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FILED

JUL 29 2015

[Handwritten Signature]
BY _____ CLERK

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

THE PEOPLE OF THE STATE)	Criminal Case No. 213515
OF CALIFORNIA,)	
)	DATE: July 29, 2015
Plaintiff,)	TIME: 1:30 p.m.
)	DEPT: 24
v.)	TIME EST.: 5 MINUTES
)	
ANTOLIN GARCIA-TORRES,)	RESPONSE AND OPPOSITION
)	TO GARCIA'S MOTION FOR
Defendant.)	A CONTINUANCE UNDER PC 1050
_____)	

I.

STATEMENT OF THE CASE

Counsel for defendant Garcia requests another trial setting. This case has been on this Court's calendar for trial setting approximately seven times. The defendant was arraigned on the indictment in February 2014 and has been charged with these crimes continuously since 2012. To date, counsel has not given any indication as to when they might be ready for trial and for the first time indicated that at least one pre-trial motion may be on file by the next court date.

1 Based upon the reasons proffered by the defense, the People
2 object to a continuance of the trial setting because the
3 declaration is devoid of the detail required for Penal Code
4 section 1050 motions and as a result he does not establish good
5 cause to ask for another two months to set a trial date.

6 II.

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 A. No Good Cause is Presented

9 "Continuances shall be granted only upon a showing of good
10 cause. Neither the convenience of the parties nor a stipulation
11 of the parties is in and of itself good cause." PC §1050(e). The
12 Legislature has found:

13 The welfare of the people of the State of California
14 requires that all proceedings in criminal cases shall be
15 set for trial and heard and determined at the earliest
16 possible time. To this end, the Legislature finds that
17 the criminal courts are becoming increasingly congested
18 with resulting adverse consequences to the welfare of
19 the people and the defendant. Excessive continuances
20 contribute substantially to this congestion and cause
21 substantial hardship to victims and other witnesses.
22 Continuances also lead to longer periods of presentence
23 confinement for those defendants in custody and the
24 concomitant overcrowding and increased expenses of local
25 jails. It is therefore recognized that the people, the
26 defendant, and the victims and other witnesses have the
27 right to an expeditious disposition, and to that end it
28 shall be the duty of all courts and judicial officers
and of all counsel, both for the prosecution and the
defense, to expedite these proceedings to the greatest
degree that is consistent with the ends of justice . .

24 PC §1050(a) (emphasis added). While the People recognize the
25 challenges facing opposing counsel, the facts as presented in
26 counsel's motion simply do not justify the request to seek a
27 continuance of the trial setting at all, much less for an
28 additional two months.

1 Counsel cites to the ABA Guidelines for the Appointment and
2 Performance of Defense Counsel in Death Penalty Cases, however
3 both the U.S. Supreme Court and the California Supreme Court have
4 stated that the ABA does not set the standards for capital
5 representation. See *Bobby v. Van Hook* (2009) 558 U.S. 4, 8 and *In*
6 *re Reno* (2012) 55 Cal.4th 428, 467. This being said, the People
7 do not quibble with defense counsel's obligation to make
8 objectively reasonable choices in its investigation of this case,
9 including issues surrounding the penalty.

10 Counsel states in his declaration that he needs more time to
11 complete his investigation. This begs the question, to do what?
12 Counsel does not describe any investigation conducted to date,
13 does not identify with specificity any that needs to be done or
14 that is planned.^{1/} The California Supreme Court has held that a
15 "showing of good cause requires that both counsel and the
16 defendant demonstrate they have prepared for trial with
17 diligence." *People v. Doolin* (2009) 45 Cal.4th 390, 450. This
18 Court simply cannot evaluate whether counsel has acted with
19 diligence without knowing what investigation has been completed,
20 what is pending, and why it might be necessary and objectively
21 reasonable.

