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FILED

2016 SEP 19 P 2:03

David H. Yemasaki, Clerk of the Superior Court
County of Santa Clara, California
By: 
Mark McCoy

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)
14 Plaintiff,) Motion to prohibit admission of
15 -vs.-) victim-impact evidence; alternatively,
16) Motion to limit victim-impact evidence
17 Antolin Garcia-Torres,) and request for evidentiary hearing
18)
19 Defendant.) Date: October 3, 2016
20) Time: 9:00 am
21) Dept. 40
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26 Introduction

27 On July 28, 2016, the prosecution filed its "Notice Pursuant to Penal Code Section
28 190.3" in response to a defense discovery request. The document enumerated eight items the
29 prosecution intends to offer "in support of a verdict of death." As relevant to this motion,
30 the prosecution voiced its intention to present evidence of "the effect of the instant crimes
31 on Sierra LaMar's family and friends" and the effect of the Safeway incidents on the victims
32 and their families. The prosecution also notified court and counsel of their "intention to
33 present victim-impact evidence as permitted by law."
34
35

1 The prosecution has provided the defense with a witness list that purports to cover
2 both the guilt and penalty phases of the trial, but has not specified which witnesses it will call
3 who are “family and friends” as referenced in their notice or whom or what they will use as
4 victim-impact evidence. Indeed, it is unclear to the defense if the prosecution believes the
5 effect of the crimes evidence somehow differs from victim-impact evidence or if the Notice
6 is simply redundant.

7 Points and Authorities

8 **I. Admitting victim-impact evidence violates the 8th Amendment**

9 The law surrounding the 8th Amendment is subject to change as society evolves. The
10 death penalty itself, for example, was found to be unconstitutional in *Furman v. Georgia* (1972)
11 408 U.S. 238. Only four years later, the Supreme Court reversed course and brought it back
12 in *Gregg v. Georgia* (1976) 428 U.S. 153. The admissibility of victim-impact evidence has seen a
13 similar change. The Supreme Court held in 1987 and 1989 that the admission of such
14 evidence at the penalty phase of a capital trial violated the 8th Amendment. (*Booth v. Maryland*
15 (1987) 482 U.S. 496; *South Carolina v. Gathers* (1989) 490 U.S. 805.) But it rejected its prior
16 holdings in 1991 when it held that the 8th Amendment erects no per se bar to the admission
17 of such evidence. (*Payne v. Tennessee* (1991) 501 U.S. 808, 827.) Though it removed the 8th
18 Amendment bar, the Court said that victim-impact evidence may be so unduly prejudicial
19 that it renders the trial fundamentally unfair in violation of the 14th Amendment’s due
20 process clause. (*Id.* at p. 825.) The California Supreme Court subsequently interpreted the
21 California statutes supporting the state’s death penalty scheme to permit the admission of
22 victim-impact evidence as a circumstance of the crime under Penal Code section 190.3(a).
23 (*People v. Edwards* (1991) 54 Cal.3d 787, 835.)

24 The defense recognizes that this Court is bound by prior precedent and raises this
25 issue to preserve it in case the Supreme Court changes the law in this area again. We
26 therefore argue that this Court should exclude all victim-impact as its admission would
27 violate the 8th Amendment under the reasoning of *Booth* and *Gathers*. In addition, the defense
28 argues that *Payne* only permitted the states to authorize the admission of victim-impact

1 evidence and California's failure to pass a statute specifically permitting it means the state
2 cannot take advantage of *Payne*. The theory of admissibility in California came not from the
3 Legislature passing a statute, but from the state Supreme Court's interpretation of factor (a),
4 the circumstances of the crime. This runs afoul of *Payne*. In the absence of an authorizing
5 statute, this Court should not admit victim-impact evidence.

6 **II. Victim-impact evidence related to prior crimes should not be admitted**

7 *Payne* held that evidence of the homicide's impact on the victim and the victim's
8 family was not barred by the 8th Amendment. It did not authorize or even address victim-
9 impact evidence related to other crimes evidence. Because the evidence is inherently
10 prejudicial to the defendant and because it doesn't relate to the capital charge, this Court
11 should refuse to permit victim-impact regarding other crimes. Admitting it will violate the 8th
12 Amendment and the 5th, 6th, and 14th Amendments as well.

