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(ENDORSED)
FILED
APR 7 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY G. COLBENSON DEPUTY

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

8 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: 213515
Plaintiff,)
9 vs.) **PEOPLE'S OPPOSITION TO**
10) **DEFENDANT'S MOTION FOR REMEDY**
ANTOLIN GARCIA-TORRES,) **DUE TO DESTRUCTION OF EVIDENCE**
Defendant.) (*California v. Trombetta* (1984) 467 U.S. 479.)
11)
12)
13)

INTRODUCTION

14 Antolin Garica-Torres (hereafter "Defendant") brings a motion pursuant to *California v.*
15 *Trombetta* (1984) 467 U.S. 479, arguing that the analysis of the Defendant's shoes, that included
16 tape lifts of soil from the bottom of those shoes, prevented the defense from conducting a soil
17 comparison. Based upon this, Defendant requests the exclusion of any evidence of Defendant's
18 shoes, including evidence obtained from the shoes.

19 Defendant's motion should be denied. Defendant is unable to demonstrate the destruction
20 of physical evidence that is of significant materiality as required under *California v. Trombetta*.
21 (*California v. Trombetta* (1984) 467 U.S. 479, 488 (*Trombetta*)). However, even if the defense
22 were to demonstrate that the tape lifts of the Defendant's shoes constituted "a failure to preserve
23 potentially useful evidence", there is no evidence of bad faith as required to show a denial of due
24 process. (*Arizona v. Youngblood* (1988) 488 U.S. 51, 58 (*Youngblood*)).

25 Therefore, the People respectfully request that the Defendant's motion be denied.

1 STATEMENT OF LAW AND ARGUMENT

2 I.

3 **DEFENDANT CANNOT MEET HIS BURDEN TO SHOW THAT THE SOIL ON HIS**
4 **SHOES HAD AN APPARENT EXCULPATORY VALUE AT THE TIME OF THE TAPE**
5 **LIFTS; NOR CAN DEFENDANT SHOW THAT THE TAKING OF THE TAPE LIFTS**
6 **WAS AN ACT IN BAD FAITH.**

7 In *California v. Trombetta*, the United States Supreme Court held that the constitutional
8 duty to preserve evidence is “limited to evidence that might be expected to play a significant role
9 in the suspect's defense.” (*Trombetta, supra*, 467 U.S. at p. 488.) Accordingly, under *Trombetta*, a
10 defendant seeking sanctions for destruction of evidence collected by the state must show that the
11 destroyed physical evidence was of *significant materiality*. “[T]he mere “possibility” that
12 information in the prosecution's possession may ultimately prove exculpatory ‘is not enough to
13 satisfy the standard of constitutional materiality.’” (*City of Los Angeles v. Superior Court* (2002)
14 29 Cal. 4th 1, 8.) “To fall within the scope of this duty, the evidence ‘must both possess an
15 exculpatory value that was apparent before the evidence was destroyed, and be of such a nature
16 that the defendant would be unable to obtain comparable evidence by other reasonably available
17 means.’” (*People v. Roybal* (1998) 19 Cal. 4th 481, 510; citing *Trombetta, supra*, 467 U.S. at p.
18 489.)

19 If the defense cannot meet the *Trombetta* requirement, but, at best, can only show that the
20 evidence was potentially useful, relief is denied unless the defense can additionally show that the
21 state destroyed the evidence in bad faith. (*Illinois v. Fisher* (2004) 540 U.S. 544, 548-49.)
22 “[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve
23 potentially useful evidence does not constitute a denial of due process of law.” (*Youngblood,*
24 *supra*, 488 U.S. at p. 58; see also, *People v. Cook* (2006) 39 Cal.4th 566, 591; *People v. Cooper*
25 (1991) 53 Cal.3d 771, 810.) Thus, a claim, such as the one here, that the evidence *could* have
been subjected to tests that *might* have exonerated the defendant is insufficient without a showing
of bad faith.

1 The state's responsibility is further limited when the defendant's challenge is to “the
2 failure of the State to preserve evidentiary material of which no more can be said than
3 that it could have been subjected to tests, the results of which might have exonerated the
4 defendant.” In such case, “unless a criminal defendant can show bad faith on the part of
5 the police, failure to preserve potentially useful evidence does not constitute a denial of
6 due process of law.”

