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Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
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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.)
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17

Criminal Case No. 213515

PEOPLE'S THIRD SUPPLEMENTAL
MOTIONS *IN LIMINE*

18 The People have moved to exclude reference to, or in the alternative to sanitize, Steve
19 LaMar's Penal Code section 288(a) conviction for impeachment purposes in the guilt and penalty
20 phases, but the below discussion is targeted toward the guilt phase. As noted, Mr. LaMar's conduct
21 occurred over 12 years ago or longer and he has successfully completed probation. It is his only
22 offense. The People argued in its original motion, and argue herein, that the introduction of this
23 conviction for impeachment would violate Evidence Code section 352. However, if the Court
24 permits the conviction for impeachment under Evidence Code section 788, Mr. LaMar will not be
25 called as a witness in the guilt phase; therefore, there will be nothing to impeach.

26 Regardless of whether Mr. LaMar testifies, the defense in their response attempts to make
27 Mr. LaMar's conviction relevant with their "runaway" theory. The only witness the defense
28 proffers in their motion to support the runaway theory is the statement of Ashley, the child of Rick

1 Gardiner who was then dating Sierra's mother, Marlene LaMar. Putting aside the weakness in
2 Ashely's statement, which will be more fully discussed below, the defendant's argument of
3 relevance of the conviction skips over the reality that his conviction does not establish the fact that
4 they wish to introduce. Their desire is to show that Sierra could not live with her dad in Fremont.^{1/}
5 The nature of the conviction, as well as the fact that the condition was imposed as part of a criminal
6 case, is not necessary. Should the Court permit the inference, which is far too speculative in the
7 People's estimation, the Court should only allow the defense to introduce that there was a court
8 order in place that did not permit Sierra to live with her dad at the time.^{2/}

9 Anything beyond the generic nature of an order would permit the jury to use the information
10 for an improper purpose – which the defense has disavowed – third party culpability. There is also
11 the great danger of smearing this criminal case and the LaMar family with the stain of her dad's
12 misdeeds nearly a decade before she went missing for no permissible purpose.

13 **A. The Law**

14 Only relevant evidence is admissible; therefore, the purpose of the evidence will determine
15 its relevance. As noted, the People will not call Sierra's dad should the Court permit impeachment
16 under Evidence Code section 788. The People do not dispute that the conviction would be relevant
17 for impeachment should Mr. LaMar testify in the guilt phase.^{3/}

18 The Court has discretion to exclude, or sanitize, prior convictions that are otherwise
19 relevant. *People v. Clark* (2011) 52 Cal.4th 856, 931; *People v. Cole* (1982) 31 Cal.3d 568, 580
20 (approving sanitized convictions, but finding insufficient sanitization on the facts of the case);
21 *People v. Gray* (2007) 158 Cal.App.4th 635, 641-642 (the Court may also "sanitize" the prior
22 conviction to reduce potential prejudice); *People v. Ballard* (1993) 13 Cal.App.4th 687, 698, fn.

24 ^{1/} The defense wrote: "as a result of Steve LaMar's molestation convictions [sic] Sierra
25 LaMar could live with him in Fremont" [Def. Trial Motion No. 8, filed October 6, 2016.] Mr.
LaMar suffered a single conviction.

26 ^{2/} It should be noted that order was due to, and did, expire in September 2014.

27 ^{3/} The People do challenge the relevance for the purpose offered by the defense, more fully
28 discussed *infra*.

1 6 (same); *People v. Muldrow* (1988) 202 Cal.App.3d 636, 644 (sections 788 and 352 give the trial
2 judge discretion to exclude evidence of prior felony convictions). In the evaluation of whether to
3 permit impeachment, the courts have laid out the following test: 1) does the prior conviction
4 reflect adversely on the witness honesty or veracity and if it does to what degree because some
5 felonies, e.g. perjury, are clearly connected with the issue of veracity while others (e.g.) robbery
6 are less relevant; 2) weighing the probative value of the prior conviction based on the nearness or
7 remoteness in time of the prior conviction; 3) whether the conviction is for the same or
8 substantially similar conduct for which the accused is on trial; and 4) the effect on the defendant's
9 choice to testify (which is not applicable here). *Cole, supra*, 31 Cal.3d at 580.

