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March 20, 2017

Hon. Vanessa Zecher
Hall of Justice
Dept. 40

(ENDORSED)
FILED
MAR 22 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY C. COLLENSON DEPUTY

Re: Letter brief re: admissibility of third-party culpability evidence

Dear Judge Zecher,

Thank you for permitting briefing on this issue. As you are aware, there are two areas of evidence at issue: the presence of a silver Mercedes at two of the Safeway incidents and the presence of a car driving erratically around the location where Ms. LaMar disappeared. Our position on both is explained below.

Facts (Safeway incidents)

The first two Safeway attacks occurred on the same night. One happened at the Dunne Safeway and the second at the Tennant Station Safeway. An officer responded shortly after the first attack and performed foot patrol in the area. He walked into the Safeway to attempt to identify any suspects or witnesses who might have been in the vicinity. As he walked into the store, he noticed two people exiting. Both were Caucasian, one was male, and they had smirks on their faces. Importantly, the victim of one of the Safeway attacks described her assailant as having a smirk. The officer noted that the couple, apparently carrying groceries, walked to a silver Mercedes that was in the parking lot.

Security video from the Tennant Station Safeway store shows a vehicle drive by roughly 15-20 minutes after the first attack. It appears to be a silver Mercedes. Indeed, the officer reviewed the video and noted the similarities between the two vehicles. The assailant in that case is also on the video and is shown walking near the Mercedes. We were not permitted to explore this area in depth because of the prosecution's objection.

The prosecution has presented evidence that Mr. Garcia-Torres lived within walking distance of the Safeway stores at the time of the attack, at times he walked to Safeway from home, and that the attacker did not appear to have a car.

Assistant Public Defenders: ***

Facts (Sierra LaMar disappearance)

The prosecution has presented evidence suggesting that Ms. LaMar disappeared the morning of March 16, 2012. Part of the evidence they are using against Mr. Garcia-Torres is that he says he drove by the street near her bus stop around the same time.

The prosecution has attempted to establish a timeline for Ms. LaMar's disappearance by arguing that she was intending on going to school but never made it to her bus. They cannot establish where she would have been abducted—be it the bus stop or closer to her house.

The defense has a witness who saw a car coming from the area of Paquita Espana and Dougherty just minutes after the time the prosecution's theory would have Ms. LaMar being abducted. The car was being driving erratically and even cut off the witness as she drove her car. This occurred at the location where law enforcement later finds Ms. LaMar's phone. The witness observed the car being driving erratically and weaving back and forth as if the driver were struggling with someone.

Admissibility of third-party culpability evidence

It is always proper to defend against criminal charges by showing that a third person, and not the defendant, committed the crime charged. (*People v. Hall* (1986) 41 Cal.3d 826, 832.) Of course, the defense cannot introduce just any evidence that another person may have committed the crime. To be admissible, the proffered evidence must be capable of raising a reasonable doubt about the defendant's guilt. (*Id.* at p. 833.)

A court should determine the admissibility of third-party culpability evidence under Evidence Code section 352. (*People v. Page* (2008) 44 Cal.4th 1). Thus, it is admissible if it is relevant (§ 350) unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion (§ 352). (*ibid.*)

Thus, the rule is that "... the third-party evidence need not show 'substantial proof of a probability' that the third person committed the act; it need only be capable of raising a reasonable doubt of the defendant's guilt." (*People v. Hall, supra*, 41 Cal.3d at p. 833.) "Mere motive or opportunity, without more, will not suffice to raise a reasonable doubt. There must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*ibid.*)

The facts of *Hall* and *People v. Yeoman* (2003) 31 Cal.4th 93 help to explain the rule. *Hall* involved a murder charge where an older man was killed. Law enforcement initially believed he had died of cardiac arrhythmia, but decided to perform an autopsy after an informant claimed Hall had admitted to the killing. The defense attempted to argue that the informant was the actual killer because of waffle stomper prints in the victim's bedroom (presumably the informant was tied to the prints), the likely left handedness of the killer (the informant was left handed; the defendant right handed),

and the informant's knowledge of particulars of the offense that would only be known by the killer. The trial court excluded the evidence because it was not persuaded it proved the informant was the killer. The Supreme Court determined that the trial court was wrong and that the evidence should have been admitted. It cautioned that trial court's should avoid hasty conclusions that the third-party evidence is 'incredible' and instead allow the jury to determine its value. The evidence was more than mere motive or opportunity; rather, a reasonable jury could have found it raised a reasonable doubt about the defendant's guilt. Therefore, it should have been admitted.