13 In spite of the limited context of *Payne*, the California Supreme Court has authorized
14 victim-impact evidence related to factor (b): the presence of criminal activity by the
15 defendant which involved the use or attempted use of force or violence or the express or
16 implied threat to use force or violence. (*People v. Davis* (2009) 46 Cal.4th 539, 617.) The
17 defense submits that the Court was incorrect in its ruling and that the admission of factor (b)
18 victim-impact evidence is unconstitutional. Indeed, it isn't consistent with the statutes.
19 Section 190.3(a) permits evidence of the circumstances of the crime for which the defendant
20 was convicted in the present proceeding. Section 190.3(b), on the other hand, only permits
21 the admission of evidence of the presence or absence of criminal activity involving violence.
22 The difference in the statutes should result in different treatment. If victim-impact is
23 admissible under factor (a) as a circumstance, it isn't admissible under factor (b) because that
24 statute only permits the presence or absence of criminal activity.

25 **III. This Court should review victim-impact evidence prior to trial and limit what
the prosecution is permitted to introduce**

The Supreme Court held in *Payne* that, though the 8th Amendment does not bar
victim-impact evidence per se, such evidence would violate due process if it is "so unduly

1 prejudicial that it renders the trial fundamentally unfair.” (*Payne v. Tennessee, supra*, 501 U.S. at
2 p. 825.) Victim-impact evidence is admissible when it gives the jury an understanding of the
3 victim as an individual. (*Id.*) However, its very nature tends to be highly emotional and may
4 distract the jury from its proper role or invite an irrational, purely subjective response. (*People*
5 *v. Edwards, supra*, 54 Cal.3d at p. 836.) Indeed, *Payne* described the evidence it was authorizing
6 as “a quick glimpse of the life” of the victim or demonstrating the loss to the victim’s family
7 and society which has resulted from the homicide. (*Payne v. Tennessee, supra*, 501 U.S. at p.
8 822.)

8 The California Supreme Court has held that there are limits to victim-impact evidence
9 and argument. (*People v. Edwards, supra*, 54 Cal.3d at p. 836.) For example, it may not include
10 “characterizations or opinions about the crime, the defendant, or the appropriate
11 punishment.” (*People v. Pollock* (2004) b32 Cal.4th 1153, 1180.) Because the evidence is offered
12 for a similar purpose, the limits apply at least as stringently for factor (a) evidence as factor
13 (b) evidence. Quoting a pre-*Payne* case, the *Edwards* Court cautioned about how far this type
14 of evidence should be allowed to go.

14 Nevertheless, the jury must face its obligation soberly and rationally,
15 and should not be given the impression that emotion may reign over
16 reason. [Citation.] In each case, therefore, the trial court must strike
17 a careful balance between the probative and the prejudicial. [Citations.]
18 On the one hand, it should allow evidence and argument on emotional
19 though relevant subjects that could provide legitimate reasons to sway
20 the jury to show mercy or to impose the ultimate sanction. On the other
21 hand, irrelevant information or inflammatory rhetoric that diverts the
22 jury’s attention from its proper role or invites an irrational, purely
23 subjective response should be curtailed.

20 *People v. Edwards, supra*, 54 Cal.3d at p. 836 (citing *People v. Haskett* (1982) 30 Cal.3d 841, 864.)

21 The defense therefore requests that the Court hold a hearing pursuant to Evidence
22 Code section 402 to determine if the victim impact evidence offered by the prosecution
23 exceeds the scope *Payne* and *Edwards*, including making a determination whether the
24

1 evidence is so unduly prejudicial or inflammatory that it violates principles of fundamental
2 fairness and due process.

3 Making this determination requires that the Court be advised of the exact nature of
4 the victim-impact evidence the prosecution intends to present. At this point, the defense is
5 unaware of what form the prosecutor's presentation will take as all he has said is that he will
6 present it "as permitted by law." (See Notice Pursuant to Penal Code Section 190.3 filed 28
7 July 2016.) The defense is asking for a section 402 hearing regarding the victim-impact
8 evidence because it can be so powerful and because it may be difficult to control. We
9 therefore request that the Court review the actual evidence the prosecution intends to
submit and allow argument on its admissibility.

10 Conclusion

11 Victim-impact evidence can be extremely powerful and may prevent Mr. Garcia-
12 Torres from receiving a fair trial under the 5th, 6th, 8th, and 14th Amendments to the U.S.
13 Constitution and their California corollaries. The defense asks this Court to exclude victim-
14 impact evidence or at least conduct a hearing to determine what form it will take and limit it
so as to avoid prejudice.

15 Date: September 19, 2016

17 Respectfully submitted,

18 
19 _____
20 Brian Matthews


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) and request for evidentiary hearing

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) Proof of Service

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

20 On September 19, 2016 I served a copy of the Motion to prohibit admission of
21 victim-impact evidence; alternatively, motion to limit victim-impact evidence and request for
22 evidentiary hearing on the plaintiff in this action by leaving a copy for Dep. DA David Boyd
23 in the lobby of his office.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed on
25 this 19th day of September 2016 at San Jose, California.