(*Roybal, supra*, 19 Cal. 4th at p. 510, internal citations omitted.)

Further, mere negligence to preserve potentially useful evidence does not constitute bad faith.
(See *People v. DePriest* (2007) 42 Cal. 4th 1, 42; *People v. Medina* (1990) 51 Cal. 3d 870, 894;
People v. Ochoa (1998) 19 Cal. 4th 353, 417.)

Lastly, the burden is on Defendant to not only establish the destruction of evidence, but
also to establish that the destruction violated due process. (See *People v. Alexander* (2010) 49
Cal.4th 846, 879: “[D]efendant failed to sustain his burden of proving the threshold requirement
that the unavailable evidence had any exculpatory value, and therefore the exculpatory value of
these items could not have been apparent before they were “destroyed.”) This burden includes
Defendant showing that the destruction of evidence was in bad faith. (See *Youngblood, supra*, 488
U.S. at p. 58.)

Here, *assuming arguendo* that the act of tape lifting the soil on the Defendant’s shoes in
some way destroyed the evidence, Defendant is unable to show that this evidence possessed an
apparent exculpatory value. (*Trombetta, supra*, 467 U.S. at p. 489.) Defendant’s shoes were not
recovered until April 7, 2012— approximately three weeks after Sierra LaMar disappeared. Given
this lapse of time, even if a comparison demonstrated that the soil from Defendant’s shoes did not
match that collected in the areas associated with Sierra LaMar’s disappearance, this would not
exculpate him from the offense.¹ Accordingly, Defendant fails to make the necessary showing
under *Trombetta*.

¹ Additionally, the almost five-year delay before the processing of the soil from the shoes and the subsequent defense request for analysis further establishes that there was no *apparent* exculpatory value at the time of the tape lifting.

1 Defendant is also unable to show that the actions of the criminalist in taking tape lifts —
2 tape lifts that were taken to preserve and retain the soil and debris from his shoes—is an act of bad
3 faith by the government. Accordingly, even *assuming arguendo* that the soil from Defendant's
4 shoes constituted potentially useful evidence that was destroyed, Defendant fails to demonstrate
5 bad faith. The motion should be denied.

6 **CONCLUSION**

7 For all the foregoing reasons, and based on additional evidence and oral argument that will
8 be presented at the hearing, the People respectfully request that the Motion for Remedy under
9 *California v. Trombetta* be denied.

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11 Date: April 7, 2017

Respectfully submitted,

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13 JEFFREY F. ROSEN, DISTRICT ATTORNEY

14 By 

15 Dana Veazey
16 Deputy District Attorney
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Clerk of the Court
Superior Court of CA County of Santa Clara
BY G. GOLDBENSON DEPUTY

1 Case Name: *People v. Garcia-Torres*
2 Case Number: 213515

3 **PROOF OF SERVICE**

4 I am a citizen of the United States, employed in the County of Santa Clara, State of California. I
5 am over the age of 18 years and not a party to the above-entitled action. My business address is:
6 Office of the District Attorney, 70 W. Hedding Street, West Wing, San Jose, California 95110.

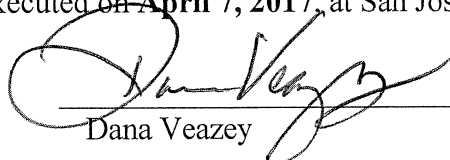
7 On **April 7, 2017**, I served the following document(s) upon the interested parties herein by the
8 method(s) indicated below:

9 **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR REMEDY DUE TO
10 DESTRUCTION OF EVIDENCE (*California v. Trombetta* (1984) 467 U.S. 479.)**

11 **X** **BY ELECTRONIC MAIL TRANSMISSION:** by e-mailing a true copy thereof to the
12 recipient at the e-mail address indicated:

13 Brian.Matthews@ado.sccgov.org and Alfonso.Lopez@ado.sccgov.org

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct, and that this declaration was executed on **April 7, 2017**, at San Jose,
16 California.

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Dana Veazey