

FILED

SEP 11 2015

DAVID H. YAMASAKI
Chief Executive Officer
Superior Court of CA County of Santa Clara
BY: [Signature]
Work Station

JEREMY F. ROSEN
District Attorney
DAVID R. BOYD
Deputy District Attorney
California State Bar No. 184614
County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
Telephone: (408)792-2968

Attorneys for Plaintiff

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-LORRES,

Defendant.

Criminal Case No. 213615

PEOPLE'S RESPONSE TO
DEFENDANT'S MOTION TO COMPEL
DISCOVERY

9-22-15
130
Dept 29

I.

INTRODUCTION

The People agree with the statement of facts as noted in the defense's moving papers as follows. This a capital case where the defendant was indicted in February 2014 and the defense was notified of the decision to seek death in May 2014. The People further agree that the case involves thousands of pages of police reports, many videos and voluminous lab reports, data and photographs. The People also agree that the defense has made several informal requests for discovery, which have been resolved

1 without court involvement by the production of the requested
2 material and more.

3 However, the People do not agree with the defense's
4 inflammatory statement: "it is clear that the government has not
5 fully complied with their discovery obligation." [Disc. Mot.^{1/} at
6 3:13-16]. Although counsel has attached a few selected informal
7 discovery requests to their briefing, Mr. Lopez has failed to
8 attach any of the People's detailed written responses that were
9 provided on those matters. Counsel has also neglected to provide
10 a complete history of many of his demands at issue in the instant
11 motion.

12 Defense counsel further alleges that the People and the
13 defense are at an impasse regarding certain issues. At least with
14 respect to the battery, this comes as a surprise to the People as
15 counsel has not addressed the matter with the People since 2014.
16 [Boyd 9/11/15 Decl. ¶¶4-5; Exh. 1.]

17 Counsel alleges that he "is aware of other areas of discovery
18 and **Brady** material that the government has failed to disclose."
19 [Disc. Mot. at 21:27-28, Lopez 8/17/15 Decl. ¶15.] If counsel has
20 the information, it is unclear how the People have suppressed it,^{2/}
21 especially considering the fact that counsel fails to note what
22 exactly the information may be.

23 Finally, counsel erroneously claims that the People have not
24 previously provided certain information, which in fact has been

25
26 ^{1/} "Disc. Mot." refers to defendant's motion to compel
discovery filed with this court on August 17, 2015.

27 ^{2/} Government suppression is a necessary predicate to a
28 **Brady** violation. *Strickler v. Greene* (1999) 527 U.S. 263, 282.

1 previously provided. Given the volume of the file, it is not
2 surprising that information previously provided might be
3 overlooked. However, given that counsel has stated, under penalty
4 of perjury no less, that they have not received the information,
5 what is clear is that on this point they are wrong.

6 II.

7 THE PEOPLE'S DISCOVERY OBLIGATIONS

8 The People note that regardless of any legal obligation to
9 give the defense "everything" - even as they might define it -
10 there is no document or recording in the People's actual or
11 constructive possession that will not be disclosed.

12 That being said, a brief discussion of the People's discovery
13 obligations is appropriate. The defendant has no discovery right
14 to "everything". *U.S. v. Ruiz* (2002) 536 U.S. 622, 628, citing
15 *Weatherford v. Bursey* (1977) 429 U.S. 545, 559 ("There is no
16 general constitutional right to discovery in a criminal case, and
17 *Brady* did not create one"). The People are required to
18 produce to the defense, absent any request, material exculpatory
19 information. *Brady v. Maryland* (1963) 373 U.S. 83; *People v.*
20 *Gutierrez* (2013) 214 Cal.App.4th 343, 348 (*Brady* information prior
21 to preliminary hearing). This has been done, and will continue to
22 be provided, should any exist. The People are further obligated
23 to produce discovery pursuant to Penal Code section 1054.1. While
24 this right is a trial right, the People are **not** holding onto any
25 material with the idea that its disclosure is not yet required.^{2/}

26
27 ^{2/} Of course, some material cannot possibly be disclosed
28 at this time. For example, the defense has demanded a witness

(continued...)

1 The People are not, however, required to produce material
2 that is not in the possession of the prosecution.

3 [The prosecution cannot reasonably be held responsible
4 for evidence in the possession of all governmental
5 agencies, including those not involved in the
6 investigation or prosecution of the case.

7 In re Steele (2004) 32 Cal.4th 682, 697. This is the rule for
8 Brady information, as well as material under Penal Code section
9 1034.1. Under a Brady analysis, the People are not required to
10 provide material that is also reasonably available to the defense.

11 If the material evidence is in a defendant's possession
12 or is available to a defendant through the exercise of
13 due diligence, then . . . the defendant has all that is
14 necessary to ensure a fair trial. . . .

15 *People v. Salazar* (2005) 35 Cal.4th 1031, 1049, italics added; see
16 also *People v. Morrison* (2004) 34 Cal.4th 698, 713 (finding that
17 "the prosecutor had no constitutional duty to conduct defendant's
18 investigation for him").

19 In short, the defendant is not entitled to "everything." As
20 noted above, they will get everything to which they are entitled
21 and much more regardless of the People's obligation.

22 //

23 //

24 //

25 3 (...continued)

26 list, but as the trial date has only recently been set for next
27 April, the People simply have not yet determined the identity of
28 all the witnesses it reasonably anticipates that it may call at
trial. Neither has the defense, as they have provided no
witness list to date. [Boyd 9/11/15 Decl. ¶¶ 2-3.] See Penal
Code section 1054.3(a)(1) (requiring the production of a defense
witness list, among other items).

1 III.

2 DISCUSSION

3 Because the People have no intention of only disclosing
4 information within the strict limits of Brady and Penal Code
5 section 1054.1, the People will review the defense's specific
6 requests in order to inform this Court of the status of the
7 material requested and the history behind the requests by the
8 defense.

9 The People are in no position to declare in court or
10 elsewhere that the defense has everything, as we are under no
11 obligation to do so. The People are, however, willing to declare
12 that no report, recording, photograph, video or lab testing known
13 to the People is being withheld and that the defense has
14 substantially more material than is legally required to be
15 produced. As material comes into existence or becomes known to
16 the People, and it is within our actual or constructive
17 possession, it will be disclosed irrespective of any obligation to
18 do so. As a review of the file is perpetually ongoing, all
19 material identified as overlooked will be provided.

20 The defense's voluminous demands in essence ask for three
21 things: (1) a complete witness list, (2) irrelevant information
22 related to persons the prosecution does not intend to call at
23 trial, and (3) Brady information which counsel claims to be aware
24 of, but neglects to specifically identify. First, pursuant to
25 reciprocal discovery duties, the People and the defense will
26 exchange witness lists when they become available, which will be
27 closer to the recently set trial date of April 25, 2016. Second,
28

1 the People have disclosed, and will continue to disclose, the
2 information related to witnesses it knows will be called at trial
3 (e.g. witnesses who testified at the Grand Jury). Finally, as
4 material exculpatory information becomes available to the People,
5 it will be disclosed to the defense pursuant to the People's
6 ethical duties, without the necessity of asking the court to
7 compel production of vaguely identified material.^{4/}

8 Now that the Court is involved, the People have organized our
9 point-by-point responses under the same headings used by the
10 defense.

11 a. LAW ENFORCEMENT REPORTS

12 Defendant requests a court order to compel blanket disclosure
13 of:

14 **All reports, notes, documents, diagrams, electronic mail,**
15 **memoranda and records,** including those prepared by their
16 experts, crime lab, Department of Justice, F.B.I., S.J.P.D.,
17 Morgan Hill Police Department, all law enforcement agencies
18 involved in the search and investigation in the case, chain
19 of custody logs, logs or information related to finger print
20 dusting kits, however recorded or preserved, prepared by any
21 police officer or investigator, or at the direction of any
22 police officer or investigator concerning this case. All
23 notes made by any law enforcement officer in connection with
24 the case shall be preserved and a copy provided to counsel.
25 [Disc. Mot. at 5:15-22, emphasis added].

26 This is exactly the kind of discovery demand that the
27 criminal discovery statute was enacted to avoid. See *People v.*
28 *Jackson* (1993) 15 Cal.App.4th 1197, 1202, citing Penal Code
section 1054(d) (emphasizing the importance of informal

^{4/} See *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1225
("the duty to disclose [Brady evidence] exists regardless of
whether there has been a request by the accused.")

1 communication between attorneys to save the court time from
2 judicial enforcement).

