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(ENDORSED)
FILED
JUL 28 2016

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Iran Tran DEPUTY

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: August 1, 2016
TIME: 9:30 a.m.
DEPT: 40
TIME EST.: 15 MINUTES

PEOPLE'S RESPONSE
TO GARCIA'S MOTION FOR
A CONTINUANCE UNDER PC 1050

The People do not challenge the law that the defendant cites except to the extent that counsel implies that the ABA Guidelines for the Performance of Counsel in Death Penalty Cases indicates the standard for effective assistance of counsel. They do not. See *Bobby v. Van Hook* (2009) 558 U.S. 4, 8 (ABA Guidelines are “only guides’ to what reasonableness means”); *In re Reno* (2012) 55 Cal.4th 428, 467 (determining some of the ABA Guidelines required “much more of counsel than is required by state and federal law governing ineffective assistance of counsel” or were “inconsistent” with the California Supreme Court’s own standards, or recommended “a higher level of rigor than” required by the California Court or the U.S. Constitution.).

Below, the People will address select paragraphs of the declarations attached by counsel. If there is no response or clarification to the paragraph, it is because the paragraph was redacted,

- 1 22a. The lab notes and data have been previously provided. This request was previously made
2 in an e-mail dated April 18, 2016, and the People responded, in a letter dated April 19,
3 2016, pointing the defense to the CD number and BATES pages in which it is contained.
4 The defense asks for the data in electronic form, however they have the data in table form
5 already. It is unknown whether they have the proprietary software to read the electronic
6 data.
- 7 22b. As with 22a, the defense has previously requested this material. The People previously
8 responded in writing telling the defense that they have been provided the material and were
9 they would find it in the discovery.
- 10 22c. The People explained this issue in a March 25, 2016, letter. The defense continues to ask
11 for the same DNA profiles, but on a sheet of paper that happens to have a different date on
12 it.
- 13 22d. Counsel was provided this data on CD (DM-526) back in August 2015.
- 14 23a. This is a duplicate of 22a. Counsel has the data, just not in electronic form.
- 15 23b. Counsel's request here exceeds the outer limits of Penal Code section 1054.1. They have
16 been provided all data for testing on samples from this case, including any noted
17 contamination, if there was any.
- 18 23c. Counsel's request here exceeds the outer limits of Penal Code section 1054.1. They have
19 been provided all data for testing on samples from this case, including any noted
20 contamination, if there was any.
- 21 23d. The People received this request for the first time on July 26, 2016. The Jan Bashinski
22 laboratory has not used Genescan or Genotyper for many years. After speaking with DoJ
23 lab personnel, these products were not used on the defendant's case or for his 2010 buccal
24 swab.
- 25 It appears the defense is for the first time asking for the DNA profiles of potentially nearly
26 one hundred other persons whose DNA profiles would have been developed by the lab at
27 the same time as his 2010 arrestee buccal swab. This information is confidential by law
28 and is not exculpatory or mitigating.

1 23e. This was provided to the defense as documented via letter dated January 21, 2016. The
2 defense must have the material as they have specifically referenced at least one other page
3 from that batch of discovery in discussions with the People about the motion to suppress.
4 23f-g. Defense requests covering these topics in various forms have been repeatedly made and
5 there is no known information not previously provided to the defense. The People again
6 inquired with the responsible person at the District Attorney Crime Laboratory who
7 indicates that there no additional material. The People will periodically review the CODIS
8 system at reasonable intervals to determine if there have been any additional candidate
9 matches, including those deemed “non-matching” profiles, during the proceedings.
10 24. Defense is seeking the DNA profiles of police officers involved in this case. The defense
11 already has the profiles that were used for comparison in this case in the notes, and batch
12 data files, of the respective crime lab reports.
13 25-27. The People did the same mitochondrial analysis and already have results which have been
14 provided to the defense on July 13, 2016. It is not clear why the People could get the
15 results from an outside laboratory more than two months before the defense will do so. The
16 results confirm that the hair belongs to Sierra’s maternal line.
17 28. Mr. Lopez told this Court on May 23, 2016, he expected to have the severance motion filed
18 by June 20, 2016. [RT Vol. 26, 398:7-19.] On June 17, 2016, Mr. Lopez stated that he was
19 “confident [the venue and severance motions] both can be filed by the next court date,
20 which is July 29th.” [RT Vol. 27, 413:20-21.] Each representation was made after Mr.
21 Lopez had been assigned to this Court for the *Salas* trial.
22 34. Whatever material Mr. Matthews is referring to, the People have been requesting it for
23 months, including seeking an order to compel discovery which the defense opposed.
24 36. The defense reply to the People’s opposition was due July 25, 2016. [RT Vol. 26, 400:9-
25 18.]
26 40. Penal Code section 190.3 does not require a pre-trial filing of the Notice of Aggravation.
27 However, one has been prepared and will be filed no later than the commencement of the
28 trial.

1 54. The People believe that counsel has been aware of the prosecution of the defendant's father
2 for the sexual molest of defendant's older sister since the inception of this prosecution.
3 Defendant's July 26, 2016, informal discovery request is the first time detailed files from
4 this prosecution have been specifically sought. The People are aware of no information that
5 suggests the facts of that case are exculpatory to the defendant or mitigate punishment in
6 any way. To date, counsel has proffered no theory of relevance to the People and has not
7 previously requested the files from that prosecution, which included a jury trial, and now
8 includes an unpublished Court of Appeal opinion.^{2/}
9 Additionally, for the first time on July 26, 2016, counsel requested evidence of domestic
10 violence between defendant's father and his mother. The People have previously provided
11 crimes of moral turpitude with respect to defendant's mother and father. Because domestic
12 violence is a crime of moral turpitude, counsel was already aware of the single prosecution
13 of defendant's father for a violation of Penal Code section 242/243(e) in 1997. They have
14 had that information since at least March 24, 2016. Ordinarily the People do not retain
15 misdemeanor files that are so old. We are in the process of trying to determine whether the
16 report might be contained elsewhere.
17

18 DECLARATION - DEPUTY ALTERNATE DEFENDER ALFONSO LOPEZ

19
20 9-10. It is not clear when lead counsel and his defense team will be ready to proceed for trial.
21

22 **CONCLUSION**

23 Because much of Mr. Matthews' declaration is redacted, the People are in no position to
24 challenge or add relevant facts. The People trust that the Court will carefully evaluate each line
25 of the redacted material in its review and order unsealed those portions that are not attorney-client
26

27 _____
28 ^{2/} Should this prosecution be so critical, the People wonder if counsel has requested the transcripts of the trial testimony in *People v. Garcia*, docket F1139027.

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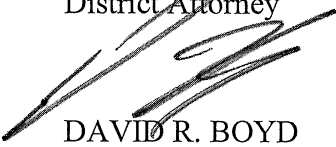
privilege or other confidential material that must remain sealed at this time; keeping in mind that attorney work product is not a privilege and is not absolutely protected from disclosure.

The People ask this Court to inquire when all the items Mr. Matthews has listed in his declaration will be completed, including the tactical decisions that he suggests impacts the timing of the defense's discovery obligations. Regarding the motion to continue, the People take can no position on whether good cause is present because so much of it is hidden from view.

DATED: July 28, 2016

Respectfully Submitted,

JEFFREY E. ROSEN
District Attorney



DAVID R. BOYD
Deputy District Attorney

