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(ENDORSED)
FILED
SEP 13 2016

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

DIANA GUTIÉRREZ

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, NO. 213515
13
14 Plaintiff, Trial Motion No.
15 vs. REPLY TO GOVERNMENT
16 ANTOLIN GARCIA-TORRES, OPPOSITION (MOTION FOR
17 Defendant. SEVERANCE)

18
19 The Court should sever all the counts to ensure Mr. Garcia-Torres receives a fair trial
20 free from the prejudice of unproven inflammatory charges. The government's offer of proof
21 regarding intent, motive, common scheme or plan, and propensity is lacking any similarity
22 other than they all result in inflammatory prejudice. The government claims of similarity fail to
23 meet any of the standards set by case law.

24 The government is asking this Court to find similarities between the various counts
25 based on profile type speculation. The government claims, "The evidence in all instances
26 demonstrates the defendant's desire to stalk and terrorize his victims with an apparent
27 enjoyment of the chase and the fear he placed them in."(pg 21, Trial Memo.) Such profile
28 speculation is inadmissible and the government seeking to use it to show similarities among the
counts amounts to prejudice on steroids. The courts have reverse cases where such profiling

1 evidence was introduced by experts let alone by the government's speculation. The problem
2 was illustrated as follows:

3 As these cases indicate, **profile evidence** is inherently prejudicial because it
4 requires the jury to accept an erroneous starting point in its consideration of the
5 **evidence**. We illustrate the problem by examining the syllogism underlying
6 **profile evidence: criminals** act in a certain way; the **defendant** acted that way;
7 therefore, the **defendant** is a **criminal**. (*People v. Robbie*, (2001) 92 Cal.App4th
8 1075, 1085.)

9 In this case, the government's attempt to show similarity among the charges with speculation
10 and inadmissible profile evidence fails to establish cross-admissibility amongst the charges.

11 The appellant courts have dealt with cases where the government wrongfully introduces
12 prior conduct claiming it's being introduced under Evidence Code section 1101 (b), for the
13 limited purpose of showing intent. In the case of *People v. King*, (2010) 183 Cal.App.4th 1281,
14 a school district police officer was charged with sexual misconduct when he made a late night
15 traffic stop and gave the 21 year old victim a full body search including massaging her breasts
16 and digital penetration. At his trial, the government introduced uncharged sexual misconduct
17 for the limited purpose of proving intent. The uncharged misconduct included the officer
18 making sexual advances toward an 18 year old student while on duty at the school. The court
19 found that the introduction of the uncharged misconduct was error and should have been
20 excluded. The court finds that there were similarities between both acts but that the
21 dissimilarities were significant while the commonalities were superficial. (pg, 1303) The
22 government's claim that there are some superficial similarities among the charges is not enough
23 to make the charges cross-admissible to prove intent.

24 The government's claim of cross-admissibility based on section 1101 (b) fails because
25 of the lack of similarity as discussed in case law. Similarly, the claim of motive fails because
26 the claimed motive is based on inadmissible profile speculation. Moreover, the Safeway
27 incidents and the disappearance of Sierra Lamar share significant dissimilarities. The age of the
28 alleged victims being adults versus a minor, the time of the incidents night time versus
morning, Safeway parking lot versus a rural residential neighborhood, assault inside the alleged
victim's car versus disappearance where the alleged assault location is unknown. More
importantly, the government alleges that the Safeway incidents were attempted carjacking

1 offenses while Ms. Lamar never possessed a car and could not have been car-jacked. These are
2 just a few of the significant dissimilarities among the charges.

3 The significant dissimilarities among the Safeway incidents and the disappearance of
4 Ms. Lamar can be easily made and severing them is an easy call. The significant dissimilarities
5 among the Safeway incidents present a closer call. Although those charges share more similar
6 facts, the greatest issue is that the government fails to have any evidence that the alleged
7 Safeway counts were committed by the same person. Although the Safeway incidents share
8 similar facts, they fall short of a signature or common plan or scheme which requires a higher
9 degree of similarity. The assault on Lundy involved a failed attempt to open her driver side
10 door while the other two involved assaulting Mrs. Walters and Mrs. Orozco from the back seat.
11 Mrs. Walters was assaulted after she exited the Safeway store and entered her vehicle while
12 Mrs. Orozco was assaulted prior to exiting her car before she went shopping. These differences
13 are significant because they show that the three assaults were spontaneous and not part of a
14 common plan. The mere fact that three women were assaulted at two different Safeway stores
15 on different nights in different ways is too general to prove a common scheme or plan.

16 The severance factors regarding the Safeway incidents and the disappearance of Ms.
17 Lamar were discussed in the defense severance motion already so we will only briefly discuss.
18 As stated above, the lack of similarity renders the counts not cross-admissible. Secondly, the
19 Safeway counts are inflammatory as the government aims at tripling down on prejudice to
20 make up for their lack of evidence to prove that Ms. Lamar is deceased. The prejudicial aim is
21 to have the jury believe that if Mr. Garcia-Torres committed one offense he must have
22 committed them all and not to prove them with independent facts. Next, the government is
23 joining four weak cases in an effort to make up for the shortcomings of the cases. Lastly, this
24 case is a capital case where judicial economy should not be the focus in light of the
25 consequences of an unfair trial: wrongfully convicting and killing an innocent man.