3 For the authority to support their demand, defense cites (1)
4 Penal Code section 1054.1(f), (2) *People v. Moore* (1987) 189
5 Cal.App.3d 1537, 1540, and (3) *Funk v. Superior Court* (1959) 52
6 Cal.2d 423.^{5/}

7 Penal Code section 1054.1(f) mandates disclosure of
8 "[r]elevant written or recorded statements of witnesses or reports
9 of the statements of **witnesses whom the prosecutor intends to call**
10 **at the trial.**" (emphasis added). Defendant cites both *Moore* and
11 *Funk* for the proposition that Penal Code section 1054.1(f) also
12 requires the disclosure of all officer's notes. This broad
13 reading of the discovery statute is not supported by any of the
14 authority cited by the defense.

15 In the pre-Prop 115 case, *Moore*, the court actually held that
16 the prosecution's failure to provide a police officer's notes from
17 an interview with a defense witness was not error because the
18 notes did not materially undermine the credibility of prosecution
19 witnesses. *Moore, supra*, (1987) 189 Cal.App.3d at 1540.

22 ^{5/} Oddly, throughout their motion counsel relies on cases
23 that predate Proposition 115's enactment in 1990. See *In re*
24 *Littlefield* (1993) 5 Cal.4th 122, 129 ("In criminal proceedings,
25 under the reciprocal discovery provisions of section 1054 et
26 seq., **all court-ordered discovery is governed exclusively by-and**
27 **is barred except as provided by-the discovery chapter newly**
28 **enacted by Proposition 115,**"), emphasis added, citing Penal Code
section 1054(e) ("no discovery shall occur in criminal cases
except as provided by this chapter, other express statutory
provisions, or as mandated by the Constitution of the United
States.").

1 Funk simply held that the defense has a right to handwritten
2 statements relating to the matters covered in a trial witness's
3 testimony. *Funk, supra*, (1959) 52 Cal.2d at 424. However, not
4 all law enforcement notes are discoverable. See *Thompson v.*
5 *Superior Court* (1997), 53 Cal. App. 4th 480, 488 (holding that
6 reciprocal discovery requires a party to disclose "raw written
7 witness interview notes reflecting the witness's statement, but
8 not the impressions or opinions of the interviewer, regardless of
9 whether the notes are used to produce a formal written witness
10 statement report.").

11 None of the defense's cited cases describe any legal
12 obligation to disclose all "documents, diagrams, electronic mail,
13 memoranda and records." [Disc. Mot. at 5:15]. Nonetheless, the
14 defense is already in possession of thousands of pages of that
15 very type of discovery, and the People will continue to provide
16 additional information to the defense without court involvement or
17 order.

18 The defense also asks the prosecution to notify all police
19 officers involved in the investigation to preserve any original
20 notes that they may have made during the investigation. This has
21 been done. The People requested Santa Clara County Sheriff's
22 Detective Sgt. Leon to inquire with all detectives who worked on
23 the case to preserve any notes and provide said notes to the
24 People. The People are in the process of collecting all of these
25 notes and will provide them shortly.

26 //

27 //

28

1 b. STATEMENTS BY DEFENDANTS

2 Next the defense asks the court to compel (1) all statements
3 or utterances by the defendant and (2) contact information of "any
4 and all witnesses to the making of said statements." [Disc. Mot.
5 at 6:14-15].

6 As to the first request, and mandated by Penal Code section
7 1054.1(b), the People have already provided this material. We are
8 unaware of any undisclosed statements of the defendant.

9 For authority as to their second request, the defendant
10 cites: (1) *Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 804-5;
11 (2) *People v. Jones* (1983) 145 Cal.App.3d 751, 758; (3) *People v.*
12 *Campbell* (1972) 27 Cal.App.3d 849, 855-8; and (4) *McCarthy v.*
13 *Superior Court* (1958) 162 Cal.App.2d 755, 760-1. As noted *infra*
14 (see footnote 5), these cases pre-date Proposition 115 and
15 therefore do not assist this Court in the People's discovery
16 obligations.

17 *Joe Z.* held that a defendant's statements must be disclosed
18 if (1) the defendant demonstrates cause better than a "mere
19 desire" and (2) disclosure would not unduly hamper the prosecution
20 or violate some other legitimate governmental interest. *Joe Z.*,
21 *supra*, (1970) 3 Cal.3d at 804-5. *Jones* held that police notes of
22 an interview with a criminal suspect should be preserved and
23 disclosed to the defense. *Jones, supra*, (1983) 145 Cal.App.3d at
24 760. *Campbell* held that the prosecution must produce (1)
25 defendant's written statements, (2) original recordings of his
26 statements, (3) transcripts of his tape-recorded statements, and
27 (4) unrecorded oral statements known to the prosecution.
28

1 | *Campbell, supra*, (1972) 27 Cal.App.3d at 855, 858. The *McCarthy*
2 | decision also held that an interrogator's notes of a defendant's
3 | statement must be disclosed. *McCarthy, supra*, (1958) 162
4 | Cal.App.2d at 759-60.

5 | There is no support in the defense's cited authority for any
6 | obligation of the People to find and turn over "the names, current
7 | addresses and telephone numbers of any and all witnesses" to the
8 | defendant's statements. [Disc. Mot. at 6:14-15]. This information
9 | is not within the scope of Penal Code section 1054.1(b) and the
10 | defense has not met its burden even under pre-Proposition 5.5 case
11 | law to establish that they have more than the "mere desire" to
12 | inspect this information, or that such information is necessary
13 | for the preparation of their case. See *Joe Z., supra*, 3 Cal.3d at
14 | 806.

15 | Despite the absence of authority for the defense's demand
16 | here, the People are not withholding the requested information.

17 | c. STATEMENTS USED DURING INTERROGATION OF DEFENDANT

18 | Next, the defense asks this Court to compel production of all
19 | statements of any person that were used during interrogation of
20 | the defendant that might reasonably have encouraged the defendant
21 | to make a statement.

22 | This is a strange request because the defense has audio
23 | and/or video recordings of all of the defendant's interviews that
24 | were recorded. They also have reports reflecting law enforcement
25 | contact with the defendant. To the extent that statements were
26 | used during these interviews, the defense would have heard them
27 | and/or read about them. The People are simply unaware of
28 |

1 statements used during the interrogation of the defendant that
2 they do not already have. Given that the questioning of the
3 defendant by investigators was recorded, and those recordings have
4 been provided, the defense is in a unique position to identify to
5 this Court any material that was possibly overlooked, if any
6 exists.

7 d. WITNESSES TO BE CALLED AT TRIAL

8 Next, the defense demands (1) contact information for "every
9 witness the prosecution should reasonably anticipate is likely to
10 be called to testify at the trial during guilt or penalty phases",
11 (2) contact information for any persons present during interviews
12 of any of the witnesses, and (3) the complete record of all oral
13 or written statements by these witnesses. [Disc. Mot. at 7:18-19].

14 For authority, the defense cites: (1) Penal Code sections
15 10b4.1(a), (e), (2) *People v. Wright* (1985) 39 Cal.3d 876, 890-91,
16 (3) *Joe Z.*, *supra*, (1973) 3 Cal.3d at 806, (4) *Punk*, *supra*, 52
17 Cal.2d 423, (5) *People v. Hammond* (1994) 22 Cal.App.4th 1611,
18 1621-22, (6) *Stanton v. Superior Court* (1987) 193 Cal.App.3d 265,
19 (7) *People v. Shaparnis* (1983) 147 Cal.App.3d 190, 193-96, (8)
20 *Gonzales v. Municipal Court* (1977) 67 Cal.App.3d 111, 117, (9)
21 *Craig v. Superior Court* (1976) 54 Cal.App.3d 416, 423, and (10)
22 *People v. McManis* (1972) 26 Cal.App.3d 608, 616-17.^{4/}

23 Before responding to the defense's voluminous case law, the
24 People note that the defense is asking this Court to compel a
25 complete witness list for this case more than seven months prior
26

27 ^{4/} As noted previously, most of these cases predate
28 Proposition 116 and, as a result, do not provide this Court with
relevant authority for the defense's request.

1 to the recently set trial date of April 25, 2016.^{2/} Penal Code
2 section 1054.7 requires statutory disclosure to be made prior to
3 30 days before trial. There is no duty to disclose witness
4 information before the prosecutor has enough information to
5 reasonably anticipate who is likely to be called. *People v.*
6 *Willis* (1998) 18 Cal.4th 284, 290, 293; *People v. Hammond* (1994)
7 22 Cal.App.4th 1611, 1622-24. The People are not aware of any
8 cases that require a witness list at this early date, and nothing
9 in the nine cases defense relies on changes this fact.

