or deny the federal due process claim before engaging
3 in any balancing.

4 2. Speedy Trial Right under the California Constitution

5 A defendant's state constitutional speedy trial right is triggered by the filing of a felony or
6 misdemeanor complaint.^{2/} This is so because article I, section 15, of the California Constitution
7 states that the "defendant" (and not an "accused") in a criminal case has the right to a speedy trial.
8 *People v. DePriest* (2007) 42 Cal.4th 1, 27; *Martinez, supra*, 22 Cal.4th at 765; *see also People v.*
9 *Conrad* (2006) 145 Cal.App.4th 1175, 1182-1183.

10 The California Supreme Court held in *Nelson* that:

11 under California law, negligent, as well as purposeful, delay in bringing charges
12 may, when accompanied by a showing of prejudice, violate California due process.
13 This does not mean, however, that whether the delay was purposeful or negligent
14 is irrelevant. . . . [W]hether delay was negligent or purposeful is relevant to the
15 balancing process. Purposeful delay to gain an advantage is totally unjustified, and
16 a relatively weak showing of prejudice would suffice to tip the scales towards
17 finding a due process violation. If the delay was merely negligent, a great showing
18 of prejudice would be required to establish a due process showing.

16 *Nelson, supra*, 43 Cal.4th at 1255-1256. Since the People's delay was neither intentional nor
17 negligent it should follow that an even stronger showing of prejudice must be made under
18 California Due Process.

19 3. Defense Has the Burden of Proving Actual and Substantial Prejudice

20 The defendant has the burden of establishing actual and substantial prejudice. There is no
21 presumption of prejudice under federal law.^{3/} *Marion, supra*, 404 U.S. at 324. As noted above,
22 the defendant must show that the pre-accusation delay was intentional and designed to obtain a
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25 ^{2/} The timing at which the state right is triggered differs slightly from the federal speedy trial
26 right, but is of no moment in this case because the defendant does not assert any claims of delay
27 after the filing of the charges by juvenile petition.

28 ^{3/} There can be a presumption of prejudice under federal law for uncommonly long delay,
however the defendant alleges no such delay in the instant motion.

1 tactical advantage to show a violation of federal due process. *Nelson, supra*, 43 Cal.4th at 1251;
2 *Catlin, supra*, 26 Cal.4th at 107.

3 There is also no presumption of prejudice under the California Constitutional right to a
4 speedy trial. The defendant has the burden of affirmatively demonstrating actual prejudice in order
5 to establish a speedy trial claim under the state constitution. If there is prejudice to the defendant
6 resulting from the delay, it must be weighed against the justification for the delay. *DePriest, supra*,
7 42 Cal.4th at 27; *Martinez, supra*, 22 Cal.4th at 766-768; *see also Conrad, supra*, 145 Cal.App.4th
8 at p. 1183. As pointed out by the Court of Appeal:

9 The purpose of the [state] constitutional speedy trial provision is to insure timely
10 prosecutions and to prevent unjustified delays from inhibiting the sound
11 presentation of a defense. *But unless a defendant can demonstrate specific*
12 *prejudice flowing from the delay, the draconian remedy of dismissal should not be*
13 *invoked merely because the accused was not arrested as quickly as would be*
14 *possible in the best of all worlds. It is only because a delay can infect the truth*
15 *finding process by preventing the accused from mounting a viable defense that a*
16 *dismissal is ever justified.*

17 *Shleffar v. Superior Court* (1986) 178 Cal.App.3d 937, 946 (emphasis added).

18 Thus, even if decades pass between the crime and the defendant's arrest, without more,
19 there are not grounds for dismissal under the state speedy trial provision. In *Nelson*, there was a
20 26-year delay in filing charges against the defendant. In that case the defendant argued that in
21 exceptionally long delays, prejudice should be presumed. *Nelson, supra*, 43 Cal.4th at 1250.
22 Rejecting the interpretation of California due process, the Court said, "[t]hat has never been the
23 law, and we decline to adopt such a rule here." *Id. See also, e.g., Scherling v. Superior Court*
24 (1978) 22 Cal.3d 493 [11 year delay]. Here, the delay was just over three years.

25 As a result, the defense must prove actual prejudice. *People v. Archerd* (1970) 3 Cal.3d
26 615, 640; *People v. Belton* (1992) 6 Cal.App.4th 1425, 1433-1434. Bare conclusory statements,
27 such as a claim of lack of recall, are not sufficient to establish actual prejudice. *Serna v. Superior*
28 *Court* (1985) 40 Cal.3d 239, 250. "The showing of actual prejudice which the law requires must
be supported by particular facts and not . . . by bare conclusionary statements." *Crockett v.*
Superior Court (1975) 14 Cal.3d 433, 442. Until the defendant proves prejudice, there is no need

1 to explore justification for any delay. “[I]t would be unwise to impose upon the courts the
2 inquisitional function of scrutinizing the internal operations of law enforcement agencies when no
3 possible prejudice to the accused has been shown.” *People v. Sobiek* (1973) 30 Cal.App.3d 458,
4 471. As explained below, the defendant has failed to show actual or substantial prejudice.

