

1 while jogging in the neighborhood, she noticed a white van, perhaps a Chevy Astro, being driven
2 by a Hispanic gentleman. Ms. Miller told the investigator that she felt uneasy, as if the man in the
3 van was watching her. She also mentioned that around 6 a.m. one morning about a month before
4 Sierra's abduction she heard what she thought was a knock at the door. Her grandfather
5 investigated but saw no one and no associated cars. Finally she described someone taking a photo
6 of her car about one week after Sierra went missing.

7 To be admissible as third party culpability evidence, Ms. Miller's statements must "be
8 capable of raising a reasonable doubt of defendant's guilt." *People v. Hall* (1986) 41 Cal.3d 826,
9 833. "[E]vidence of mere motive or opportunity to commit the crime in another person, without
10 more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or
11 circumstantial evidence linking the third person to the actual perpetration of the crime." *Id.*

12 Ms. Miller's statements are less persuasive than the excused testimony of Cindy Durham
13 in *People v. McWhorter* (2009) 47 Cal.4th 318. Ms. Durham, the victim's former neighbor, told
14 a defense investigator that eight months prior to the murders, the victim saw her ex-husband parked
15 outside her residence. *Id.* at 368. "[W]hen [the victim] saw her ex-husband parked outside her
16 home," Durham told the defense investigator, "she got a 'panic stricken look on her face.'" *Id.*
17 The defendant attempted to introduce Durham's testimony as evidence that the victim's ex-
18 husband, not the defendant, was culpable for the murders. *Id.* The California Supreme Court
19 affirmed the trial court's exclusion of the third party culpability evidence, finding that it was
20 "entirely speculative." *Id.* at 372. Here, Miller's statements are more speculative in nature and
21 because there is no direct or circumstantial evidence linking the man driving the white van, the
22 knocking on the door or the photo taking to the crimes in this case, any argument that the van or
23 its driver may be culpable for Sierra's disappearance is inadmissible. Ms. Miller's statements
24 should be excluded.

25 **B. Robert Royce**

26 Defense counsel has advised the People that they intend to call Robert Royce "to educate
27 the jury" on human trafficking. Robert Royce will not offer any opinion based upon the facts of
28

1 this case that Sierra was a victim of human trafficking.^{2/} Royce’s proposed testimony compares
2 and contrasts prostitution and human trafficking, contains a glossary of terms associated with each,
3 and notes that victims of human trafficking are sometimes kidnapped. The defense additionally
4 proposes to play a video clip of an unnamed police officer from the Anaheim Police Department
5 describing abduction by alleged pimps.

6 Royce’s proposed testimony on the nature of human trafficking is inadmissible third party
7 culpability evidence: it invites the jury to infer that a third party – some human trafficking
8 organization or person – is culpable for Sierra's kidnap and/or murder. The mere fact that Sierra
9 disappeared to never be seen again is insufficient circumstantial evidence that she is a victim of
10 human trafficking; otherwise, every missing child would provide sufficient circumstantial evidence
11 of human trafficking.

12 *People v. Covarrubias* (2011) 202 Cal.App.4th 1 involved expert testimony similar to
13 Royce’s proposed testimony on human trafficking. In *Covarrubias*, the trial court admitted expert
14 testimony “concerning the structure and practices of drug trafficking organizations, including a
15 description of the various roles that individuals perform within such organizations.” *Id.* at 16.
16 “Because the People presented no evidence associating [the defendant] with such an organization,”
17 the court concluded, “the trial court abused its discretion in admitting this evidence . . .” *Id.* Since
18 the defense has not produced any evidence that establishing a connection between Sierra’s
19 disappearance and any human trafficking operation, Royce’s testimony should be excluded.
20 Indeed, the defense disavowed that they intend to present any such evidence. In a November 2,
21 2016 email, Mr. Lopez advised the People that he has “decided to call him [Robert Royce] to
22 educate the jury and discuss the terms and concepts he addresses in his report. At this time, I am
23

24 ^{2/} Nor should Mr. Royce be permitted to offer his opinions on human trafficking. Such
25 testimony would be so highly speculative that it fails in establishing relevance. Regardless, it
26 would violate Evidence Code section 352. See *People v. Peoples* (2016) 62 Cal.4th 718 (excluding
27 expert opinion testimony that the defendant’s multiple crimes demonstrated a deteriorating ability
28 to plan and deliberate) and *People v. Linton* (2013) 56 Cal.4th 1146, 1181-84 (excluding expert
opinion testimony regarding false confessions when there was no evidence to suggest defendant’s
confession was false).

