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(ENDORSED)  
**FILED**  
MAY 22 2017

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

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

14 PEOPLE OF THE STATE OF CALIFORNIA, NO. 213515  
15 Plaintiff, PENALTY MOTION  
16 vs. LINGERING DOUBT MITIGATION  
17 ANTOLIN GARCIA-TORRES, Penal Code Section 190.3 (k)  
18 Defendant.

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND THE DISTRICT ATTORNEY  
20 OF SANTA CLARA COUNTY:

21 The courts have construed mitigation evidence broadly which includes evidence of  
22 lingering doubt, see *People v. Gay* (2008) 42 Cal4th 1195, 1213. The jury may be asked by  
23 defense counsel to consider evidence regarding defendant's guilt for the crime of conviction,  
24 less than reasonable doubt but preventing absolute certainty, which mitigates against imposing  
25 the death penalty. Such evidence is enough for a guilty verdict but can be considered as a  
26 mitigation factor favoring life, see *Penal Code section 190.3 (k)*. The defense is seeking to  
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1 present evidence of impeachment of Sergeant Herman Leon for his testimony at the penalty  
2 phase and guilt phase of the case being offered as mitigation evidence under section 190.3 (k).

3 **IMPEACH EVIDENCE OF SERGEANT LEON**

4 Days after the jury rendered guilty verdicts in this case, another murder case was granted  
5 a new trial based in part on the false testimony of Sergeant Leon. In the murder trial of David  
6 Pilipina and Eddie Rivera, Sergeant Leon was called by the government as an expert in crime  
7 scene investigations. A major issue in controversy was whether there was premeditation in the  
8 stabbing by Mr. Pilipina including his mental state. The government contended that Mr.  
9 Pilipina preplanned the killing because he put on murder gloves to aid in the crime. Such a  
10 theory was supported by the expert opinion of Sergeant Leon who testified that he has reviewed  
11 cases where the suspect puts on gloves prior to the stabbing to protect his hands from cuts and  
12 blood transfer. He supported his opinion by conservatively estimating that in 30 to 40 percent  
13 of the stabbing cases he reviewed since 2007 as the CSI supervisor, he noted through witness  
14 statements that the suspects wore gloves. His expert testimony was used to gain a guilty verdict  
15 of first degree murder.  
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19 Defense counsel was able to obtain the reports for the time period which Sergeant Leon  
20 said he reviewed cases regarding non-custodial stabbings since 2007 at the time he was  
21 supervising the crime scene unit. Contrary to his expert testimony, there were no other stabbing  
22 cases involved the suspect using gloves contained in the District Attorney case files since 2007.  
23 The Pilipina Case was the sole case where a stabbing suspect wore gloves during the act based  
24 on witness statements. In other words, based on the over 100 reports provided to defense  
25 counsel by District Attorney Office, Sergeant Leon testified falsely when he claimed he had  
26 reviewed cases since 2007 where stabbing suspects wore gloves. He further testified falsely by  
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1 providing a false statistic stating that between 30 to 40 percent of the stabbing cases he  
2 reviewed involved the suspect wearing gloves.

3 The trial court in the Pilipina Case made finding that based on the testimony of Sergeant  
4 Leon and the reports obtained from the District Attorney, that his testimony was false. The  
5 government claimed that Sergeant Leon may have relied on reports not in the possession of the  
6 District Attorney however they did not present such reports despite being given the opportunity  
7 to do so. Based on the evidence presented in the New Trial Motion, it was proven that Sergeant  
8 Leon presented false testimony.  
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10 Defense counsel for Mr. Garcia-Torres seeks to introduce the false testimony of Sergeant  
11 Leon by confronting him in this case with the discrepancy between his testimony and the  
12 reports provided by the District Attorney Office. Defense counsel will use his prior false  
13 testimony to impeach his testimony in the penalty phase but also his testimony in the guilty  
14 phase of the trial. Defense counsel is confident that it can prove Sergeant Leon testified falsely  
15 in the recent Pilipina Case, and then argue to the jury that they should consider that false  
16 testimony as a mitigating factor.  
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18 Dated: May 22, 2017.  
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20 Respectfully submitted,

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22 Alfonso O. Lopez  
23 Deputy Alternate Defender  
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