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9 *Attorneys for Antolin Garcia Torres*

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

12 People of the State of California,

13 Plaintiff,

14 vs.

15 Antolin Garcia Torres,

16 Defendant

17 Case No.: 213515

18 **Order permitting filing in excess of page
19 limit**

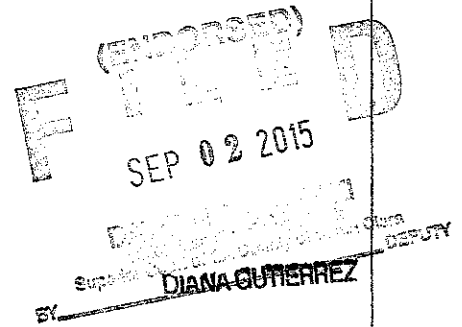
20 Good cause appearing therefore:

21 IT IS HEREBY ORDERED that defense counsel may file the attached Motion to
22 Dismiss Indictment in spite of the brief exceeding the page limit found in the Rules of
23 Court.

24 Dated: SEP 02 2015

25 
26 _____
27 JUDGE OF THE SUPERIOR COURT

28 Hon. Helen E. Williams



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F
SEP 02 2015
Superior Court
DIANA GUTIERREZ

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

12 People of the State of California,

13 Plaintiff,

14 vs.

15 Antolin Garcia Torres,

16 Defendant

17 Case No.: 213515

18 Declaration of Counsel in Support of Order
19 Permitting Filing in Excess of Page Limit

20 I, Brian Matthews, declare the following:

- 21 1. I am an attorney employed by the Alternate Defender's Office for Santa Clara
22 County;
- 23 2. I have been assigned to represent Antolin Garcia-Torres, the accused, in the
24 above-captioned case;
- 25 3. Mr. Garcia-Torres stands charged with, among other things, murder. The District
26 Attorney has alleged the existence of a special circumstance and has formally
27 announced his intention to seek the death penalty;
- 28

1 4. I have prepared the attached Motion to Dismiss the Indictment and it exceeds the
2 page limit found in the Rule of Court;

3 5. The page limit had to be exceeded for the following reasons:

4 a. The Grand Jury proceedings included testimony and evidence regarding
5 four separate incidents. Specifically, it included the disappearance of Sierra
6 LaMar and three different assaults that occurred in Safeway parking lots in
7 Morgan Hill;

8 b. The transcript of the Grand Jury proceedings consists of 1,920 pages;


9 c. The testimony presented addressed topics including detailed forensic
10 science and required significant space to generate the Statement of Facts;

11 d. One of the types of error claimed, *Johnson* error, requires the defense to go
12 outside the transcript of what was presented to the grand jury and show
13 exculpatory evidence that could have been, but wasn't, presented. This
14 showing required additional pages.

15 6. Due to the size of the documents involved and the complexity of the issues, the
16 defense is asking for leave to file the brief even though it exceeds the page limits.

17
18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on the 1st day of September 2015 at San Jose, California.

20
21 
22 _____
23 Brian Matthews
24 Deputy Alternate Defender
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F
SEP 02 2015
DIANA GUTIERREZ

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

12
13 People of the State of California,

14 Plaintiff,

15 vs.

16 Antolin Garcia Torres,

17 Defendant

18 Case No.: 213515

19 Motion to Dismiss Indictment

20 Date: October ⁵ 4, 2015 *Asl*

21 Time: 9:00 am

22 Dept.: 29

23 Time Est.: One Hour

24 TO THE CLERK OF THE SUPERIOR COURT AND
25 TO THE DISTRICT ATTORNEY FOR SANTA CLARA COUNTY:

26 PLEASE TAKE NOTICE THAT on the 1st day of October 2015 the defense will move to
27 dismiss the indictment on the ground that the prosecution failed to make the grand jury
28 aware of exculpatory evidence it possessed and thereby caused the defendant to suffer
substantial prejudice. Further grounds exist because the grand jury was improperly
presented with evidence of other crimes to bolster the respective allegations. The third
ground supporting dismissal is the prosecutor's improper argument made at the close of
his presentation. All the grounds are based on statutory and constitutional rights,

1 including the right to due process of law under the 5th and 14th Amendments to the U.S.
2 Constitution in addition to the 8th Amendment.

3 This Motion is based on the transcripts of the grand jury proceedings, the exhibits
4 presented to the grand jury, and the exhibits attached to this Motion.

