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(ENDORSED)
FILED
MAR 20 2017

Clerk of the Court
Superior Court of the County of Santa Clara
BY _____ DEPUTY

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

12 Plaintiff,)

13 v.)

14 ANTOLIN GARCIA-TORRES,)

15 Defendant.)
16

Criminal Case No. 213515

DATE: March 20, 2017

TIME: 8:45 AM

DEPT: 40

PEOPLE'S RESPONSE
TO GARCIA'S MOTION FOR
A CONTINUANCE UNDER PC 1050

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18 **A. Introduction**

19 The Defense seeks a two week continuance. The People object to the extent that it would
20 cause a rescheduling of the agreed upon dates between counsel for cell phone evidence
21 presentation. The People have arranged to bring a witness from South Korea and he will be
22 expected to testify on March 28, 2017. Additionally, the People have arranged for an FBI agent
23 who is not available the week of April 3rd to rebut the proposed testimony of defense witness
24 Aguero.

25 Outside of scheduling issues, the People take no position on the defense request. It should
26 be noted that the defense still has not produced the proposed testimony of named witnesses Peter
27 Barnett or Henry Lee. Additionally, they have produced no material regarding their recently
28

1 proposed, but unnamed, "bias" expert.^{1/} Finally, the People still have not received the remainder
2 of the defendant's penalty phase evidence.

3 **B. Counsel's Declaration**

4 Below, the People will address select portions of the declaration authored by Al Lopez. The
5 purpose of the below is complete the record and, where appropriate, to assist the Court in its review
6 of good cause.

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8 DECLARATION - AL LOPEZ

9 **Paragraph 5:** The date of a lab report does not necessarily reflect when it is has been
10 finalized or is available for production. All lab reports must go through technical and
11 administrative review. That process can take several days. This testing was conducted in response
12 to defendant's request for trace material to be sent to their own expert mid-trial.

13 **Paragraph 8:** As noted above, the date of a lab report does not necessarily reflect when
14 it is finalized and available for production.

15 **Paragraph 9:** Only a portion of Dr. Whittall's conclusions are new and those new
16 conclusions are based upon the recent work of Melissa Dupee surveying the tape lifts from the
17 defendant's car documented in Supplement 86. As noted, this work was done in response to
18 defendant's request to send samples to Mr. Palenik in January and February.

19 Counsel has had Dr. Whittall's comments regarding the trace evidence found on Sierra's
20 clothing since October 2013. Additionally, counsel was informed that the People were definitely
21 going to call Dr. Whittall on January 12, 2017.

22 In the email along with Dr. Whittall's report, counsel was informed that while the report
23 was dated March 15, 2017, the People did not receive the final report until the day is was turned
24 over to the defense, March 17, 2017.

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27 ^{1/} On Friday, March 17, 2017, during a requested viewing of evidence, Mr. Lopez
28 disclosed that the People should be talking to Ms. Barlow about her contemplated "bias" expert.

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Paragraph 10: This paragraph consists of the opinion of the defense and argument, it is not a statement of fact.

Paragraph 11: As of this writing, the People have not received from defense counsel which trace evidence items their expert needs in order to conduct the contemplated analysis.

C. Conclusion

The People object to any continuance to the extent it will impact the presentation of the agreed upon cell phone testimony during the week of March 27, 2017. The People take no further position on the defense request other than to note that the defense has provided no proposed testimony from their named experts of Peter Barnett and Henry Lee. Indeed, Mr. Lopez has stated that he will not disclose their proposed testimony until they have the final conclusions of Mr. Palenik. Mr. Palenik’s examination of the physical samples in this case was not commenced until 2017 (with the exception of the fibers, which were requested in August 2016).

DATED: March 19, 2017

Respectfully Submitted,

JEFFREY F. ROSEN
District Attorney

DAVID R. BOYD
Deputy District Attorney