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(ENDORSED)
FILED
JAN 8 2017

~~DAVID H. YAMAMOTO~~
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
~~DAVID H. YAMAMOTO~~

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

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

v.

ANTOLIN GARCIA-TORRES,

Defendant.

Criminal Case No. 213515

DATE: January 5, 2017

DEPT: 40

PEOPLE'S FIFTH SUPPLEMENTAL
MOTION IN LIMINE (IMPEACHMENT)

This Court has requested briefing regarding impeachment of the following witnesses:
Annette Walters, Saquilla Jackson, Isiah Hernandez, Claire Normoyle, Laura Avina, Francine
Sarmiento, and Maria Garcia. Specifically the Court requested more information with respect to
the witnesses likely testimony in order to rule on the impeachment. What follows is a brief
discussion of the range of likely testimony along with a discussion of the impeachment and the
People's request from the Court.

The requested relief of exclusion is permissible [see *People v. Clark* (2011) 52 Cal.4th 856,
931] and is more fully briefed in the People's Third *Motion in Limine* filed October 31, 2016.

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A. Annette Walters

Ms. Walters is the victim of Count 3 in the Indictment. This Court indicated that a further summary of her proposed testimony is unnecessary. The People move to exclude her impeachment which consists of a single misdemeanor conviction of PC §537(a)(1) in 2012.

On February 20, 2012, Gilroy Police responded to an Applebee’s Restaurant where the manager said that Ms. Walters had been drinking and refused to pay her bill. The manager reported that Walters left the restaurant without paying the bill and when he approached her in the parking lot he asked her to return to the restaurant to pay. Noticing that she was intoxicated, the manager offered her free coffee and food to sober up. Walters returned to the restaurant and ate salmon and coffee, however she provided an expired credit card to pay her \$47.99 bill.

Walters was initially arrested for PC § 647(f) (intoxicated in public). During a search of her purse the police found various pills, some of which were prescription medication. Walters informed the officer that she had prescriptions for all of the pills at her house. A blood test revealed the presence of the methadone Walters was taking and a blood alcohol level of 0.16%. Walters initially was charged with BP §4060 (possession of prescription medicine without a prescription), HS §11350(a) (possession of methadone), and PC §537(a)(1) (defrauding an innkeeper – failure to pay bill). All the charges were dropped except the PC §537.

None of the dismissed conduct is an offense of moral turpitude and therefore is inadmissible for impeachment. As for the violation of PC §537(a)(1), Ms. Walters’ actions more reasonably appear to be a function of her level of intoxication than conduct having “some logical bearing on the veracity of a witness” in this proceeding. *People v. Harris* (2005) 37 Cal.4th 310, 337. Therefore the People move to exclude the failure to pay the bill as substantially more prejudicial than probative under Evidence Code section 352.

B. Saquilla Jackson

Ms. Jackson is one of Sierra’s friends from Ann Sobrato High School and was one of the four contributors to the shared notebook of writings. The notebook contains writing and notes between the four girls about the typical things that high school girls may share with each other

1 without expectation that it would be viewed by law enforcement, their parents, school
2 administrators or the courts. Ms. Jackson is expected to testify about her relationship with Sierra
3 and will generally portray Sierra as a typical high school girl adjusting to a new school, new friends
4 and relationships with her parents.

5 Ms. Jackson was arrested for PC §488 in 2013; however, she was neither charged, nor
6 convicted having completed pretrial diversion. The People ask that this Court permit no questions
7 with respect to this arrest, or the underlying conduct, under both Evidence Code sections 350 and
8 352. An arrest does not establish the conduct and is therefore irrelevant and inadmissible.^{1/} The
9 conduct, given its obvious de minimus nature and that fact that Ms. Jackson completed diversion
10 successfully suggests that whatever occurred, its use here would be substantially more prejudicial
11 than probative of her honesty.

12 **C. Isiah Hernandez**

13 Mr. Hernandez is a friend of Sierra's from Ann Sobrato High School in Morgan Hill. He
14 is not on the People's witness list, so it is unknown what testimony, if any, the defense proposes
15 from him. There was a letter from him in Sierra's recovered belongings. The People will not be
16 offering the letter or its contents into evidence. Two years after Sierra disappeared, Hernandez was
17 charged with violations of PC §186.22(a), 245 and 211/212.5(c). All charges were dropped by the
18 People in April 2015.