10 (1) In *Wright*, the court reiterated a prosecutor's *Brady* duty
11 to disclose police reports that tend to impeach a prosecution
12 trial witness. *Wright* (1983), *supra*, 39 Cal.3d at 590-91. (2) In
13 *Joe Z.*, the court explained that a defendant requesting compelled
14 discovery must show more than a "mere desire" to inspect that
15 information. *Joe Z.*, *supra*, (1970) 3 Cal.3d at 806. The court
16 held that the prosecutor had no duty to disclose witness
17 statements of co-defendants "simply because it might assist in the
18 preparation of the defense." *Id.* at 805-06. (3) *Funk*, as
19 discussed *supra* (Section III., paragraph (a) at p. 7-8), is a 1959
20 case that established that handwritten notes of witness statements
21 do not have to be verbatim transcriptions to be discoverable.
22 *Funk*, *supra*, 52 Cal.2d at 424. (4) *Hammond* simply held that the
23 prosecution cannot withhold the identities of rebuttal witnesses
24

25 ^{2/} This date was set - after the filing of the Motion to
26 Compel - on September 2, 2015 and only after many months of the
27 People addressing the fact that the defense had previously been
28 unwilling to provide any guidance to the Court as to when they
might be ready to try the case. See People's Response and
Opposition to Garcia's Motion for a Continuance under PC 1050
filed on July 29, 2015.

1 they intend to call at trial. *People v. Hammond* (1994) 22
2 Cal.App.4th 1611, 1621-22. (5) *Stanton* is another example of a
3 blatant Brady error wherein the prosecution failed to disclose a
4 third-party report in its possession which directly contradicted
5 the primary witnesses. *Stanton, supra*, (1987) 193 Cal.App.3d 265,
6 268, 272. (6) *Shaparnis* is yet another case of the prosecution
7 failing to disclose a police report implying that someone other
8 than the defendant committed the murder. *Shaparnis, supra*, (1983)
9 147 Cal.App.3d 190, 196. (7) *Gonzales* is an attorney-client
10 privilege case which does not appear applicable to the case at
11 bar. *Gonzales, supra*, (1977) 67 Cal.App.3d 111, 117. (8) *Craig*
12 is a case about a prosecutor's failed argument to characterize a
13 witness statement to law enforcement during trial as work product.
14 *Craig, supra*, (1976) 54 Cal.App.3d 416, 423-24. (9) Finally,
15 *McManis* simply stands for the proposition that the defense is
16 entitled to any tape recorded statements of a defendant. *McManis,*
17 *supra*, (1972) 26 Cal.App.3d 608, 616-17.

18 It is apparent that none of these nine cases state that a
19 prosecutor must disclose its witness list more than seven months
20 before a recently set trial date. The People will be in a
21 position to exchange witness lists with the defense at a
22 reasonable time before the trial date of April 25, 2016. We are
23 open to a mutually agreeable date for the exchange of both the
24 prosecution **and defense** witness lists.

25 e. PERCIPIENT WITNESSES

26 The defense's next paragraph asks this Court to compel
27 discovery of contact information (including "current addresses")
28

1 for "all persons who were percipient witnesses to the collection
2 of evidence in the case . . . whether or not they are to be called
3 to testify against the defendant . . . or who testified at the
4 Grand Jury including any possible Federal Grand Jury." [Disc.
5 Mot. at 8:25-27, 9:1-2].

6 The People are not withholding the name or address of any
7 known percipient witness. Nor are the People aware of any Federal
8 Grand Jury in this case. We will continue to disclose the last
9 known address for each anticipated trial witness. Telephone
10 numbers are not mandated discovery under Penal Code section 1054
11 et seq. However, the People have not redacted telephone numbers
12 of percipient witnesses.

13 f. DOCUMENTS USED TO REFRESH RECOLLECTION

14 The defense asks this Court to compel:

15 (1) "ALL notes, reports, recordings or other memoranda made
16 by prospective witnesses relating to the case, for all
17 possible phases" and (2) "all documents that may have been
18 used or may be used by any witness to refresh his or her
19 memory at the Grand Jury or before trial. [Disc. Mot. at
20 9:15-18].

21 As to the first point, the People are not withholding
22 anything described that is in the People's actual or constructive
23 possession.⁴⁷ As to the second point, the defense has the Grand
24 Jury transcripts. Anything used to refresh recollection at the
25 Grand Jury was described on the record with a reference to its
26 identity. As to documents that could be used to refresh a
27 witness's memory before trial, the People cannot possibly

28 ⁴⁷ The People have not yet identified or interviewed the
relevant witnesses for the purposes of victim impact testimony
for the penalty phase.

1 determine and disclose such information, and neither of the cases
2 cited by the defense impose such a duty.

3 Estrada simply held that written notes of a prosecution
4 witness's statement are discoverable. *People v. Estrada* (1960) 54
5 Cal.2d 713, 716. This case is of no assistance to the Court
6 because this holding was codified in Penal Code section 1054.1(f)
7 thirty years later.

8 Next, *Pacific Lighting Leasing Co.* is cited without any
9 specific page reference. The defense appears to cite it for the
10 proposition that a nonparty must produce subpoenaed information in
11 court for the defendant's inspection, if such information is
12 necessary for a fair trial. *Pacific Lighting Leasing Co. v.*
13 *Superior Court* (1976) 60 Cal.App.3d 552, 559-60. This case
14 provides no authority for a blanket right to "all documents . . .
15 that may be used by any witness to refresh his or her memory . .
16 . before trial." (Disc. Mot. at 9:16-17).

17 At this early date, the People cannot possibly anticipate
18 what documents may be used to refresh recollection. PC §1054.1
19 imposes no such duty.

20 g. CRIMINAL RECORD OF WITNESSES TO BE CALLED TO TESTIFY

21 The defense asks this Court to compel the felony conviction
22 record of each witness that the prosecution may call.

23 This information is within the scope of Penal Code section
24 1054.1(d), and will be provided well before the April 25, 2016
25 trial date, when the People decide on a witness list. The People
26 are open to an agreed date for the prosecution and defense to
27 exchange witness lists.

28

1 h&i. ACTS OF MORAL TURPITUDE & CHARGES AGAINST WITNESSES

2 Next, the court is asked to compel:

3 (1) All records, police reports and other information,
4 however recorded, of any prior acts that may adversely
5 reflect on the honesty or credibility of any witness who may
6 be called to testify by the prosecution in all phases of the
7 trial, whether or not such acts resulted in an arrest or
8 conviction for a criminal offense. [Disc. Mot. at 10:14-17].

9 (2) All records and information related to any prospective
10 prosecution witness in both cases who is currently on
11 probation or parole or has any pending charges, including a
12 list of any such charges, docket numbers or CEN numbers
13 relating to such charges, anywhere in the state of
14 California. Disclosure regarding whether any prospective
15 witness was on probation or parole or had any pending charges
16 dismissed or otherwise settled since the date of the alleged
17 offense. [Disc. Mot. at 11:2-7].

18 The People will provide the existence of additional
19 impeachment evidence once the witness list is completed. This
20 will include "[t]he existence of a felony conviction of any
21 material witness whose credibility is likely to be critical to the
22 outcome of the trial" as required by Penal Code section 1054.1(d).
23 It will also include the date, police report number if known, and
24 law enforcement agency responsible for any arrest or known
25 investigation that involves a crime of moral turpitude.^{2/} Counsel
26 demands that the People seek out the "records, police reports and
27 other information" [Disc. Mot. at 10:14] however no case requires
28 the People to conduct the defense investigation for them. Arrest
reports, police reports, or records of other agencies not part of
the prosecution team and not in the People's possession are not a

25 ^{2/} Prior to their testimony, the People ran checks for
26 acts of moral turpitude for each of the civilian witnesses at
27 the grand jury. Where there was impeachment, these witnesses
28 were questioned on the stand as to such impeachment as was then
known to the People. The defense has these grand jury
transcripts.

1 required disclosure under Penal Code section 1034.1, Brady or any
2 of the cases cited by the defense. In re Steele (2004) 32 Cal.4th
3 682, 697; People v. Whalen (2013) 56 Cal.4th 1, 65 at fn. 27.