1 not planning on having him render any opinions specific to the case.” In other words, the defense
2 will not provide the requisite connection between the abduction of Sierra LaMar and human
3 trafficking.

4 The People further move to exclude the video clip of the unnamed Anaheim police officer
5 as hearsay, irrelevant and without any foundation as to the declarant’s alleged expertise to render
6 such an opinion. Should this Anaheim officer have the necessary expertise, the People anticipate
7 that the officer would testify that the facts of this case carry none of the hallmarks of a human
8 trafficking case.

9 **C. Sage A.**

10 Sage A. spoke with an investigator for the Alternate Defender’s Office about the day his
11 neighbor drove him to school: March 16, 2012. While en route to school, Sage, then eleven years
12 old, observed his neighbor point out a suspicious car parked on Santa Teresa. Sage told the ADO
13 investigator that the suspicious car may have been blue or green, that the car did not have rear
14 windshield louvers, and that he could not identify the car’s make or model. Sage’s testimony
15 reveals that a car was parked on Santa Teresa, but unknown which cross street, sometime on the
16 way to Sage’s school. Assuming there was a person in the car, although Sage saw no one in or
17 around it, there is still no evidence linking this car to any of the crimes charged here. Sage’s
18 statements are not “capable of raising a reasonable doubt of defendant’s guilt,” so they are
19 inadmissible to show a third party’s culpability. *Hall, supra*, 41 Cal.3d at 833. Indeed, the
20 proposed testimony is simply not relevant.

21 **D. Irene Steele**

22 Irene Steele told an investigator for the Alternate Defender’s Office that on March 16,
23 2012, she was driving south on Palm, and observed a ugly and scary looking man with a dark olive
24 complexion driving north on Palm, toward Santa Teresa, in a 1980s-1990s silver-bluish car that
25 resembled a Saturn. She told the investigator that there may have been something in the rear seat
26 of that car, such as a car seat, and that the car did not have louvers on its rear windshield. The
27
28

1 investigator's report does not indicate the time Ms. Steele observed this man driving on Palm, but
2 the initial tip indicated that it was between 9:30 and 10:00 a.m.

3 Statements that appear more probative than Ms. Steele's have been excluded as improper
4 third party culpability evidence. For example, in *People v. Page* (2008) 44 Cal.4th 1, a death
5 penalty case, a six-year-old girl disappeared and was found brutally murdered the next day. *Id.* at

6 5. The defendant attempted to introduce evidence that the girl's neighbor Phil, a forty-year-old
7 man, was culpable for her kidnapping and murder. *Id.* at 35. Specifically, the defendant planned
8 to call Steve and Carrie, a father and his eleven-year-old daughter that lived in the murdered girl's
9 apartment complex, to describe Phil's predilection for young children. *Id.* at 35-36. The defendant
10 asserted that Steve and Carrie were prepared to testify that, among other things, Phil invited Carrie
11 "to accompany Phil to the desert," that Carrie's mother refused to let her go with Phil, and that Phil
12 "rarely was in the company of adult residents, and instead spent his time with the children,
13 including [the murdered girl] in the playground area of the apartment complex." *Id.* at 36. The
14 trial court excluded Steve and Carrie's proposed testimony, finding that the evidence did not link
15 Phil to the crime, "and hence was incapable of raising a reasonable doubt as to defendant's guilt."
16 *Id.* at 33. The trial court added that "assuming the evidence regarding Phil . . . was of some
17 marginal relevance, pursuant to Evidence Code section 352 the probative value of the evidence was
18 outweighed by its undue prejudice." *Id.* The California Supreme Court affirmed the trial court's
19 exclusion of Steve and Carrie's proposed testimony, and reiterated that "third-party culpability
20 evidence is admissible only if it links a third party to the crime." *Id.* at 39.