5 **B. Discussion**

6 1. The Death of Arnold Ting

7 Arnold Ting provided a limited statement to the police at the time of the crime.^{4/} In that
8 statement Mr. Ting stated that while he saw a male enter Ms. Walters’ car, he said that he could
9 not see much due to the time of night and darkness. He further described that he had difficulty
10 seeing anything due to the tinted windows in Ms. Walters’ car. Saying he was about 30 feet away,
11 he described that he heard screaming and as a result “positioned his vehicle toward the scene and
12 turned on his headlights.” Mr. Ting stated that he thought the suspect was in his 20s, not because
13 he was able to see enough about the suspect but because of “how fast he ran.” Mr. Ting “estimated
14 [the suspect] was white male adult, about 5'10", wearing a dark hat or hood, dark top and dark
15 pants.”

16 Despite the fact that Ms. Walters was in the same car with the suspect, spoke to him and
17 was only a few feet away, the defense characterizes Mr. Ting’s “estimations” from outside the car
18 over 30 feet away as unambiguously raising a reasonable doubt regarding guilt. The People
19 seriously question whether this single “estimation” satisfies the defendant’s burden to establish
20 actual substantial prejudice requiring the prosecution to justify the delay. Given the jury
21 instructions on witness identification, including cross-racial identification [CALCRIM 315], and
22 the fact that Ms. Walters described her assailant as either Hispanic or a light skinned African
23 American male, it seems that whatever worth the witness’s racial estimations have is fully captured
24 in Ms. Walters’s description since she was unable to say for sure the race of her attacker.

25 As the defense so aptly notes, Ms. Walters did not identify her attacker in the photo lineup
26 conducted over three years later. Delay may weaken the government’s case just as much as the

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28 ^{4/} A copy of the report documenting the statement of Arnold Ting is attached as Exhibit 1.

1 defendant's. *Doggett v. United States* (1992) 505 U.S. 647, 655; *Marion, supra*, 404 U.S. at 322.
2 It is just as probable, indeed more so, that the delay more substantially impaired the People's case
3 because the delay faded the victim's memories to the degree that they could not make such an
4 identification.

5 Regardless, such possible prejudice to the defendant cannot prove a due process violation
6 without consideration of the other criteria. *Doggett, supra*, 505 U.S. at 655. The "real possibility"
7 that memories will dim, witnesses will become inaccessible and evidence will be lost, are not in
8 themselves enough to demonstrate that the defendant cannot receive a fair trial, and that the case
9 therefore should be dismissed. *Marion, supra*, 404 U.S. at 325-326. "Even a showing of some
10 detriment, however, does not necessarily mean that a denial of due process has occurred." *People*
11 *v. Price* (1985) 165 Cal.App.3d 536, 542. In fact, the defense cites no case that says that simply
12 because a witness says one marginally useful thing and thereafter becomes unavailable because
13 he died is a violation of California state or federal due process. The People could find no
14 analogous case that found such a minimal showing was substantially prejudicial to the defense.
15 It must be kept in mind that due process is a fairness issue, not a rule of relevance or admissibility
16 and the defense request to *dismiss all charges* because a potential witness died does not implicate
17 the fairness concerns that the Ca. Const., Art. I, sec. 7 contemplates.

18 2. The Alleged Loss of the Video

19 Defendant makes several assumptions regarding a video that are not supported. First, that
20 there was, in fact, a video from March 19, 2009, showing the Lundy attack. Second, that the video
21 would be sufficient to identify the perpetrator. Third, that the perpetrator would not be the
22 defendant.^{5/} He does this when he asserts: "the video would have documented the incident and
23 would have captured the image of the attacker." [Mot. to Dismiss Safeway at p. 8.] This statement
24 is without factual basis; but as it is the defendant's burden, the People await his proof.

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28 ^{5/} Indeed, there is no prejudice to the defendant if the video would show him as the perpetrator, rather that would remove all doubt, reasonable or otherwise.

1 At the time of the attack in the parking lot of 840 E. Dunne Avenue, Safeway cameras did
2 not cover the parking lot. [GJ TX^{6/} 416.] There were only two cameras outside of the store: a
3 camera above each of the exit doors showing customers entering and leaving. [GJ TX 415.] The
4 camera arrangement is the same from store to store. [GJ TX 418.] While the cameras do cover
5 small portions of the parking lot in the distance, the area is not clear and is not well lighted.
6 Distinguishing faces is challenging even for those walking in the store closest to the cameras. [MH
7 DM-10, 15.]^{7/}

8 Given that Ms. Lundy happened to park her car in virtually the exact same spot as Ms.
9 Orozco on March 26, 2009, it follows that *if* the video from the Orozco attack showed the “image
10 of the attacker” then the video with respect to Ms. Lundy’s attack would also show the attack or
11 attacker. The problem is that the video from the Orozco attack shows no such thing. Even the
12 video from the attack of Ms. Walters, which does reveal a figure that could be the attacker, is
13 insufficient for any identification or exclusion purposes. Even rudimentary information such as
14 the race or gender of the possible attacker cannot be determined.