26 The Court should apply the factors as set forth in the *Alcala* case to the Safeway
27 incidents among themselves. First, the alleged victims in the Safeway case are different and the
28 evidence is not cross-admissible. There is nothing to suggest that the alleged victims or
suspects were the same person. Secondly, the government is seeking to join the Safeway
counts to inflame the jury into convicting him of a greater crime of attempted kidnapping

1 during a car-jacking rather than a lesser crime barred by the statute of limitations such as
2 attempted robbery. Next, the government seeks to join the Safeway incidents in an effort to
3 inflame the jury into believing that if Mr. Garcia-Torres committed one of the incidents he must
4 have committed all three. There is only a finger print purportedly belonging to Mr. Garcia-
5 Torres on a battery in one of the counts and no other credible evidence against him in the other
6 Safeway counts. Lastly, the Safeway incidents among themselves do not convert the case into a
7 capital case but weighing all the factors still warrants a severance as not all the factors need be
8 shown.

9 The government's claim that the evidence is cross-admissible as propensity to commit a
10 sex crime under Evidence Code section 1108 is erroneous for several reasons. First, the
11 government chose not to charge Mr. Garcia-Torres with any sex crime covered by section 1108.
12 Secondly, none of the counts allege that there were unlawful sexual acts or that Mr. Garcia-
13 Torres has a propensity to commit sexual offenses. Lastly, section 1101 (a) forbid the use of
14 propensity evidence unless it is being offered under section 1108 which is not the case here.
15 The government claim that they might allege that the crimes were sexually motivated is nothing
16 but speculation as the evidence lacks any credible evidence suggesting any of the charges were
17 sex offenses let alone that Mr. Garcia-Torres has a propensity to commit sex crimes.

18 The government attempts to make up for their lack of evidence by citing the doctrine of
19 chances. Their argument fails to pass the straight face test as their claims ignore the evidence in
20 the case. They claim that the alleged victims in the Safeway counts must have been assaulted
21 for sexual reasons because nothing was stolen and the suspect did not claim a non-sexual
22 reason for the assaults. What the government fails to acknowledge is that just because nothing
23 was said during the assault is not evidence of an attempted sexual assault because actual
24 evidence is necessary. In fact, nothing was taken because the facts are clear that in each of the
25 Safeway counts the assaults were interrupted and the intent is unknown. To claim that the
26 doctrine of chances makes the assaults sexual is beyond a stretch of the imagination. The
27 government ignores the fact that nothing sexual was said in either incident. Moreover, the
28 government has alleged attempted crimes because the alleged crimes were not completed. If the
government's flawed reasoning were correct, everyone who attempts a robbery and says
nothing is guilty of a sexual offense unless they specifically indicate the attempted robbery is

1 not sexual. If we were to speculate that the Safeway incidents were committed by the same
2 person and apply the doctrine of chances, then what would be assumed, if at all, is that the
3 Safeway incidents were attempted robberies.

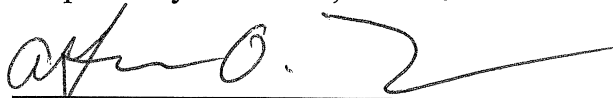
4 The government cites People v. Spector, (2011) 194 Cal.App.4th 1335, where the facts
5 of that case are not even remotely similar to the facts in this case. In the *Spector* case, they had
6 a body and proving she was deceased was not an issue. The defense in that case was that the
7 victim committed suicide and that Mr. Spector could not have killed her. To refute the defense
8 and to prove second degree murder under an implied malice theory, the government introduced
9 seven prior bad acts where he assaulted women with guns while he was drunk. The government
10 sought to prove that Mr. Spector acted with wanton and willful disregard for human life when
11 he assaulted the women with guns and that based on the doctrine of chances he was bound to
12 kill one of the women sooner or later. The prior bad acts were used to disprove the defense of
13 suicide and accident. Unlike the *Spector* case, in this case there is no body to prove Ms. Lamar
14 is deceased let alone that she was killed by another. Moreover, the defense is not alleging that
15 she committed suicide or that she was killed by accident.

16 **CONCLUSION:**

17 This Court should sever all the counts after applying the factors discussed herein so
18 that Mr. Garcia-Torres receives a fair trial under his state and federal due process rights
19 including their respective constitutions. Because the government is seeking the ultimate
20 punishment of a death sentence, judicial economy should not be the focus of this Court.
21 Ensuring that Mr. Garcia-Torres receives a fair trial and is not wrongfully killed by the
22 government should be the Court's foremost interest over preserving resources. Empaneling
23 multiple juries to try the cases separately is minimal compared to the death sentence being
24 sought in this case and the danger of an unfair trial by not severing the counts.

25 Dated: September 13, 2016.

26 Respectfully submitted,

27 

28 Alfonso O. Lopez
Deputy Alternate Defender

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

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11 COUNTY OF SANTA CLARA

12 PEOPLE OF THE STATE OF
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16 ANTOLIN GARCIA-TORRES,

17 DEFENDANT
18

CASE NO.: 213515

Reply to Government Opposition (Motion
For Severance)

Proof of Service

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

22 On September 13, 2016, I served the within *Reply to Government Opposition*
23 *(Motion For Severance)* on the Plaintiff in this action by leaving a true and correct copy at
24 the clerk's office at the Hall of Justice and by email to Deputy District Attorney David Boyd
25 at his office e-mail account.

26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed on this 13st day of September at San Jose, California.

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