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9 *Attorneys for Antolin Garcia-Torres*

FILED

2016 SEP 19 P 2:00

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By: 
Mark McCoy

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

People of the State of California,

Plaintiff,

-vs.-

Antolin Garcia-Torres,

Defendant.

) Case No.: 213515
)
) Motion to exclude evidence in
) aggravation and request for
) *Phillips* hearing
) *10-3-16*
) *9 Am*
) *Dept 40*

Introduction

The prosecution filed a Notice Pursuant to Penal Code Section 190.3 on July 28, 2015 listing eight items it intends to use as aggravation at an eventual penalty phase. The defense raises the following objections to their admissibility.

Points and Authorities

Argument

I. The defense requests that this Court hold a *Phillips* hearing to determine the admissibility of items 6 and 7 of the 190.3 notice

The prosecution is limited, in their penalty case-in-chief, to presenting evidence that is relevant to a statutory factor in aggravation. (*People v. Boyd* (1985) 38 Cal.3d 762, 772-776.)

1 For example, general evidence of bad character is not typically relevant to any aggravating
2 factor. (*See People v. Avena* (1996) 13 Cal.4th 394, 439.) The statutory aggravators are factor (a):
3 the circumstances of the crime; factor (b): the existence of other violent criminal behavior;
4 and (c): the existence of prior felony convictions. (Pen. Code § 190.3.)

5 The prosecution refused the defense request that it articulate which aggravating factor
6 it believed its aggravation applied to. The defense assumes the prosecution will offer items
7 (circumstances and effects of defendant's use of force against Jeff Dye on or about June 16,
8 2010) and 7 (circumstances and effects of defendant's use of force and violence against
9 police officers Dini and Thomas on or about May 29, 2009) under factor (b). Neither of the
10 incidents resulted in felony convictions and neither are related to the circumstances of the
11 homicide so neither factor (c) nor factor (a) apply.

12 To be admissible under factor (b), the evidence must demonstrate both that the
13 conduct amounted to a crime and that it involved the use or threatened use of violence.
14 (*People v. Anderson* (2001) 25 Cal.4th 543, 584 (must show an actual crime that violates a penal
15 statute); *People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1013 (must involve use, attempted use, or
16 threatened use of violence against a person). The prosecution must prove factor (b) evidence
17 beyond a reasonable doubt. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1239.) The Supreme
18 Court has advised that it may benefit the trial court to conduct an Evidence Code section
19 402 hearing to determine the admissibility of factor (b) evidence. (*People v. Phillips* (1985) 41
20 Cal.2d 29, 72 fn. 25.) These types of hearings are often called *Phillips* hearings. The defense
21 asks the Court to conduct hearings into both incidents and determine whether there is
22 enough evidence that they involve an actual crime and violence against a person such that
23 they should be presented to a jury.

24 **A. June 16, 2010 incident**

25 According to police reports documenting the matter, Mr. Garcia-Torres was involved
in a family dispute on June 16, 2010. His sister and her boyfriend, Mr. Dye, had been staying
with Mr. Garcia-Torres and his mother, but they had not been paying rent or otherwise
living up to their household responsibilities. Mr. Garcia-Torres, to protect his mother,

1 informed them they would have to move out. They refused and an argument ensued. It was
2 alleged that Mr. Garcia-Torres punched Mr. Dye and caused him to suffer injury.

3 The Sheriff's Department responded to the scene and arrested Mr. Garcia-Torres for
4 violating Penal Code section 243(d) (felony) and 261.5 (misdemeanor). The section 261.5
5 charge came about when they interviewed Mr. Garcia-Torres's then-girlfriend. She was 17.5
6 years old and pregnant. He was 18.

7 Mr. Garcia-Torres was later charged with misdemeanors stemming from the incident.
8 The misdemeanor 243(d) was dismissed when the prosecution was unable to proceed
9 because of Mr. Dye's apparent unwillingness to testify and the 261.5 violation was dismissed
10 when Mr. Garcia-Torres completed a parenting class.

11 **1. The 261.5 charge is inadmissible**

12 The 261.5 charge did not involve violence, attempted violence, or threatened
13 violence. There should be no question but that it isn't admissible under factor (b).

14 **2. The Court should hold a *Phillips* hearing regarding the 243(d)**

15 The defense ask the Court to hold a hearing to determine if there is substantial
16 evidence to prove each element of the crime alleged. While a hearing is not mandatory
17 (*People v. Clair* (1992) 2 Cal.4th 629, 677), the Court should conduct one here. It is especially
18 important because the prosecution was unable to proceed on the evidence it had at the time
19 of trial. As both sides plan their presentations to the jury, it is desirable to know in advance
20 what evidence will be admitted and what will be excluded. (*See People v. Frank* (1990) 51
21 Cal.3d 718, 727.)

22 **B. May 29, 2009 incident**

23 Sheriff's deputies went to a house near where Mr. Garcia-Torres was living on May
24 29, 2009 in search of a suspect. The person, not Mr. Garcia-Torres, was wanted in
25 connection to a \$100,000 warrant. After contacting the residents of one house, they were
referred to another house on the same property. The officers then saw a woman, later
determined to be Mr. Garcia-Torres's sister, at a car. She appeared to speak to someone at
the car and then the suspect exited the car and ran into the house. The deputies followed

1 him in, apparently without knocking or giving notice of their presence. Mr. Garcia-Torres
2 came out of a room and said something to the effect of "Fuck you pigs get the fuck out of
3 my house." He got close to Officer Thomas and then Officer Thomas and Dini grabbed his
4 wrists and pulled him out the front door.

5 The defense requests the Court hold a Phillips hearing to determine if there is
6 substantial evidence to prove a crime occurred and, if one did, if it involved violence. In
7 addition, the defense ask the Court to exclude the identity of the person who was wanted
8 and the reason for the warrant as neither is relevant to a factor in aggravation and maybe e
9 excluded under Evidence Code section 352. Permitting such extraneous information to be
10 presented would be unduly prejudicial and would violated Mr. Garcia-Torres's right to a fair
11 trial under the 5th, 6th, 8th, and 14th Amendments to the U.S. Constitution and their California
12 corollaries.

13 Conclusion

14 The prosecution has provided notice of its intent to seek to admit evidence under
15 factor (b). The defense objects to such evidence and asks the Court to conduct a *Phillips*
16 hearing to determine its admissibility.

17 Date: September 19, 2016

18 Respectfully submitted,

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20 Brian Matthews
21 Deputy Alternate Defender

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) Proof of Service

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

20 On September 19, 2016 I served a copy of the Motion to exclude evidence in
21 aggravation and request for *Phillips* hearing on the plaintiff in this action by leaving a copy
22 for Dep. DA David Boyd in the lobby of his office.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed on
24 this 19th day of September 2016 at San Jose, California.

25 

FILED

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David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By:

Deputy Clerk


Mark McCoy