4 However, the People will assist the defense should they have
5 difficulty in securing the necessary information.

6 j. INDUCEMENTS TO TESTIFY

7 Next, the defense asks for inducement to testify; something
8 that the prosecution is not aware exists in this case. They
9 demand:

10 [Disclosure regarding any type of promises, inducements,
11 offers of reward or immunity, threats, plea agreements, or
12 affirmative representations made or implied to such persons
13 in an effort to obtain information or testimony as to the
14 investigation and/or prosecution of the present case. [Disc.
15 Mot. at 11:27-28, 12:1-2].

16 To the extent that the People become aware of any such
17 information related to a witness it reasonably anticipates it is
18 likely to call at trial, it will be provided.

19 k. OTHER INFORMATION BEARING ON WITNESS CREDIBILITY

20 The defense makes yet another request for a court order to
21 disclose a laundry list of non-specific Brady information,
22 including any potential "use of psychics":

23 "All reports, records or other information in the possession
24 of the prosecution bearing on the credibility of all
25 witnesses to be called to testify against the defendants in
26 all phases of trial, including, but not limited to,
27 information relating to any physical, mental or psychological
28 limitation on their ability to perceive, recollect or
29 communicate concerning the subject matter of their testimony;
30 a witness's poor character for honesty or veracity; the
31 existence of any expressed bias, interest or motive in
32 testifying; or any admission of untruthfulness. All notes
33 and reports of observations of police officers or
34 investigators concerning the state of sobriety of any witness
35 at a time relating to the subject matter of his or her
36 testimony. All information obtained by the government in

1 this case by use of psychics, suspect profiler [sic], or
2 similar individuals that profess to have special skills in
3 uncovering evidence or suspects." [Disc. Mot. at 12:19-27,
4 13:1-2].

5 The People have provided and will continue to provide any
6 exculpatory information in our actual or constructive possession.
7 Many people have contacted the Santa Clara County Sheriff's Office
8 and the District Attorney's Office with their theories of the case
9 and sometimes offering alleged unique abilities (e.g., psychics).
10 The People are not withholding that information, however it must
11 be noted that questionable tips regarding this case have come in
12 on an ongoing basis. As those tips are investigated, the results
13 have been, and will continue to be, provided to the defense.

14 1. PHOTOGRAPHS/LICENSE PLATE READER

15 The defense asks this Court to compel:

16 All photographs, diagrams, surveillance footage, still
17 photos, motion pictures or videotapes of the scene of the
18 alleged offense, areas evidence was collected, or areas where
19 the crime could have been committed in whole or in part. All
20 school bus and VTA video footage obtained during the
21 investigation in this case including footage taken on March
22 16, 2012, by [sic] school bus surveillance cameras while
23 driver Monica Cisneros witnessed a suspicious white van
24 driving erratically around the time of Sierra LaMar's
25 disappearance. Including print outs, images, spreadsheets
26 obtained from license plate readers during the investigation
27 in this case. [Disc. Mot. at 14:2-9].

28 The People have provided the license plate reader data in DM-
498 and DM-524.^{26/} The People have further provided all the VTA
and school bus surveillance in our actual or constructive
possession. Given that the defense is asking the Court to compel

^{26/} DM-524 will be provided before the hearing on this
matter. It consists of a digitized spreadsheet of license plate
reader data gathered after Sierra's disappearance. It's
production was apparently overlooked when the printed license
plate reader data was produced to the defense on April 25, 2014.

1 such documentation, we will audit this area to confirm that any
2 material not currently in the actual or constructive possession of
3 the prosecution team is acquired from the necessary third parties
4 and disclosed. As the defense has issued certain public records
5 requests for bus surveillance video, they may already know whether
6 the demanded information ever existed within the Morgan Hill
7 Unified School District.

8 It is unclear why the defense thinks that the prosecution
9 team has the specific video requested (i.e., Monica Cisneros) as
10 they have declined to say more, other than to demand a court order
11 for its production.

12 m. PHOTOGRAPHS OF THE DEFENDANT

13 This section asks for all photographs and video taken of the
14 defendant by law enforcement in this case at or near the time of
15 arrest as well as his time in custody.

16 The defense has received all such photographs and video in
17 the actual or constructive possession of the prosecution team. It
18 seems that counsel is demanding possible photos and video taken as
19 part of his being detained pending trial following his arrest in
20 May 2012. The People have not acquired such material from the
21 Department of Corrections and under *People v. Superior Court*
22 (*Barrett*) 80 Cal.App.4th 1305, 1317-18, such material is not
23 within our actual or constructive possession.^{11/}

24 //

25 //

27 ^{11/} A review of counsel's exhibits does not reveal an
28 informal request for such material regardless.

1 n. PHOTOGRAPHS OF VICTIMS

2 The defense also demands: "any copies of any photographs of
3 the alleged victims taken by or on behalf of the prosecution or
4 law enforcement agencies." [Disc. Mot. at 15:2-3].

5 The defense has received comprehensive discovery of Sierra's
6 digital fingerprint that also includes numerous photos of her.
7 The People are not currently in actual or constructive possession
8 of additional photos, however as noted previously, the People have
9 not fully identified or interviewed penalty phase witnesses to
10 date and therefore there may be additional photographs of Sierra.
11 They will be disclosed once identified, in advance of trial. The
12 People have provided the photographs in our actual or constructive
13 possession of the 2009 victims.

14 r. INSPECTION OF PHYSICAL EVIDENCE/BATTERY CODE

15 The defense asks the court to compel:

16 An opportunity to view and examine all physical evidence
17 seized or obtained as part of the investigation of the
18 charged offenses, whether or not the prosecution intends to
19 introduce the evidence at trial. An opportunity to obtain
20 the manufacturing code from the battery recovered from the
21 stun gun seized in 2009 during the Safeway incident. The
22 government has written over the code where it is only
23 partially visible. Either the crime lab or defense
24 consultant Ken Moses should be allowed to clean off the
25 government writing to obtain the manufacturer's code. [Disc.
26 Mot. at 11:17].

27 The battery code issue is discussed *infra*, (Section IV,
28 paragraph C).

 The People have agreed to, and made arrangements for, the
defense's request to view the evidence. The defense made their
first request to comprehensively view the evidence via e-mail on
August 8, 2014. The People responded in writing the same day

1 noting that if counsel really sought to see every item seized in
2 the case, it would likely take over one month.^{12/} [Boyd 9/11/15
3 Decl. ¶¶6-7; Exh. 2.] In the alternative, the People suggested
4 that the defense narrow their list using the evidence items
5 numbers that are assigned to each item. Although it took counsel
6 until June 17, 2015 to provide the prosecution with such a list,
7 the letter did not object to the People's request but rather asked
8 for the arrangement of a mutually agreeable date. [Boyd 9/11/15
9 Decl. ¶8; Exh. 3.]

10 For the first time, in court on August 31, 2015, Mr. Lopez
11 suggested that the People have unreasonably delayed the defense
12 ability to review the evidence. The People take issue with
13 insinuation. The defense has never objected to narrowing the list
14 of evidence to review and even complied with the People's request
15 to identify the items it needed to see by evidence item number.^{13/}
16 Within two days of that list being received by the People, this
17 prosecutor contacted the investigating officer for available dates
18 as well as his time estimate for the requested viewing. [Boyd
19 9/11/15 Decl. ¶10.] Because the defense wishes to examine over
20 180 items of evidence, it is anticipated that the review will

22
23 ^{12/} Prior to this, counsel had sought to view a stun gun
24 and battery. Viewing of this evidence item at defense request
has occurred on multiple occasions without court intervention.

25 ^{13/} Numerous items of evidence, likely in the hundreds,
26 have no relevance to this case and/or have been photographed or
27 copied for the defense. Of course, if the defense wishes to see
28 the items, arrangements will be made, but this prosecutor has
requested such a process in every murder case previously
prosecuted and has never encountered a defense attorney who
could not or would not narrow the range of evidence they wished
opened for inspection prior to trial.

1 likely take over one week to complete.^{14/} The investigator
2 provided this prosecutor with some available dates, however the
3 People did not receive the defense proposal for dates until July
4 24, 2015 from Brian Matthews. [Boyd 9/11/15 Decl. ¶9; Exh. 4.]
5 Mr. Matthews proposed two sets of dates. One in which this
6 prosecutor was on vacation and the now (apparently)^{15/} agreed upon
7 dates during the week of September 21, 2015. [Boyd 9/11/15 Decl.
8 ¶9-10; Exhs. 4-5.]