5
6 Dated: September 1, 2015

7
8 Respectfully submitted,

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11 Brian Matthews
12 Deputy Alternate Defender
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SEP 02 2015

DIANA GUTIERREZ DEPUTY

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

12
13 People of the State of California,

14 Plaintiff,

15 vs.

16 Antolin Garcia Torres,

17 Defendant

Case No.: 213515

Motion to Dismiss Indictment

18 Date: October ⁵ 1, 2015 *WEL*

19 Time: 9:00 am

Dept.: 29

Time Est.: One Hour

20 Issues Presented

- 21
- 22 1. The grand jury must be independent of the prosecutor. Therefore it must require
- 23 the production of exculpatory evidence when it determines that such evidence may
- 24 explain away the charge. The implementation of this mandate puts an obligation
- 25 on the prosecution to make the grand jury aware of exculpatory evidence they
- 26 possess. The prosecutor here failed to present several significant items of
- 27 exculpatory evidence, including Sierra's statements that she intended to run away
- 28 on the very day she disappeared. He also failed to advise the grand jury of people

1 who had contacted law enforcement who believed they had seen Sierra. These
2 items and the others detailed herein could explain away the murder and
3 kidnapping charges. Did Mr. Garcia-Torres suffer substantial prejudice from the
4 failure to produce the exculpatory evidence?

- 5 2. A grand jury should not be exposed to evidence that would not be admitted at trial
6 over objection. This grand jury was presented not only with evidence of Sierra
7 LaMar's disappearance, but also of three other incidents that occurred several
8 years before. Separate incidents should not be joined in the same charging
9 document when their joinder causes the defendant to suffer undue prejudice. The
10 incidents were not cross-admissible and were highly prejudicial. Did Mr. Garcia-
11 Torres suffer prejudice such that the indictment should be dismissed?
- 12 3. It is prosecutorial misconduct¹ to argue facts that are not in evidence. The
13 prosecution argued that a cell phone that had gone off the network would go back
14 on the network when it gets wet without the benefit of any testimony to support it.
15 Should the error result in the dismissal of the indictment?
- 16 4. The due process clauses of the federal and state constitutions require that a grand
17 jury be independent and impartial. Did the cumulative effect of the errors deprive
18 Mr. Garcia-Torres of just such an independent grand jury?

19 **Statement of Facts**

20 Marlene LaMar lived in Morgan Hill with her boyfriend, Rick Gardiner, and her
21 daughter, Sierra LaMar, in March of 2012.² (R.T. 1490:2-5) She and Sierra had been
22 living there for about five months after moving from Fremont. (RT 1490: 2-13) Sierra
23 had been unhappy, both with the move and with her mother's relationship with Mr.

24
25 ¹ The term prosecutorial misconduct does not imply malicious intent. Some have argued
26 that 'prosecutorial error' may be a better descriptor. The defense uses the traditional term
27 since that is the term used in the majority of the opinions on the subject.

28 ² Marlene LaMar will hereinafter be identified as Ms. LaMar; Sierra LaMar will be
identified as Sierra.

1 Gardiner. (RT 1491: 4-18; 1493: 6-10) She maintained friendships in Fremont and Ms.
2 LaMar often drove her there to visit friends. (RT 1495: 9-13)

3 On March 16, 2012, Mr. Gardiner left for work before 6:00 am and Ms. LaMar
4 left shortly thereafter. (RT 1503: 17-28; 1504: 1) Before leaving, she went to Sierra's
5 room to make sure she was up and getting ready for school. (RT 1503: 17-28; 1504: 1;
6 1515: 8-16) She gave Sierra a hug and told her she loved her. (RT 1503-1504) The two
7 had not argued the night before; they had instead discussed a school project Sierra was
8 contemplating relating to teenage depression and suicide. (RT 1518: 10-23) Sierra
9 typically took the 7:25 am school bus to get school and would catch it at the corner of
10 Palm and Dougherty in Morgan Hill. (RT 1504: 23-28; 1505-1506)