19 The People are moving to exclude any reference to Mr. Hernandez's purported conduct.
20 If the defense wishes to delve into it, as the proponent of the evidence, it is their burden to furnish
21 an adequate foundation and establish its relevance. EC §403(a).

22 **D. Claire Normoyle**

23 Ms. Normoyle is one of Sierra's friends from Washington High School in Fremont. They
24 would regularly communicate via social media and would see each other when Sierra went to
25 Fremont on weekends to visit with her dad and her friends. Ms. Normoyle has a single event of
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27 ^{1/} If it did, then the defendant's arrest for kidnapping and murder would be relevant to his own
28 character. It is axiomatic that it is not.

1 potential moral turpitude in her history. However, she was only convicted of the non-moral
2 turpitude crime of simple possession. The conviction has been dismissed under the deferred entry
3 of judgment provisions of PC §1000 *et. seq.* The People move to exclude any reference to the
4 details of her case as insufficiently reflecting on her character for honesty and therefore violates
5 the relevance provisions of Evidence Code section 350 as well as being excludable as substantially
6 more prejudicial than probative under section 352.

7 On September 20, 2014, just four months after her eighteenth birthday, Ms. Normoyle and
8 her boyfriend, Alec Nelson, were at the Shoreline Amphitheater for the Beyond Wonderland
9 Electronic Music Concert. Undercover police officers approached Normoyle and Nelson with the
10 goal of seeing if they could purchase drugs. Asking Nelson if he had any drugs he would sell,
11 Nelson said that he only had enough for himself and Normoyle. The group continued to chat and
12 watch the concert. Nelson then asked one of the undercover officers: “hey... you’re not a fed or
13 anything right?” After answering that he was not, Nelson laughed and offered to sell him a pill for
14 \$10. The undercover gave \$10 to Nelson, but Nelson could not find the pill. Normoyle found a pill
15 in her fanny pack, and gave it to Nelson who gave it to the undercover.

16 Normoyle and Nelson were arrested for sale of a controlled substance. The pill was
17 determined to be methylenedioxymethamphetamine (MDMA). Normoyle was only charged with
18 HS §11377 as a misdemeanor and she successfully completed deferred entry of judgment which
19 results in a dismissal of the charge. HS §11377 is not a crime of moral turpitude, but sale of the
20 drug is.

21 The People move to exclude questions about this conduct. Ms. Normoyle’s conduct in
22 handing her boyfriend a single tablet of ecstasy who sells it to what she believed was just a guy at
23 a concert who initiated the transaction is barely relevant to her character for honesty. In the Court’s
24 analysis, the People ask this Court to consider the provisions of Evidence Code §788(c), which
25 prohibits impeachment with a felony conviction after it has been dismissed under PC §1203.4.
26 Because Ms. Normoyle successfully completed DEJ, it is the functional equivalent of a record
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1 clearance which she would be entitled to as matter of law because of her successful completion.
2 See PC §1203.4.

3 **E. Laura Avina**

4 The People withdraw its request to impeach Ms. Avina with her two theft convictions (PC
5 §488 and §490.1) at this time. We will revisit the issue should the impeachment become necessary.
6 The People's approach will be contingent on whether the Court permits similar types of
7 impeachment of the People's key witnesses as well as Ms. Avina's testimony before the jury. The
8 People, of course, will seek leave of court at that time.

9 **F. Francine Sarmiento**

10 The People withdraw its request to impeach Ms. Sarmiento with her theft conduct (PC
11 §488) which has since been expunged under PC §1203.4. We will revisit the issue should the
12 impeachment become necessary. The People's approach will be contingent on whether the Court
13 permits similar types of impeachment of the People's key witnesses as well as Ms. Sarmiento's
14 testimony before the jury. The People will seek leave of court at that time.

15 **G. Maria Garcia**

16 The People withdraw its request to impeach Ms. Garcia with her vandalism conduct which
17 has since been expunged. We will revisit the issue should the impeachment become necessary.
18 The People's approach will be contingent on whether the Court permits similar types of
19 impeachment of the People's key witnesses as well as Ms. Garcia's testimony before the jury. The
20 People, of course, will seek leave of court at that time.

21 DATED: December 28, 2016

22 Respectfully submitted,

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24 JEFFREY F. ROSEN
District Attorney

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26 DAVID R. BOYD
Deputy District Attorney
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