9 s. INFORMATION ALLEGED TO CONCERN OTHER SUSPECTS

10 Next, defense counsel seeks to compel:

11 The names, addresses, DNA profiles, fingerprints and
12 statements of all persons detained, interviewed or
13 arrested as potential suspects in this case, including
14 any informal contact or tips regarding this case. DNA
15 CODIS hits, DNA profiles, DNA cold hits of all potential
16 suspects who were investigated in this case whether or
17 not they were excluded as suspects. [Disc. Mot. at
18 16:2-6].

19 The People are not in possession, actually or constructively,
20 of any material that has not been disclosed pursuant to this
21 paragraph. No other persons have been arrested as potential
22 suspects in this case and no informal contacts or tips are being
23 withheld.

24 ^{14/} It must be understood that the items are not all held
25 in one place and due to prior examination some items have been
26 separated for further analysis. Finally, some evidence requires
27 special storage and handling. All of these things increase the
28 amount of time necessary for inspection.

29 ^{15/} The People have no record of the defense ever
30 responding to the People's agreement to the defense's proposed
31 date, Mr. Lopez indicated on the record on August 31, 2015, that
32 he understood the evidence view was scheduled for the proposed
33 days in September 2015. Subsequently, counsel has narrowed the
34 planned four days for the evidence view to two.

1 By this request for "DNA cold hits of all potential suspects
2 . . .", counsel appears to be making reference to prior informal
3 requests for CODIS information. First, it must be noted that
4 there were no other "cold hits" or "CODIS hits" except to
5 defendant Antolin Garcia-Torres. Second, the information that the
6 defense requested informally does not relate to "potential
7 suspects" and is protected by law making it a criminal offense for
8 the demanded information to be disclosed.^{16/} In his demand here,
9 counsel has failed to inform the Court of the background of his
10 request, the written correspondence back and forth on the matter,
11 or the fact that the People informed the defense that it was
12 asking the People and the California Department of Justice to
13 commit a felony by providing the requested material. [Boyd
14 9/11/15 Decl. §§11-12; Exhs. 6-7.]

15 The defense's discovery demand here is a significant point of
16 fact and law, including whether the information is within the
17 actual or constructive possession of the prosecution team, and
18 requires further briefing if in fact they are making that demand.
19 The People request that this matter be heard at the same time as
20 the Motion to Dismiss the Indictment.

21 c. EVIDENCE TO SHOW SIMILAR CONDUCT

22 Next, the defense wants the People to identify each act of
23 misconduct by the defendant that the People will offer as Evidence
24 Code section 1101(b) evidence.

25
26 ^{16/} Penal Code section 295.5(i)(1)(A) makes it a felony to
27 disclose DNA identification information to unauthorized persons.
28 Disclosing DNA profiles of "all persons detained, interviewed or
arrested as potential suspects in this case, including any
informal contact or tips regarding this case" as requested by
the defense would require committing multiple felonies.

1 Notwithstanding the defense's reliance on a general citation
2 to Ewoldt, there is no obligation to **identify** which acts of
3 misconduct the People intend to offer as 1101(b) evidence. The
4 People will provide, and have already provided, information
5 concerning defendant's other acts of misconduct, some of which is
6 potential 1101(b) evidence and/or relevant to the penalty phase.

7 v. ACCESS TO SHERIFF CASE FILE

8 The defendant asks this Court to order access to the case
9 files of the investigating officers. Such an order is not
10 permitted under the discovery statutes, but is also unnecessary in
11 this case.

12 Reviews of these files have already been conducted without a
13 court order. The People are open to counsel's review of the case
14 files at a mutually agreeable time.

15 v. EVIDENCE FAVORABLE TO DEFENDANT (BRADY DISCOVERY)

16 Defendant's final request is duplicative. The People are
17 aware of their obligation to disclose Brady and FC §1034.1(c)
18 material. We have done so in the past and will continue to do so.

19 **IV.**

20 **RESPONSE TO DECLARATION OF ALFONSO LOPEZ**

21 The People will respond to selected paragraphs in Mr. Lopez's
22 Declaration as set forth below. The paragraphs not responded to
23 are either not in dispute or contain the opinions of Mr. Lopez
24 that require no response.

25 A. Paragraph 4

26 The People are in no position to address Mr. Lopez's
27 declaration that "defense counsel has become aware that there is
28 outstanding exculpatory discovery which the government has had in

1 its possession since 2012." [Lopez 8/17/15 Decl. ¶4]. Defense
2 counsel has declined to identify it.

3 B. Paragraphs 5-8

4 Counsel alleges that additional Department of Justice reports
5 dated in 2012 have not been received. Presumably counsel is
6 referring to DoJ reports BK-12-000260-0001 through 0003. Counsel
7 has declared under penalty of perjury that the defense has not
8 received those reports. [Lopez 8/17/15 Decl. ¶8]. This is false.
9 The defense received DoJ reports 0002 and 0003 previously and more
10 than one year ago or longer depending on the report.^{12/} [Boyd
11 9/11/15 Decl. ¶13.]

12 It is true that as of the filing of the defense motion here,
13 report 0001 had not been disclosed,^{13/} however it is simply a
14 report reflecting the defendant's own 15 loci profile. The
15 defense has had this profile in its possession through the Santa
16 Clara County Crime Lab testing since early 2013.^{14/}

17 As to the Department of Justice mitochondrial DNA report (BK-
18 12-000260-0004) disclosed to the defense in July 2015, the People
19 did not intentionally wait eight months before disclosing it.
20 [Lopez 8/17/15 Decl. ¶¶6-7]. The People were not aware this

21 ^{12/} For counsel's benefit, report 0002 can be found in LAB
22 BATES 2844-2846 and 3117-3119 produced on 10/22/2013 and
23 4/25/2014 respectively. It was discovered twice. Report 0003
was produced in LAB BATES 3120-3121 on April 25, 2014.

24 ^{13/} The People were simply not aware that Cal DoJ produces
25 a report of this type when there is a CODIS hit. It has now
been disclosed.

26 ^{14/} The defendant's buccal swab collected in this case on
27 April 7, 2012 was tested and the same 15 loci profile was
28 revealed. That testing is reflected in lab case number M120319
- Supp 21 (LAB BATES 1087-1092) discovered no later than March
6, 2013.

1 report was completed until July 2015 after defense counsel Brian
2 Matthews suggested to this prosecutor that the report might be
3 available.^{20/} Unnecessary accusations aside, this report did not
4 contain any information in the People's constructive possession
5 prior to the case presentation to the grand jury as the testing
6 was not completed until well after the indictment.

7 C. Paragraphs 9-10

8 Counsel has neglected to give this Court the full background
9 regarding the battery and numbering on the bottom of the battery.
10 The battery at issue was located in a stun gun dropped by the
11 defendant during his attempted kidnapping charged in Count three
12 of the Indictment. The battery was examined in order to see if
13 fingerprint identification was possible. It is customary during
14 the examination for analysts to document their work by writing
15 dates and initials. This was done on the bottom of the battery
16 where no ridge detail was located. According to the defense the
17 notations obscured what appears to be numbering on the bottom of
18 the battery. The defense has noted to the prosecution a desire to
19 determine that numbering, a desire which the prosecution has no
20 objection to. However, the defense's proposed methods are not
21 scientifically sound according to this prosecutor's conversations
22 with the Sheriff's Office and Crime Lab analysts. The People are
23 concerned that the defense's proposed method of trying to wipe off
24

25 ^{20/} Mr. Matthews noted to this prosecutor that the chain
26 of custody logs revealed the evidence had been returned to the
27 DA Crime Lab from the Department of Justice Lab. The People had
28 been periodically inquiring with DA Crime Lab personnel about
the status of the report, but had not received word of
completion until the inquiry prompted by the conversation with
Mr. Matthews.

1 the bottom of the battery, which is a paper type material, will
2 also wipe off the numbering as well. This concern was sent to the
3 defense counsel in writing. [Boyd 9/11/15 Decl. ¶5; Exh. 1.]

4 As noted in the letter, and as promised [see 1/27/14 e-mail,
5 attached to the defense's Motion to Compel Discovery filed August
6 17, 2015, Exh. B], the People did review every known photograph of
7 the battery prior to the placing of the notation, including photos
8 taken of the battery in 2009, but unfortunately there are no known
9 photos of the bottom of the battery. [Boyd 9/11/15 Decl. Exh. 1].