11 Ms. LaMar sent three text messages and called Sierra's phone several times during
12 the day of the 16th but never got a response. (RT 1523) She began to panic as she went
13 home from work. (RT 1524: 6-28) Sierra would normally get home before either Ms.
14 LaMar or Mr. Gardiner, but she wasn't there when Ms. LaMar arrived. (RT 1525: 21-26;
15 1507: 20-24) Ms. LaMar drove to the High School, but she didn't find Sierra there. (RT
16 1526:1-10) She contacted Sierra's father and Mr. Gardiner's daughter and learned that
17 Sierra wasn't with them. (RT 1527: 23-28) Then, at about 6:00 pm, Ms. LaMar received
18 an e-mail from Sierra's school notifying her that Sierra had not been present that day.
19 (RT 1532: 4-10) She called 911 to report Sierra missing at approximately 6:27 pm. (RT
20 1530: 24-28; 1531: 5-7) She has not seen or heard from Sierra since she left for work that
21 morning. (RT 1535: 17-26) She told the grand jury that, while she wanted to believe
22 Sierra was alive, she hadn't seen any objective signs that she was. (RT 1535: 17-26)

23 Deputy Fabian DeSantiago responded to Ms. LaMar's 911 call. (RT 90: 12-28) He
24 met her, Steve LaMar (Sierra's biological father), and Mr. Gardiner when he arrived. (RT
25 91: 1-20) Deputy DeSantiago called phone numbers of people who knew Sierra but no
26 one had seen her. (RT 97:4-19) He also called Sierra's number several times but never
27 reached her. (RT 98: 4-11) The earlier calls he made went straight to voice-mail, but the
28 final one rang numerous times. (RT 98: 17-20) He made that call at 3:48 am the morning

1 of the 17th. (RT 99:2-26) Kurtis Stenderup, a Sheriff's deputy who had been trained in
2 cell phone technology, testified that the phone was off the network from sometime after
3 7:11 am to 10:46 pm. (RT 821:22-28)

4 Kim Kirkpatrick testified that she was a bus driver for the Morgan Hill School
5 District at the time Sierra disappeared. (RT 1041-1042) She drove the bus that Sierra took
6 to get to school. (RT 1042: 19-21) Sierra rode her bus most weekdays. (RT 1045: 3-5)
7 Ms. Kirkpatrick drove the bus on March 16, 2012—the day Sierra disappeared—but did
8 not see her. (RT 1056:19-26) Indeed, she looked for her to see if she was running late, but
9 didn't see her on the street. (RT 1056: 19-26) Similarly, she never saw a car like the one
10 that would later be associated with Mr. Garcia-Torres. (RT 1059-1060)

11 Ms. LaMar gave testimony before the Grand Jury and explained that she is
12 Sierra's mother. (RT 1487: 19-22) She lived with her boyfriend, Mr. Gardiner, and Sierra
13 in Morgan Hill in 2012. (RT 1489: 9-16) Mr. Gardiner's daughter, Ashley, stayed with
14 them every other weekend. (RT 1489: 15-19) They had been living there for five months
15 when Sierra disappeared. (RT 1490: 2-5) Sierra still had friends in Fremont that she
16 would visit nearly every other weekend. (RT 1510)

17 Ms. LaMar, Sierra, and Mr. Gardiner had previously been living in Fremont and
18 Sierra did her freshman year at Washington High School. (RT 1490: 11-20) She
19 conceded that moving Sierra out of school was not a smooth process. (RT 1490-1491)
20 Sierra wasn't happy. (RT 1491: 11-18) But Ms. LaMar thought she was coming around in
21 the weeks before she disappeared. (RT 1495: 5-8)

22 Sierra didn't have a car, a license, a bank account, or any source of money besides
23 her parents. (RT 1495: 14-26) She also didn't have any other relatives she might hide
24 with. (RT 1500: 2-6) Sierra carried an inhaler with her all the time, but it was mainly
25 used during cheer competitions when she would exert herself and lose her breath. (RT
26 1500-1501) She would not ordinarily need it in the absence of strenuous physical activity.
27 (RT 1501: 16-18)

1 Ms. LaMar said that she had never seen Mr. Garcia-Torres before and that Sierra
2 had not mentioned anyone like him. (RT 1501-1502) She also didn't recognize his car.
3 (RT 1502-1503)

4 Ms. LaMar explained that Sierra seemed fine the morning of March 16, 2012. (RT
5 1515:12-16) The two had not had any conflicts that morning or the night before. (RT
6 1517-1518) Sierra had mentioned that she was working on a project involving suicide
7 and depression among teenagers and she was trying to brainstorm what to write. (RT
8 1518: 15-23) She enjoyed writing and seemed excited about the project. (RT 1519: 3-9)
9 Ms. LaMar was the one who suggested it. (RT 1519: 10-13) She believed that Sierra was
10 planning on getting together with her friend, Allie Kendrick. (RT 1519: 23-26) She
11 explained that she had talked with Sierra about not getting together with friends without
12 letting her parents know because Sierra had done that in the past. (RT 1522-1523) She
13 told the grand jurors that she had a good relationship with her daughter and that Sierra
14 would tell her when she had problems. (RT 1494-1495)