The defendant in *Yeoman* was charged with murder and sought to show that a third-party had committed the crime. The evidence showed that the third-party had been accused of attempted burglary of the victim's car before he died. The person had complained that, if the charges weren't dropped by the victim, he would go to prison for 12 years. The charges were dropped once the victim died. The Supreme Court held that the trial court properly excluded the evidence because it merely showed that the third-party had a motive. It did not link him to the perpetration of the crime.

Unlike the evidence in *Yeoman*, the defense evidence presented to this court in both the Safeway incidents and the LaMar disappearance links third parties to the commission of the crimes.

Safeway

The people the officer saw walking out of the Safeway bore a resemblance to some descriptions of the attacker. For example, Mr. Ting explained that the attacker was a white male and one of the victims explained that the attacker wore a smirk on his face. The white male the officer saw walking out of the store to the Mercedes also wore a smirk. Approximately 15-20 minutes after the Mercedes is seen at the Dunne Safeway, we see it at the Tennant Safeway. The attacker walks near or around the car and is arguably related to it. The car leaves just before the attacker runs from the site of the attack.

The prosecution has attempted to show that Mr. Garcia-Torres committed the Safeway crimes and that he, like the attacker, did not have access to a car. They have tried to show you can walk/run between the Safeway stores and that he lived near them at the time. The evidence the defense seeks to present contradicts the very predicate the prosecution argument depends upon—that Mr. Garcia-Torres fit the profile of the attacker because the attacker did not have a car. This evidence shows it is likely the attacker did have access to a car; to the Mercedes. This is much more than mere motive or opportunity; it links the people associated with the Mercedes to the two Safeway attacks.

This is arguably not third-party culpability evidence in the sense it is discussed in Hall. Rather, this defense would use this evidence to show that the attacker had a characteristic that Mr. Garcia-Torres did not. It is similar to a situation wherein the

defense points to a video showing the attacker had red hair and then pointing out that the defendant does not have red hair.

But even if the Court see this as evidence of third-party culpability it is admissible. It is more than mere motive and opportunity; rather, it links the persons associated with the Mercedes to the commission of the crime itself.


LaMar disappearance

The third-party evidence related to the LaMar disappearance is, if anything, stronger than that of the Safeway incidents. The defense has a witness who would testify that she saw a car traveling away from Paquita Espana and Daugherty minutes after the prosecution's timeline would have Ms. LaMar being abducted. The car was being operated in an unusual manner, consistent with a person struggling with Ms. LaMar and cut the witness off at the very intersection where law enforcement later found Ms. LaMar's phone. It was swerving back and forth and going at less than the regular speed limit. This same witness does not describe seeing Mr. Garcia-Torres's car at the same time or place. Again, this is more than mere opportunity or motive. The evidence links another person to the commission of the crime directly.

Conclusion

Third-party culpability evidence is not subjected to a higher admissibility threshold than other types of evidence. It should be admitted so long as its admission does not violate section 352. Because they evidence in the Safeway incident and the LaMar disappearance may raise a reasonable doubt about Mr. Garcia-Torres's guilt and because they show more than mere motive or opportunity to commit the crimes, the Court should admit it. Failing to admit it would violate state evidentiary rules and Mr. Garcia-Torres's state and federal constitutional rights, including the 5th, 6th, 8th, and 14 Amendments to the U.S. Constitution.

Best regards,



Brian Matthews
Deputy Alternate Defender

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FILED

MAR 22 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY C. COLDENSON DEPUTY

Attorneys for Antolin Garcia Torres

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

People of the State of California,)	Case No.: 213515
)	
Plaintiff,)	
)	Proof of Service
--vs.--)	
)	
Antolin Garcia Torres,)	
)	
Defendant.)	
_____	/	

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to this action. My business address is 701 Miller Street, San Jose, CA 95110.

On March 21, 2017 I served the within Letter Brief re: Third-party culpability on the Plaintiff in this action by sending an electronic copy to the business email addresses for Dep. District Attorneys David Boyd and Dana Veazey. A hard copy was provided by hand on March 22, 2017.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 22nd day of March 2017 at San Jose, California.