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9 *Attorneys for Antolin Garcia-Torres*

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA

12 People of the State of California,) Case No.: 213515
)
13 Plaintiff,)
) Reply to People's response to
14 --vs.--) motion to exclude and/or
) limit victim-impact
) evidence
15 Antolin Garcia-Torres,)
)
16 Defendant.)

17 Issue Presented

18 The District Attorney has informed the defense that he intends to offer victim-
19 impact evidence as permitted by law and he has provided a global witness list encompassing
20 both guilt and penalty phases. He has provided no more detail than that. Caselaw permits the
21 introduction of victim-impact evidence in capital trials, but the powerful nature of this
22 evidence requires the Court to conduct an evaluation of whether its admission will render
23 the trial fundamentally unfair. Doing so requires the Court to know what the prosecution's
24 proposed evidence is. Should this Court conduct a hearing to determine what evidence the
25 prosecution seeks to present, what form it intends to use, and ultimately what is admissible?

FILED
OCT 6 2016

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

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2 **I. This Court should limit victim-impact evidence**

3 The defense objects to the admission of any victim-impact evidence at trial. However,
4 we concede there is authority that requires this Court, generally speaking, to admit such
5 evidence. (*Payne v. Tennessee* (1991) 501 U.S. 808, 827; *People v. Edwards* (1991) 54 Cal.3d 787,
6 835.) The defense also asks the Court to limit the victim-impact evidence to the victim's
7 relatives or to persons present during the crime and to circumstances known or foreseeable
8 to the defendant at the time of the crime. We argue that such limitations are required under
9 the U.S. Constitution, but recognize that this Court is bound by California Supreme Court
10 authority to the contrary. (See *People v. Lewis* (2006) 39 Cal.4th 970, 1057.) The defense also
11 objects to victim-impact evidence being used in relation to factor (b) crimes as a violation of
12 due process, the right to a fair trial, and the 8th Amendment, but submits to precedent that
13 binds this Court to rule to the contrary. (See *People v. Davis* (2009) 46 Cal.4th 539, 617.)

14 That authority does not, however, prevent the Court from reviewing the proposed
15 victim-impact evidence so that it can determine its admissibility in this trial. Indeed, the U.S.
16 Supreme Court has recognized that the admission of victim-impact evidence violates a
17 defendant's right to a fair trial when it is "so unduly prejudicial that it renders the trial
18 fundamentally unfair." (*Payne v. Tennessee, supra*, 501 U.S. at p. 825.) And, the California
19 Supreme Court has recognized that evidence of this type tends to be highly emotional and
20 may distract the jury from its proper role or invite an irrational, purely subjective response.

21 Thus, the Court must analyze the proposed evidence to determine if its admission
22 would violate due process. Furthermore, the Evidence Code requires that the Court
23 determine if the evidence should be excluded pursuant to section 352. (*People v. Carpenter*
24 (1997) 15 Cal.4th 312, 400 (*court retains discretion under section 352 regarding form of penalty phase*
25 *evidence.*) How can the Court discharge its obligation without being advised of the evidence
the prosecution seeks to introduce? The government suggests that the defense should be
forced to lodge objections in a question-by-question manner. The defense objects to being
put to the difficult strategic choice of interrupting emotional testimony or waiving the

1 objection when the matter could be resolved in a pretrial hearing.

2 Indeed, it is difficult to raise specific objections now when we don't know even the
3 most basic things, for example,

- 4 • How many victim-impact witnesses does the prosecution intend to call?
- 5 • What do they intend to say? For example, will they refrain from clearly
6 inadmissible testimony regarding their feelings for the defendant and the
7 appropriate sentence?
- 8 • Does the prosecution intend to use photos? If so, what photos?
- 9 • Does the prosecution intend to use a video? If so, what does it depict?

10 The prosecution attempts to avoid disclosure and review before trial by claiming the
11 defense is asking for depositions. But that is not what we are seeking; rather, we are asking
12 for the Court to be able to conduct the analysis it is required to do under constitutional
13 authority and the Evidence Code. The defense has the right to ask the Court to exercise its
14 authority in this manner.

15 The prosecution claims that the defense has no right to a hearing regarding victim-
16 impact evidence and cites *People v. Montes* (2014) 58 Cal.4th 809, 877. The briefing includes no
17 discussion of *Montes* and only claims it stands for the proposition that the defense has no
18 right to a section 402 hearing in this context. A closer analysis of what actually happened in
19 *Montes* shows it supports the defense request. The Court in that case refused to conduct a
20 402 hearing involving live testimony, but “it reviewed with defense counsel letters family
21 members had submitted to the prosecutor and an outline of questions the prosecutor
22 planned to ask them.” (*Id.* at p. 877.) The Supreme Court found that the trial court did not
23 have to conduct a hearing involving live testimony but noted that “the trial court considered
24 the proposed testimony by reviewing the written statements of the proposed victim impact
25 witnesses.” (*Ibid.*) The Court found this was sufficient and therefore there was no error. The
prosecution has not offered anything close to what was offered in *Montes* so that the Court
can review the material. Instead he argues that the Court should trust that he knows the

1 permissible limits and will not exceed them. But doing as the government suggests would
2 prevent the Court from fulfilling its obligation to review this evidence and determine its
3 admissibility.

4 The prosecution posits that “the very concept of prejudicial victim impact evidence is
5 something of a misnomer considering what is permitted.” (People’s Response to
6 Defendant’s Motion in Limine filed September 19, 2016 at p. 8) Both the U.S. Supreme
7 Court and the California Supreme Court disagree. Indeed, both Court’s have recognized that
8 victim-impact evidence has the potential of distracting a jury from its job and may invite an
9 irrational, purely subjective response, from the jury. (*Payne v. Tennessee, supra*, 501 U.S. 808;
10 *People v. Edwards* (1991) 54 Cal.3d 787.) It is clear that victim-impact evidence can be
11 impactful and is deserving of special review. As the Supreme Court said in *Haskett* and
12 repeated in *Edwards* in regards to victim-impact evidence, “in each case, therefore, the trial
13 court must strike a careful balance between the probative and the prejudicial.” (*People v.*
14 *Edwards, supra*, 54 Cal.3d at p. 836 (citing *People v. Haskett* (1982) 30 Cal.3d 841, 864.) This
15 Court cannot discharge this duty without knowing the proposed evidence. Because of the
16 amorphous nature of the prosecution’s disclosure, the defense suggests a 402 hearing with
17 live testimony. Short of that, the defense asks for some type of review similar to what was
18 done in *Montes*.

17 Conclusion

18 The defense requests that this Court conduct a section 402 hearing to determine the
19 admissibility, both as to content and form, of any victim-impact evidence the government
20 seeks to admit. If the Court determines a full evidentiary is unnecessary, the defense requests
21 a hearing like that conducted in *Montes* so that the Court can ensure the evidence is
22 admissible under the federal and state constitutions.

22 Date: October 5, 2016

Respectfully submitted,



Brian Matthews

Deputy Alternate Defender

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

People of the State of California,) Case No.: 213515
Plaintiff,)
-vs.-)
Antolin Garcia-Torres,)
Defendant.) **Proof of Service**

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to this action. My business address is 701 Miller Street, San Jose, CA 95110.

On October 5, 2016 I served the attached Reply to People's response to motion to exclude and/or limit victim-impact evidence on Deputy DA David Boyd by email to his business address.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 5th day of October 2016 at San Jose, California.

Bj Matthews