10 B. Discussion

11 1. Impeachment

12 There is no debate that for impeachment, the conviction is relevant within the meaning of
13 Evidence Code section 350 and 788, although less so than, for example, perjury. However, it must
14 be noted that in the impeachment inquiry, although the conviction is now over 6 years old, it
15 represents conduct that occurred **at least** 12 years ago. Mr. LaMar led a crime free life after the
16 conduct, successfully completed five years of probation without violation and has been crime free
17 since. While the third prong discussed in *Cole, supra*, (same or similar charges) is normally
18 associated with a defendant's impeachment, it seems a particularly appropriate consideration in the
19 ~~352 analysis here. The defense has disavowed any third party culpability. Mr. LaMar's~~
20 whereabouts the morning Sierra disappeared are well known – he was nowhere near Morgan Hill.
21 Put simply, he had nothing to do with Sierra's disappearance. Allowing the conviction in evidence
22 for impeachment – or for the basis proffered by the defendant in the “runaway” theory – would
23 effectively inject third party culpability despite it being inadmissible.

24 *People v. Clair* (1992) 2 Cal.4th 629 is instructive. In a death penalty case, the trial court
25 entirely excluded a prior conviction of voluntary manslaughter of a witness the prosecution
26 conceded was an “important witness” in the case. *Id.* at 654. After summarizing the applicable
27 standard, the California Supreme Court rather summarily upheld the trial court's ruling excluding
28 the prior for impeachment purposes. *Id.* at 655. In laying out the law, the Court stated that the

1 relevant considerations are “whether the conviction (1) reflects on honesty and (2) is near in time.”
2 *Id.* at 654. Neither voluntary manslaughter or PC §288(a) directly relate to honesty and as noted,
3 Mr. LaMar’s crime was over a decade ago and he has led a crime-free life both before and after.
4 The trial court in *Clair* said: “I find that that prior is marginally relevant but highly prejudicial. I’m
5 going to exclude it under 352 primarily because of the remoteness of time.” While the conduct in
6 *Clair* was 22 years, not the at least 12 here, there is no doubt that impeachment of a witness who
7 is by no means key or important when compared to the witness in *Clair*, would be highly
8 prejudicial to the People. As a result, the conviction should be excluded or sanitized.

9 A final point regarding the purpose behind Evidence Code section 788. The defendant
10 argues that Steve LaMar should be impeached with his prior conviction because the conviction is
11 relevant to whether he will be honest on the witness stand. Ordinarily this makes sense; someone
12 who has a character for dishonesty is less likely to take the oath to tell the truth seriously.
13 However, any inference that Mr. LaMar would lie on the witness stand would far more likely be
14 attributable to the fact that he loves his daughter deeply and wants to see the guilty held
15 responsible. While the People do not agree that Mr. LaMar will lie, whatever motive he has to do
16 so can and will be explored by the defense based upon his love for his daughter. Any further
17 impeachment with his felony conviction is unnecessary and likely to create undue prejudice to the
18 People given the nature of the conviction.

19 ~~It really does appear that the defendant just wants the jury to hear the conviction, even~~
20 ~~though Mr. LaMar has nothing to do with his daughter’s disappearance; a fact that the defense has~~
21 ~~acknowledged by the Court’s ruling with respect to third-party culpability.~~

22 2. The Runaway Theory - Ashley

23 In support of the runaway theory defendant makes some rather bizarre and nonsensical
24 remarks supporting the admission of the conviction. He says that Steve LaMar would give Sierra
25 LaMar nighttime massages as she fell asleep.” [Def. Trial Motion No. 8 at p.3, lines 2-3.] This
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1 proves what exactly?^{4/} In the sentence immediately before, the defendant discusses the facts of Mr.
2 LaMar's prior convictions which included misconduct at night. [Id at p.3, lines 1-2]. It sounds like
3 defendant is arguing third party culpability which they have previously disavowed and has been
4 excluded by this Court. While it is true that both Steve LaMar and Marlene LaMar did not desire
5 the probation condition that prevented Sierra from staying overnight, the defense does not connect
6 why the jury must know her dad was convicted of PC 288(a).