10 Counsel has indicated a desire for the number, but has not
11 presented this Court with any information that the existing data
12 on the battery is insufficient for their purposes. Presumably
13 counsel wishes to provide the numbering to the manufacturer in
14 order to draw certain conclusions regarding the battery; when it
15 was manufactured or sold, for example. However counsel has not
16 identified that the existing unobscured numbering is insufficient.
17 They have provided no contact with any relevant witness or expert
18 that informs this Court that destruction of a key piece of
19 evidence is the only reasonable means to acquire the necessary
20 information.

21 The People have asked the Santa Clara County Sheriff's
22 Department to make the very inquiries of the manufacturer that
23 might shed light on the necessity of the defense's request.^{21/}
24 However, counsel's allegation that the People and the defense are
25

26 ^{21/} Perhaps there are enough visible digits that the
27 relevant and alleged needed information can be determined
28 without resorting to potentially contaminating or removing other
evidence from the battery. Perhaps the coding will provide no
relevant information to this case.

1 at an impasse on the matter comes as some surprise. The People
2 have no record of counsel mentioned addressing the issue, except
3 for this motion, after it was determined that there were no photos
4 of the battery prior to the notation partially obscuring the
5 digits on the bottom of the battery. [Boyd 9/11/15 Decl. ¶5.]
6 Regardless, without demonstrating to this Court that an unobscured
7 number could reveal relevant information, the People are
8 requesting that counsel make some showing before the Court orders
9 any particular method in an attempt to reveal the number. The
10 People are more than happy to work with the defense's experts on
11 a method to reveal the digits on the bottom of the battery. When
12 this issue was last discussed between counsel, the People asked
13 the defense to have their expert contact Sgt. Herman Leon. [Boyd
14 9/11/15 Decl., Exh. 1].

15 D. Paragraphs 11-12

16 While the defense has made a request for CODIS information,
17 the People responded in writing regarding this request. [Boyd
18 9/11/15 Decl. ¶¶11-12; Exhs. 6-7.] None of the People's detailed
19 responses were included in the motion to compel before this Court.
20 In that correspondence, the People directed the defense to the
21 agency that holds the information requested, the California
22 Department of Justice. [Boyd 9/11/15 Decl., Exh. 7.] The People
23 also informed the defense that their request demanded discovery
24 that would, if disclosed, require the necessary personnel to
25 commit a felony. [Boyd 9/11/15 Decl., Exh. 7]. While the People
26 agree that the defense's issue should be resolved by this Court,
27 by way of SDT, Mr. Lopez's declaration states that "the government
28 has failed to provide the other suspect's information." [Lopez

1 8/17/15 Decl. ¶12.] Counsel's declaration is misleading and
2 should read that the People clearly indicated that we have
3 declined to knowingly violate the felony provisions of Penal Code
4 section 299.5 and that we are not in possession of the
5 information. On this issue, it is true; we are at an impasse. It
6 requires further briefing which, as noted previously, the People
7 request be heard at the same time as the Motion to Dismiss.

8 ". Paragraph 15

9 The declaration alleges "[t]hat defense counsel is aware of
10 other areas of discovery and Brady material that the government
11 has failed to disclose." [Lopez 8/17/15 Decl. ¶15]. The People
12 would be happy to remedy this situation if counsel would specify
13 what undisclosed Brady evidence he is aware of. Perhaps, given
14 the volume of the file, it might turn out that the information was
15 previously provided and was overlooked by counsel, such as the DNA
16 evidence in Department of Justice reports BK-12-000260-0002 and
17 BK-12-000260-0003 as noted in Section IV., paragraph B., *infra*.

18 V.

19 **CONCLUSION**

20 Prior to this motion, the defense has made informal requests
21 for discovery, most of which have been resolved to their
22 satisfaction, whether or not the material fell within PC §1054.1,
23 and without court involvement. This Court, on August 31, 2015,
24 clearly indicated to both counsel that it expects a narrowing of
25 the issues for the Court's consideration. To that end, after the
26 filing of this response, the People will seek to do so.

27 The People have diligently responded in writing to the
28 defense's numerous discovery demands and tended to those discovery


1 demands as they have arisen. However, rather than schedule a
2 meeting or identify the alleged deficiencies in further
3 correspondence,^{22/} counsel - without warning to the People - filed
4 what appears to be a boilerplate discovery demand in the form of
5 a motion to compel.

6 Penal Code section 1054 et seq. is designed to make clear the
7 People's discovery obligations and also to avoid unnecessary
8 litigation surrounding the question of discovery. The People are
9 more than willing to engage counsel in the informal resolution of
10 discovery issues that PC §1054 et seq. contemplates. However,
11 that requires counsel to raise the specific discovery issue with
12 the People directly, and not for the first time in court. Perhaps
13 then we can avoid burdening this Court with issues that are
14 resolved or representing to the Court that material has not been
15 provided when it has.

16
17 DATED: September 11, 2015

18 Respectfully Submitted,

19 JEFFREY E. ROSEN
20 District Attorney

21 
22 DAVID R. BOYD
23 Deputy District Attorney

24
25
26
27
28 _____
^{22/} Something counsel has done in the past.

1 DECLARATION OF DAVID R. BOYD IN SUPPORT OF
2 RESPONSE TO MOTION TO COMPEL DISCOVERY

3 I, David R. Boyd, do hereby declare that:

- 4 1. I am the assigned Deputy District Attorney to the above-
5 referenced case.

6 **WITNESS LISTS**

- 7 2. As the trial date was only recently set for April 25, 2016,
8 the People have not yet determined the identity of all the
9 witnesses it reasonably anticipates that it may call at
10 trial.
11 3. The People have not received a witness list from the defense
12 nor any other defense discovery under PC 1054.3, which has
13 the same timing requirement as PC 1054.1.

14 **BATTERY CODE**

- 15 4. The defense has asked to see the manufacturer's numbering
16 written on the bottom of the stun gun battery. This has been
17 a topic of multiple discussions between counsel.
18 5. On March 7, 2014, the People responded via e-mail that this
19 code was obscured by a notation made during analysis by the
20 crime lab. The People told the defense (1) that there were
21 no pictures of the battery predating the notation made by the
22 crime lab, and (2) that attempts to rub off the ink of this
23 notation would obliterate the manufacturer's code. This
24 exchange of e-mails was the last discussion on the matter.
25 The March 7, 2014 e-mail described above is attached as
26 Exhibit 1.

27 //

28 //

EVIDENCE VIEW

- 1
- 2 6. On August 8, 2014, the defense sent an e-mail asking to view
- 3 all evidence.
- 4 7. On August 8, 2014, the People sent a letter to the defense,
- 5 attached as Exhibit 2, requesting that they narrow the
- 6 evidence to view.
- 7 8. The defense has never objected to narrowing the list of
- 8 evidence to view. After ten months, on June 17, 2015, Mr.
- 9 Matthews provided an itemized list of objects which the
- 10 defense wanted to view. The e-mail did not contain suggested
- 11 dates for the evidence view. The June 17, 2015 e-mail
- 12 described above is attached as Exhibit 3.
- 13 9. On July 24, 2015, Mr. Matthews indicated via e-mail that he
- 14 had been waiting on his investigator to provide a list of
- 15 available dates for the evidence view. Mr. Matthews
- 16 requested to view the evidence either between August 10 and
- 17 August 14, or between September 21 and September 25. The
- 18 July 24, 2015 e-mail described above is attached as Exhibit
- 19 4.
- 20 10. I contacted the investigating officer, who indicated that it
- 21 would likely take more than one week to complete the
- 22 requested evidence view. On July 27, 2015, the People
- 23 communicated this information to the defense and agreed to
- 24 schedule the evidence view the week of September 21, 2015.
- 25 I was on vacation during the only other dates offered by the
- 26 defense. The July 27, 2015 e-mail described above is
- 27 attached as Exhibit 5.
- 28

CODIS DISCOVERY DEMAND

11. On June 23, 2014, the People sent a letter to the defense addressing their request for CODIS information. The letter is attached as Exhibit 6.

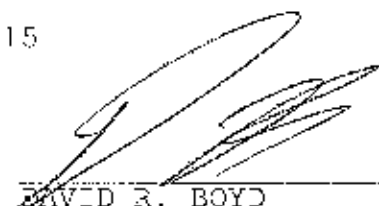
12. On March 16, 2015, the People sent another letter explaining the requested CODIS information and explaining the effect of Penal Code section 299.5 on the requested DNA discovery. The letter is attached as Exhibit 7.