22 Counsel in his declaration suggests that he is prepared to
23 provide these details should this Court permit him to do so in
24

25
26 ^{1/} Counsel does mention an evidence view. It must be
27 noted that counsel requested the evidence view last year, but
28 only within the last six weeks identified the items they wish to
view and provided dates for which they were available to do so.
The People requested this information from the defense on August
8, 2014, nearly one year ago.

1 camera. This issue was dealt with the last time the case was in
2 this Court on May 13, 2015. The Court ordered:

3 **THE COURT:** Thank you. The Court will continue this
4 matter to July 29th, at 1:30 in this department for
5 trial setting. Any further request for continuance
6 shall be made in writing in accordance with the
7 requirements of the Penal Code. Thank you very much.

8 The People inquired with the Court whether the order included the
9 Rules of Court regarding the filing of sealed documents to which
10 this Court stated: "That goes without saying." As both this Court
11 and counsel are aware, the Penal Code requires that motions to
12 continue be in writing and supported by an affidavit or
13 declaration. See PC §1050(b). Counsel's proposal is in direct
14 contravention of both the Penal Code, this Court's order, and
15 would circumvent the provisions of Rule of Court 2.550 et seq. for
16 the filing of sealed materials.

17 The People's request came on the heels of Judge Ryan's order
18 of February 25, 2015:

19 **THE COURT:** Well, I think you can work to get to that
20 point, and if you feel that you are going to need a
21 continuance of some length that's not going to
22 necessarily be agreeable to the People or that they
23 might ask for something shorter, then it should be, yes,
24 in writing, as well as any other order that you wish the
25 Court to address in the future."

26 Despite this order, counsel did not file the requisite 1050 at
27 either of the next court dates of April 8, 2015 or May 13, 2015.
28 When the People brought this issue to the Court's attention on
29 May 13, 2015, this Court issued the order noted above.

30 What counsel is essentially saying here is that despite over
31 three years of representation and a year and a half since the
32 indictment they simply cannot say when they will be ready for
33 trial. Not this year, not next year, not the following year.

1 Diligent representation objectively and reasonably requires that
2 counsel be able to identify the tasks that need to be completed.
3 Penal Code section 1050 requires that counsel do so diligently and
4 that this Court ensure that counsel is doing so with written
5 declarations when a continuance is requested. It is unfathomable
6 that counsel to date cannot give a reasonable estimate as to when
7 their investigation will be complete. It is even more surprising
8 that counsel cannot identify when their pre-trial motions will be
9 ready to be filed. Counsel is not asking for a continuance of the
10 trial, but of the trial setting date.

11 B. Potential Witnesses Have the Right to Object

12 Penal Code section 1050(b) gives witnesses the right to be
13 heard regarding a motion to continue.

14 Regardless of the proponent of the motion, the
15 prosecuting attorney shall notify the people's witnesses
16 and the defense attorney shall notify the defense's
17 witnesses of the notice of motion, the date of the
18 hearing, and the witnesses' right to be heard by the
19 court.

20 PC §1050(b). Counsel filed his motion on Friday, but because he
21 served it via the clerk's office drop box without this
22 prosecutor's name on it, it was not personally received until
23 yesterday afternoon. As a result, the People have been unable to
24 honor this command of the Penal Code. As some of the People's
25 witnesses include family members of Sierra LaMar, the in court
26 spectacle of grieving family members wondering when they will get
27 their opportunity for justice would be unusual. While the
28 witnesses, including family, understand that cases such as this
take time, they have the right to expect that any continuances

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will be specific, based upon good cause after having exercised due diligence, and in compliance with the code.

III.

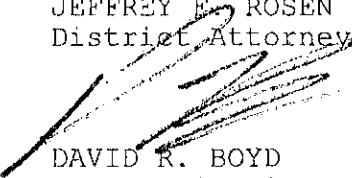
CONCLUSION

The People respectfully request that the defendant's motion be denied and that they be ordered to file a written motion in compliance with Penal Code section 1050 or set an objectively reasonable trial date.

DATED: July 29, 2015

Respectfully Submitted,

JEFFREY E. ROSEN
District Attorney



DAVID R. BOYD
Deputy District Attorney