7 To bolster their runaway theory, defendant references the statement of Ashley. Ashley was
8 thirteen years old when she was interviewed by law enforcement. During the nearly 90 minute
9 interview, Ashley said the concept of running away was mentioned by Sierra only once. Ashley
10 referred to a single comment more than eight months before Sierra was kidnapped and before the
11 family moved to Morgan Hill.^{5/} While Ashley described Sierra as happy all the time, including the
12 night before she was abducted, when the FBI pressed Ashley on the concept of whether Sierra had
13 run away, there was the following exchange.

14 FBI: Did she ever say that she wanted to leave or run away?

15 ASHLEY: Once in Fremont but I talked her out of it and I told her that everybody
16 would miss her and that nobody would want to see you gone.

17 Exploring the concept further, Ashley told the FBI, that Sierra said that if she did run away, "she
18 was going to go over to a friend's house" and to "stay there for awhile." When asked if Sierra had
19 a bag packed, Ashley described a suitcase that Sierra would use to go back and forth to Fremont
20 from Morgan Hill in her alternating weekends to visit her dad, her sister and her friends. Neither
21 this suitcase, nor any other luggage, is missing. In fact, a review of the recording of the interview

22
23 ^{4/} There is not one shred of evidence from a single witness that Mr. LaMar ever
24 inappropriately touched Sierra, or his other daughter, Danielle. These issues were fully investigated
25 by the police in 2009 and none of the discovery to date reveals a single reason to suggest either of
26 them were.

27 ^{5/} Ashley said this single comment occurred prior to Sierra starting school in Fremont during
28 the Summer of 2011. When asked if Sierra said anything about running away the night before she
disappeared, Ashley said: "Uh uh [meaning no]. "It was that one time [the Summer of 2011]. She
never brought it up again."

1 of Ashley reveals the FBI followed her to the closet and found the bag she was referring to. Ashley
2 further described other items that Sierra would take with her if she left voluntarily: her phone and
3 her pink purse. Both items were recovered within miles of Sierra's home and the purse was found
4 with her clothing, along with the defendant's DNA and fibers from the defendant's car on them.
5 Ashley also said Sierra would probably take her computer; except the computer was found in
6 Sierra's bedroom with the last photo of Sierra alive on it. The photo had the very same titled head,
7 tongue-out pose that can be seen in numerous other photos recovered by law enforcement. Ashley
8 told the FBI that Sierra: "wished she went back but, then she said she's starting to really like
9 Morgan Hill and that she didn't want to move back to Fremont, but she misses her friends and
10 stuff." This is not the statement of a girl that planned to completely abandon all of her friends and
11 family – both in Morgan Hill and Fremont. Then there is the question of how Sierra could pull this
12 off with no car, no money and no support structure or even a plan. The defense provides no facts
13 for such a theory.

14 The People are not asking this Court to exclude the testimony of Ashley, although it must
15 be noted that she is not on the defendant's witness list which begs the question of whether the
16 defense really plans on presenting this runaway theory. Should the defense call Ashley, their flimsy
17 inference will be readily apparent. Nonetheless, the defense has not articulated a clear link between
18 their runaway theory and the fact that Sierra was not then able to live with her dad. Should this
19 become relevant, the only relevance is the fact that she could not live with her dad until she was
20 eighteen or his probation expired, whichever came first. It is not necessary to say why the order
21 was in place, i.e. that it was a product of a criminal case or that it was for a PC 288(a).

22 C. Conclusion

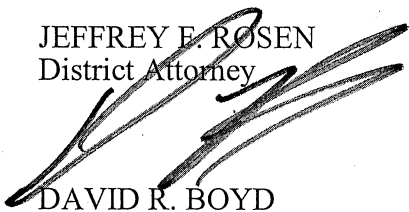
23 The People move to exclude the conviction for any purpose under Evidence section 350 and
24 352. Should the Court permit the conviction for impeachment if the People call Mr. LaMar, the
25 People ask that it be sanitized. If the Court declines, the People will not call Mr. LaMar in the guilt
26 phase and ask the Court to exclude any reference to the conviction, the accusations and the conduct.
27 The People have informed the defense that should the Court permit the conviction for impeachment
28 in the penalty phase, Mr. LaMar will make the decision on whether to testify. The People will not

1 prevent Sierra's dad from presenting testimony under Penal Code sections 190.3. He has a legal
2 right to do so under the California Constitution, Art. I, sec. 28(b)(8) and a moral right as the dad
3 of the deceased.

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7 Respectfully submitted,

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