15 Assuming that the defense allegation that Safeway keeps the video 4-6 weeks is true,^{8/} the
16 defendant does not address the fact that the destruction would have occurred prior to the time the
17 defense claims the defendant should have been identified and arrested. Even if we assume the
18 video would have contained an image of the attacker and it was not the defendant, it would have
19 been destroyed after 4-6 weeks, placing the destruction at approximately the beginning of May
20 2009. The prosecution could not have, under any defense theory, compared the fingerprint from
21 the battery to the defendant before that time. The first time the defendant was ever arrested, and
22 thus the government was in possession of his fingerprints, was May 29, 2009. As a result, even
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24 ^{6/} “GJ TX” refers to the transcript of the proceedings before the grand jury that resulted in the
25 indictment in this case.

26 ^{7/} “DM” refers to the compact disc discovery provided to the defendant. It is not attached to
27 the People’s briefing as the sole reason for the citation is to assist the defense in their response.

28 ^{8/} The People have not received the results of the purported defense investigation referred to
in their motion.

1 if the government was actually aware of the fingerprint match between the thumb print on the stun
2 gun battery and the thumb of the defendant first possessed by the government on May 29, 2009,
3 the evidence would have been destroyed by the routine video retention policy of Safeway before
4 that date.

5 Before the People continue however, it must be noted that California due process does not
6 impose upon the People an obligation to collect particular items of evidence. *People v. Fyre* (1998)
7 18 Cal.4th 894, 943 (citing *People v. Daniels* (1991) 52Cal.3d 815, 855; *People v. Farmer* (1989)
8 47Cal.3d 888, 911; and *People v. Hogan* (1982) 31 Cal.3d 815, 851). As a result, should there
9 have been such a video, due process is not implicated for the government failure to collect it.

10 4. Justification for the Delay

11 Despite the fact that no reason for the delay need be provided unless the defendant has made
12 a threshold showing, the People will provide some rudimentary, but dispositive, facts for this
13 Court's consideration. These facts will be shown at the evidentiary hearing should the Court make
14 any findings with respect to defendant's initial showing.

15 The defendant has stated that "the defense can only guess what justification the prosecution
16 will offer to excuse the delay." [Mot. to Dismiss Safeway at p. 9.] This is somewhat surprising
17 given the reason is found in the discovery. [BATES^{9/} 2017-2018, 10271; 10805-10808; SO DM-
18 518.] The defendant *was not identified as a fingerprint match* until the analysis by Timothy Fayle
19 in May 2012. [GJ TX 1011-1018, 1028-1039; GJ Exh. 31.] Defendant's statement that "they could
20 have identified Mr. Garcia-Torres through an AFIS search since his prints were in AFIS from
21 2009"^{10/} [Mot. to Dismiss Safeway at p. 10] ignores the realities of this fingerprint and the
22 capabilities of AFIS. AFIS produces ideal results when the questioned print is close to the center
23 of the finger. However, this questioned print was closer to the tip of the left thumb. It was because
24 of this fact that the questioned print was not saved in the AFIS unsolved file. [BATES 10805.]

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26 ^{9/} "BATES" refers to the pages of discovery provided to the defendant. It is not attached to
27 the People's briefing as the sole reason for the citation is to assist the defense in their response.

28 ^{10/} As noted, the defendant's first arrest, which would have produced a ten print fingerprint
card, was May 29, 2009.

1 Even if it had been saved, it is quite clear that a manual AFIS search was conducted on the
2 print from the battery when defendant was known to be in the database and it did not produce
3 defendant as a candidate for manual comparison.^{11/} As a result, defendant's claim of ignorance,
4 while most assuredly made in good faith, is answered in the discovery provided. By the time
5 defendant was identified as the perpetrator in the Safeway attacks, law enforcement diligently
6 followed up on the Safeway attacks and filed them in juvenile court within 3 months.^{12/} The
7 defendant does not claim this time period prejudiced him or that it constituted an unreasonable
8 amount of time to investigate before the filing of charges.