21 Here, absent direct or circumstantial evidence linking this car or its "ugly" and "scary"
22 driver to the crimes in this case, Steele's statements are not "capable of raising a reasonable doubt
23 of defendant's guilt," so they are inadmissible to show a third party's culpability. *Hall, supra*, 41
24 Cal.3d at 833. Indeed, if defense counsel is correct, Ms. Steele's presence in the area is similarly
25 probative of third party culpability. If the defendant's third party culpability logic is taken to its
26 conclusion, Ms. Steele should be appointed counsel and be permitted to invoke her Fifth
27 Amendment rights, as she will be admitting that she was in the area of the kidnapping some two
28

1 and a half hours after its commission (as well as the fact she was only a few blocks away at the time
2 Sierra was to catch the bus). An absurd proposition to be sure, but that is because there is simply
3 no evidence to connect either person to the kidnap and murder of Sierra LaMar. *Hall* compels its
4 exclusion.

5 **E. Tiean Kaho**

6 Tiean Kaho told an investigator for the Alternate Defender's Office that, while driving north
7 on Santa Teresa around 7:25 am on March 16, 2012, she was cut off by a two-door silver car
8 turning right from Scheller onto Santa Teresa. Tiean told the investigator that the car drove slowly
9 – 15 to 20 miles per hour, while the speed limit on Santa Teresa was 45 miles per hour – until
10 Bailey, where it turned right. Tiean told the investigator that the car had black louvers on its rear
11 windshield. As with the factual circumstances discussed in A, C and D above, there is no direct
12 or circumstantial evidence linking this car or its driver to the crimes in this case. Therefore,
13 Tiean's statements are not "capable of raising a reasonable doubt of defendant's guilt," so they are
14 inadmissible. *Hall, supra*, 41 Cal.3d at 833.

15 **F. Evidence Code section 352**

16 The California Supreme Court has repeatedly noted that a trial court has broad discretion
17 to exclude even relevant evidence "if its probative value is substantially outweighed by the
18 probability that its admission will (a) necessitate undue consumption of time or (b) create
19 substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Evid.
20 Code §352; accord, *People v. Lee* (2011) 51 Cal.4th 620, 643. The trial court's authority to
21 exclude relevant evidence extends to expert testimony as well. *People v. Linton* (2013) 56 Cal.4th
22 1146, 1181.

23 The California Supreme Court has affirmed the exclusion of relevant evidence, including
24 expert testimony, when it was sufficiently speculative that it would violate Evidence Code section
25 352. See e.g., *Linton, supra*; *Peoples, supra*, 62 Cal.4th at 743 *People v. Gonzalez* (2012) 54
26 Cal.4th 1234, 1260; *People v. Hartsch* (2010) 49 Cal. 4th 472, 496-497; *People v. McWhorter*

1 (2009) 47 Cal. 4th 318, 372; and *People v. Lewis* (2001) 26 Cal. 4th 334, 373. This rule of
2 exclusion applies whether the case is a death penalty case or not.

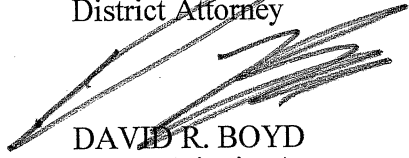
3 In this case, even if defense counsel could meet the threshold of relevance, the evidence to
4 link the proposed testimony to the crimes, if it even exists, is far too speculative to permit its
5 admission under Evidence Code section 352. In each instance, the defense wishes to take the
6 logical leap that because a car and/or a person was in an area near Sierra's home, a scary looking
7 man drove in an unsafe manner, or that human trafficking occurs somewhere in the United States,
8 suggests that these events explain the kidnap and murder of Sierra LaMar. This leap of logic is far
9 to speculative to permit admission. "[E]xclusion of evidence that produces only speculative
10 inferences is not an abuse of discretion." *People v. Cornwell* (2005) 37 Cal.4th 50, 81.

11 DATED: December 5, 2016

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

JEFFREY F. ROSEN
District Attorney



DAVID R. BOYD
Deputy District Attorney