PRIOR DISCOVERY SENT/RECEIVED

13. Defense counsel was provided DoJ report BK-12-000260-0002 on October 22, 2013 (LAB BATES 2844-2846), and again on April 25, 2014 (LAB BATES 3117-3119). Defense counsel was provided DoJ report BK-12-000260-0003 (LAB BATES 3120-3121) on April 25, 2014.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: September 10, 2015



DAVID R. BOYD
Deputy District Attorney

EXHIBIT 1

(March 7, 2014 Response to Battery Email and CODIS Request)

David Boyd - 213515

From: David Boyd
To: Alfonso Lopez
Date: 3/7/2014 3:48 PM
Subject: 213515

Mr. Lopez,

Ms. Owens has not previously made a number of these requests and I responded to some of the others when soon after they were made. I will respond to this officially and in more detail the week of March 17th, but you have items 1, 4, 5, and 7 and have had them for a very long time. I specifically responded to Traci via e-mail on 11/14/13 about request number 1 and the "laptop dump" is on DWI-447 something I referenced in an e-mail on 11/22/13 when she asked about the 3/18/12 photo of Sierra. Numbers 4 and 5 are found in Supplement 24 which you have had for over 1 year.

No one has ever asked me for 8 or 9 and I would have to check my notes about whether 2 and 3 have ever been requested. Please note that what you are asking for in number 3 is held by Cal DOJ, not the Crime Lab. We do not receive anything but the profile, not a "list of suspects." I do not know what you mean by "associated reports." It is my understanding that they would not give us the identity information even if we asked. But, before I start asking questions about that, please be more specific as to what you want. Since I am sure you have a DNA expert on retainer, why don't you speak with that person to be specific as to exactly what you want and believe I would have. Regarding request number 2, I assume you mean Deniale LaMar, not Daniel, and you have that statement (BATES 11621-11627).

Please note that we only recently looked at the phone you reference in number 8, based upon Traci's Johnson request. I will get you the phone dump in the ordinary course, but I am told the phone was a lost phone not connected to Sierra's disappearance.

I agree we have not resolved the battery issue, number 6. It turns out we do not have any photos of the bottom of the battery before Diechman used that area to write his initials documenting his work. I do not believe, given what he used to write those initials that rubbing off the ink will reveal the number, rather I think it will obliterate the number. I am more than happy to work with your experts to figure out a method, but I cannot give you what I do not have. Please have your investigator/expert contact Sgt. Herman Leon to figure out a plan.

Please give me some more information on number 2 because I am sure I can find out who Rafael Ayala is with some digging, but if you want to get it sooner, it helps knowing more information than just a name. Where do you see that name, what CD, what BATES stamp page.

Finally, what is the source of your information about 1/24/14 attacks at "the Tenant Safeway parking lot?" What agency would you suggest I contact? I have no such report, never have, and when Ms. Owens sent her clarifications to me on 2/2/14 regarding her Johnson request, the details provided did not reveal what she was talking about even though I asked Morgan Hill to investigate. I have no such report, but I am happy to look, but I need more information.

I am more than happy for you to inspect my file, however that will have to take place after I am done with the trial that I am in, which will be June.

I am out of town next week, but will work on a formalized response the following week. This is just to get you started.

David R. Boyd
Deputy District Attorney
Homicide Unit
Santa Clara County

EXHIBIT 2

(August 8, 2014 Letter Asking Defense to Narrow Evidence to
View)

County of Santa Clara

Office of the District Attorney

1 West Hedding Street, West Wing, 5th Floor
San Jose, California 95110
(408) 299-7100



Jeffrey E. Roseo
District Attorney

David R. Boyd
Deputy District Attorney

August 8, 2014

Al Lopez
Brian Matthews
Alternate Defender's Office
701 Miller Street
San Jose, CA 95110

Re: ANTOLIN GARCIA TORRES
Docket No. 213515

Dear Mr. Lopez and Mr. Matthews:

This letter is in response to Mr. Lopez's August 8, 2014 e-mail requesting the same information from his June 10, 2014 e-mail, as well as an evidence view.

On June 23, 2014, I responded to the June 10th request in detail. My response informed you of what would be forthcoming. Given the expansiveness of your request, as you might imagine, it took some time to get it together and to review it for production. I have attached a copy of that letter in case you did not receive it. Rest assured it was not my plan to wait until the end of my current trial to get the information to you. I believe you will be receiving the material referenced in my June 23rd letter by Friday, August 15th. You may contact Jenna Dougherty to schedule the pickup, but as you know from prior experience she will e-mail you when it is ready.

You have also requested to "inspect all the evidence whether it's at the crime lab or sheriff evidence warehouse." If you are intending to look at every item of evidence, over 600 items, that process will take several weeks, probably over a month given the fact that protocols must be undertaken depending on the evidence item. Further, many of the items of evidence at the lab have been broken up in to sub items as small as a single fiber or hair. Finally, the items are in multiple locations.

What may make more sense is that I will provide you a list of the evidence that has been collected and numbered by the Sheriff's Office and then have you can identify the items by evidence number that you wish to see. That way we can avoid opening things that you already


August 8, 2014

have or are not salient and we will have a good record of what needs to be done and what has been done. You already have such a list, but I can give you something more user friendly for this purpose.

As far as the evidence at the lab, collected directly by lab personnel, or that has been broken up into smaller items by the lab, that material is going to have to be handled differently. I am open to suggestions, but "I want to see it all" is not particularly helpful. For example, do you need to see a buccal swab from Marlene LaMar, the reference fibers from the LaMar residence, a single hair that appears to be animal in origin? If so, many of these items need to be handled by trained experts. We will of course, give you reasonable access as required in Penal Code section 1054.1, however, it is unrealistic to expect that this will only take a week or two or can be organized in the next three weeks to start the first week in September.

There needs to be a plan. I am open to suggestions.

Sincerely



DAVID R. BOYD
Deputy District Attorney

DA Case #: 120511149

EXHIBIT 3

(Defense June 17, 2015 Letter Requesting Evidence View of
Specific Items)

County of Santa Clara
Law Offices of the Alternate Defender
701 Miller Street, 1st Fl.
San Jose, CA 95110
(408) 299-7200 / Fax (408) 298-2516



DAVID EFPS
Supervising Attorney

June 17, 2015

Mr. David Boyd
Deputy District Attorney
70 West Hedding Street
San Jose, CA 95110

Re: *Garcia-Torres* evidence review

Dear Mr. Boyd:

You responded to our request to view some of the evidence collected during the investigation of the case by asking us to specify what we wanted to see. We reviewed the documents you provided and the police reports and produced the attached list. I know the list is extensive, but we feel we need to see each item on the list. Please contact me or Mr. Lopez to arrange for a mutually agreeable date for us to review the evidence. Thank you.

Best regards,

Brian Matthews
Deputy Alternate Defender

EXHIBIT 4

(Defense July 24, 2015 Email Proposing Dates for Evidence View)

David Boyd - Evidence Review Dates

From: "Matthews, Brian J" <[REDACTED]>
To: "David Boyd" <[REDACTED]>
Date: 7/24/2015 9:52 AM
Subject: Evidence Review Dates
CC: "Lopez, Alfonso" <[REDACTED]>

David,

I've been waiting for our investigator to return from vacation to confirm some dates. Do you think we could arrange dates between 8/10-8/14 or 9/21-9/25?

Also, when we last spoke you mentioned you would look into the mitochondrial results and get back to us. I just wanted to remind you about it. Thanks.

Brian Matthews
Deputy Alternate Defender
Santa Clara County

NOTICE:

This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. This entire message constitutes a privileged and confidential communication pursuant to California Evidence Code Section 952 and California Code of Civil Procedure Section 2018. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

EXHIBIT 5

(July 27, 2015 Email Agreeing to Evidence View Dates)

David Boyd - Re: Evidence Review Dates

From: David Boyd
To: Brian J Matthews
Date: 7/27/2015 9:00 AM
Subject: Re: Evidence Review Dates
CC: Alfonso Lopez

Counsel,

I am out of town 8/10 to 8/24. Let's do 9/21 to 9/25. Please note that Sgt. Leon is not available 9/25 and we will need more time than just this.

David R. Boyd
Deputy District Attorney
Homicide Unit
Santa Clara County
~~██████████~~

~~██████████~~
>>> "Matthews, Brian J" <~~██████████~~> 7/24/2015 9:32 AM >>>

David,

I've been waiting for our investigator to return from vacation to confirm some dates. Do you think we could arrange dates between 8/10-8/14 or 9/21-9/25?

Also, when we last spoke you mentioned you would look into the mitochondrial results and get back to us. I just wanted to remind you about it. Thanks.