9 The reason the defendant was manually compared to the fingerprint on the battery was
10 because of a bit of luck and good investigative instinct; not negligent or intentional delay. Sgt.
11 Herman Leon was a resident of Morgan Hill in 2009 and was aware of the Safeway attacks during
12 that time. [GJ TX 1767-1768.] As the assigned investigator for the Sierra LaMar kidnapping, he
13 asked that the evidence in that case be sent by the Morgan Hill Police Department to the Santa
14 Clara County Crime Laboratory for analysis. [GJ TX 1768.] When the defendant was identified
15 as a suspect because of the CODIS hit, and following the defendant's admissions on April 4th and
16 7th 2012, it was Sgt. Leon who requested a manual search by fingerprint examiners at the Sheriff's
17 Office which lead to the identification in May 2012.

18 The required showing under federal due process of intentional delay to obtain tactical
19 advantage plainly fails. As noted above, the People would have preferred that the defendant had
20 been identified, prosecuted and incarcerated so that he could have been prevented from kidnapping
21 and murdering Sierra LaMar. Given the state due process test, this Court is bound to evaluate
22 whether the investigative delay is negligent or purposeful in balancing a finding of prejudice
23 against the reasons for the delay, giving more weight to slight prejudice when the delay is
24 intentional. *Nelson, supra*, 43 Cal.4th at 1255-1256.

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26 ^{11/} This is because of the way AFIS encoded the questioned print.

27 ^{12/} Timothy Fayle's final report on the fingerprint match was dated May 24, 2012, and charges
28 were filed in the Juvenile Court on August 17, 2012. The defendant had been arrested on the Sierra
LaMar charges on May 24, 2012.

1 Given the fact that there was no negligence, much less intentional delay for a tactical
2 advantage, whatever slight prejudice the defendant must have shown to get to the balancing test
3 is not sufficient to employ the draconian remedy of dismissal of three felony counts relating to the
4 attacks of three women in 2009.

5 5. Dismissal at this Time is Too Extreme a Remedy

6 It is the People's position that the defense showing is, and will be after any hearing,
7 inadequate to show actual prejudice from the delay. Further, if there is some prejudice shown that
8 rises to the level of actual prejudice, the reasons for the delay are obvious and justifiable – the
9 defendant was not known as a suspect and no amount of reasonable diligence by law enforcement
10 would have revealed him as such until after he kidnapped and killed Sierra LaMar. Even then, the
11 connection to him was good police work on a hunch, as opposed to some obvious investigative
12 step. However, should this Court have any questions, the law permits the Court to defer ruling on
13 the motion until the trial itself, or after, to assess prejudice to the defendant.

14 It is within the court's discretion whether to rule upon the motion before, during or after
15 trial. *Martinez, supra*; 22 Cal.4th at 768-770; see also *People v. Mirenda* (2009) 174 Cal.App.4th
16 1313, 1330; *People v. Boysen* (2007) 165 Cal.App.4th 761, 781-782; *People v. Abraham* (1986)
17 185 Cal.App.3d 1221, 1225-1226. "The appropriate time to seek relief from the prejudice resulting
18 from prosecutorial delay is during or after trial when the claimed denial of due process can be
19 appraised in the light of what the trial discloses." *Price, supra*, 165 Cal.App.3d at 542. Evidence
20 of the defendant's guilt as shown by the available evidence must also be considered in the
21 balancing process. *People v. Vanderburg* (1973) 32 Cal.App.3d 526, 533-534; see also *People v.*
22 *Cave* (1978) 81 Cal.App.3d 957, 966.

23 Therefore, after a hearing, if the Court has any question whether the alleged prejudice is
24 substantial or not, and if the Court is not satisfied with the reasons for the delay, then the People
25 ask this Court to defer ruling on the motion until during or after the trial where a more precise
26 examination of prejudice can be undertaken. At that time, and only if the Court determines that
27 there is a due process violation, it can fashion an appropriate remedy. The remedy, however, need
28 not be dismissal. See *Conrad, supra*, 145 Cal.App.4th at 1185.

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C. Conclusion

The task of this Court “is to determine whether precharging delay violates the fundamental conceptions of justice which lie at the base of our civil and political institutions and which define the community's sense of fair play and decency.” *People v. Dunn-Gonzalez* (1996) 47 Cal.App.4th 899, 914. The defendant asks this Court to terminate three serious felony counts because law enforcement was unable to identify him as a suspect for three years, and during that time a single witness – who gave an estimate of a hooded suspect’s race from 30 feet away at night – died, and a single video that would not show the face of the attacker may have been lost. Even if this Court gives the defendant the most favorable interpretation of his prejudice showing, there is no offense to fair play and decency, for all cases bear the risk of witnesses dying or evidence that theoretically might be helpful is lost due to time. Given that it is the People’s burden to prove the case beyond a reasonable doubt, it is clear that delay burdens the People more than the defendant which is more than fair and is no violation of due process.

DATED: October 5, 2016

Respectfully submitted,

~~JEFFREY E. ROSEN
District Attorney~~

~~DAVID R. BOYD
Deputy District Attorney~~