Brian Matthews
Deputy Alternate Defender
Santa Clara County

NOTICE:

This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individual(s) named as recipients in the message. This entire message constitutes a privileged and confidential communication pursuant to California Evidence Code Section 952 and California Code of Civil Procedure Section 2018. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

EXHIBIT 6

(June 23, 2014 Letter Addressing Defense Request for CODIS
Information)

County of Santa Clara

Office of the District Attorney

20 West Hadding Street, West Wing, 5th Floor
San Jose, California 95110
(408) 299-7400



Jeffrey E. Rosen
District Attorney

David R. Boyd
Deputy District Attorney

June 23, 2014

Al Lopez
Brian Matthews
Alternate Defender's Office
701 Miller Street
San Jose, CA 95110

Re: ANTON GARCIA TORRES
Docket No. 213515

Dear Mr. Lopez and Mr. Matthews:

This letter is in response to your June 10, 2014, e-mail requesting certain information pertaining to DNA testing, both CODIS and Santa Clara County Crime Lab, as well as protocols within lab.

In the first (unnumbered) paragraph you request the profile uploaded to CODIS. This will be provided under separate cover (regardless of whether it already has been produced), however the candidate match profiles returned from CODIS are not permitted to be disclosed by statute. Also, it is incorrect to call the candidate match list "cold hits." They are not, because all but one was determined to be no match. As far as the protocol used, to exclude the persons on the candidate match list, the crime lab uses the same protocol it uses for all DNA analysis. That protocol has been requested by you and will be provided under separate cover. It should be noted that the candidate matches produced for analysis, are not produced by a typical writing, but rather are accessed through a computer terminal linked to CODIS.

Paragraph 1: You will be provided the validation studies used by the Santa Clara County Crime Lab for Identifier Plus. You requested this for San Mateo, but I believe that to be in error. Let me know if this belief is correct.

Paragraph 2: The People are aware of our discovery obligations, but as noted in *People v. Rose* (A135974, filed May 29, 2014), that does not require our compliance in the method that you seek. As a result, I will not be providing you the documents you have requested, but rather will

June 23, 2014

inquire, as it is my duty to do, with members of the prosecution team to determine whether there is exculpatory information in the area in which you describe. Please note, you have already received resumes, proficiency examinations, and corrective action reports for the Crims Lab personnel who have performed analysis in this case.

Paragraph 3: You will get this under a separate cover. This material is partially responsive to your request in the first (unnumbered) paragraph addressed at the beginning of this letter.

Paragraph 4: As noted above, you will receive the DNA information uploaded into CODIS in this case under separate cover. It is my understanding that only the one DNA upload occurred.

Paragraph 5.1: This request is puzzling. I cannot fathom any statute, constitutional provision or other mandated discovery principle that requires such a disclosure. As the request is not tethered to any provision of PC §1054.1 and is unambiguously not exculpatory information, no further effort will be made in this regard. However, I will note that there is publicly assessable data on the Santa Clara County Crime Lab's accreditation should you wish to seek this information on your own.

Paragraph 5.2: This request is similarly puzzling. With the exception of material exculpatory information, I cannot fathom any statute, constitutional provision or mandated discovery principle that requires such a disclosure. Rest assured, the Santa Clara County District Attorney's Office will provide *Brady* material. However, our *Brady* obligation does not extend to providing you with documents for a defense fishing expedition regarding conduct and procedures at the forensic laboratories that conduct work on this case. This is especially true given that your request seeks information from operations entirely unconnected to any personnel or procedures utilized in this case.

Paragraph 6: As you are no doubt aware, Mr. Garcia-Torres was in CODIS due to a felony arrest by the Santa Clara County Sheriff's Office in 2010. You have the arrest reports from this encounter. The remainder of the material is not within the possession of the prosecution team, so even if it was exculpatory, which I have no reason whatsoever to suspect, it is simply not discoverable from this Office. You will, of course, receive all PC §1054.1(f) material, but this is not PC §1054.1(f) material.

Sincerely,



DAVID R. BOYD
Deputy District Attorney

EXHIBIT 7

(March 16, 2015 Letter Explaining the Effect of Penal Code 299.5
on Requested DNA Discovery)

County of Santa Clara

Office of the District Attorney

West Hastings Street, West Wing, 5th Floor
San Jose, California 95110
(408) 299-7300



Jeffrey F. Rosen
District Attorney

David R. Boyd
Deputy District Attorney

March 16, 2015

Brian Matthews
Alternate Defender's Office
701 Miller Street
San Jose, CA 95110

Re: ANTONIN GARCIA TORRES
Docket No. 213515

Dear Mr. Matthews:

This letter is in response to your March 6, 2015 letter for DNA discovery.

Paragraph 1: This request has been previously made and I responded to your request. Please see my letter dated June 23, 2014. Additionally, you received further documentation in the August 14, 2014 discovery. To expand on my previous comment, Penal Code section 299.5 makes clear that disclosure is not permitted. In fact, it would be a felony to do so. PC §299.5(i). Penal Code section 299.5(h) states:

Except as provided in subdivision (g) and in order to protect the confidentiality and privacy of database and data bank information, the Department of Justice and local public DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or forensic identification database or data bank information or its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

Paragraph 2: You have already been provided the validation studies used by the Santa Clara County Crime Lab for Identifiler Plus. Since you are asking for it again, please confirm receipt of my August 14, 2014 discovery letter and DM-517. If you feel our previous response was inadequate, please explain what you believe is missing.

Paragraph 3: You have already been provided the protocols and interpretation guidelines used by the Santa Clara County Crime Lab. Since you are asking for it again, as noted above please confirm receipt of my August 14, 2014 discovery letter and DM-517. If you feel our previous response was inadequate, please explain what you believe is missing.

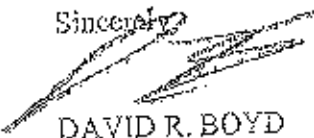
Paragraph 4: This information is not possessed or maintained by the prosecution team. The analysis is completed by the California Department of Justice. The prosecution team in this case had no role in the "testing and uploading of Mr. Garcia-Torres's DNA profile in CODIS following his arrest on June 16, 2010 (Sheriff's Case No. 10-167-01550)." You will need to seek that information from the California Department of Justice.

Paragraph 5: I have requested the current chain of custody data in LIMS for Santa Clara County Crime Lab numbers M120319, M120592 and M120369. If there are any other lab numbers where you seek chain of custody information, please let me know. I would note that as evidence is tested by the lab, or checked out for inspection, the chain of custody is updated for that item, so giving you current documentation will be relevant only up to that period of time.

I am not exactly sure what you had in mind for the "logs pertaining to the chain of custody of all evidence stored by the Santa Clara Sheriff's Department." Please contact me so I can understand your request so that I make sure I get you what you are expecting the first time around.

Finally, regarding the evidence view. I responded in detail about this in my August 8, 2014 letter. Until I have an idea of exactly what you want to see, there is no way to figure out the amount of time to set aside for the evidence view. Additionally, the evidence is stored in multiple locations, so we need the evidence item numbers ahead of time in order to accommodate your request. I have provided a spreadsheet to assist in identifying the evidence. You will get an official, and updated, spreadsheet shortly.

Sincerely,


DAVID R. BOYD
Deputy District Attorney

FILED

SEP 11 2015

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

BY _____ DEPUTY

PROOF OF SERVICE

1
2
3 STATE OF CALIFORNIA) People v. ANTOLIN GARCIA TORRES
4) ss.
5 COUNTY OF SANTA CLARA) Docket No. 213515

Mark McCoy

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

7 On September 11, 2015, I served the following documents upon the interested parties in this action by the method(s) indicated below:
8

9 **Order Permitting Oversize Brief [SCC Local Rule of Court 5.B.11.e]**
10 **Declaration in Support of Order Permitting Oversize Brief [SCC Local Rule of Court 5.B.11.e]**
11 **People's Response to Defendant's Motion to Compel Discovery**
12 **Exhibits 1-7**

13 [] BY FACSIMILE TRANSMISSION: by faxing a true copy thereof to the recipient at the facsimile number indicated:

14
15 [X] BY COUNTY PONY MAIL: by placing a true copy thereof, enclosed in a sealed envelope,
16 addressed as follows:

17 Al Lopez
18 Alternate Defenders Office
19 701 Miller Street
20 San Jose, CA 95110

21 Brian Matthews
22 Alternate Defenders Office
23 701 Miller Street
24 San Jose, CA 95110

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 11, 2015, at San Jose, California.
26

Dina Garcia
Dina Garcia