15 Sierra's State of Mind

16 Brittany Stonehouse is one of Sierra's friends who testified before the grand jury.
17 (RT 1081-1082) She met Sierra when Sierra started at Sobrato High School in October or
18 November of 2011. (RT 1084:23-28) She didn't know Sierra to have a job, a car, or a
19 driver's license. (RT 1094: 20-25) She didn't know if she had a bank account. (RT 1094-
20 1095) She didn't remember seeing Sierra with an inhaler. (RT 1095-1096) She also didn't
21 recall Sierra talking about running away in the days before she disappeared. (RT 1097)
22 She had not seen Sierra after March 16, 2012. (RT 1103: 10-13)

23 Ms. Stonehouse remembered seeing Sierra the day before she disappeared. (RT
24 1098-1099) In fact, she saw her during PE class and loaned her a Sharks sweatshirt. (RT
25 1099: 8-12) Sierra had asked to borrow it to wear the next day. (RT 1099: 10-12) She
26 identified the sweatshirt as the same one that had later been found with Sierra's clothing.
27 (RT 1099: 22-27) The plan had been for Sierra to return the sweatshirt on March 16,
28 2012. (RT 1100:12-17)

1 Ms. Stonehouse further testified that she had never heard of Mr. Garcia-Torres
2 prior to his being named as a suspect in the case (RT 1101: 23-28) She explained that she
3 had never seen his Jetta either. (RT 1103: 1-4)

4 Karissa Pugh, another of Sierra's friends from Sobrato High School, also testified.
5 (RT 1104-1106) She said that she hadn't known Sierra for a long time, but that they had
6 become really close. (RT 1109: 2-4) Sierra was not one of the kids who would skip class
7 all the time. (RT 1116: 23-28) Like Ms. Stonehouse, Ms. Pugh did not know Sierra to
8 have a bank account, a car, a job, or a driver's license. (RT 1117: 14-21) She also didn't
9 know her to have access to money other than through her parents or to have a place to
10 live other than with her parents. (RT 1117: 22-25) She didn't know about Sierra carrying
11 an inhaler with her, but said she had a cough and a constant runny nose. (RT 1117-1118)

12 Ms. Pugh testified that she sent Sierra a text message the morning of March 16,
13 2012 asking her: "could you bring your stuff for me." (RT 1121:25-28) She explained
14 that she was referring to Sierra bringing her makeup because Ms. Pugh wasn't allowed to
15 wear makeup. (RT 1121: 16-22) She said that Sierra responded to her text with a text that
16 read, "Y-E." (RT 1124: 2-13) She testified that Sierra often used the letters Y-E instead
17 of the full word 'yes.' (RT 1127: 12-14) At the time she testified, Ms. Pugh thought the
18 'Y-E' response was normal, but at the time of the disappearance she thought it wasn't and
19 that it may have meant Sierra was in trouble. (RT 1127-1128) With the exception of the
20 text message, Ms. Pugh said that she had not seen or heard from Sierra since March 15,
21 2012. (RT 1130: 6-18) She didn't have any reason to believe Sierra would have run
22 away. (RT 1130: 19-26)

23 Ms. Pugh further testified that she had never seen Mr. Garcia-Torres prior to
24 March 16, 2012. (RT 1130-1131) She never heard Sierra mention his name or anything
25 that might identify him. (RT 1131: 14-22) And she had never seen the Jetta associated
26 with Mr. Garcia-Torres before March 16, 2012. (RT 1131:23-28)

27 Rochelle Green also went to Sobrato High School with Sierra. (RT 1149-1151)
28 They were very good friends. (RT 1151: 25-27) She, Karissa Pugh, and Sierra shared a

1 locker and kept a journal together. (RT 1153-1154) The three of them wrote it in along
2 with another friend, Saquilla Jackson. (RT 1153-1154) She characterized the writing in
3 the journal as normal high school stuff. (RT 1154: 20-22) She also indicated that Sierra
4 wasn't the type to skip school often. (RT 1158: 1-6) She didn't know Sierra to have a
5 credit card, driver's license, car, or source of money outside of her parents. (RT 1159-
6 1160) She remembered Sierra using an inhaler once or twice during PE class. (RT 1161:
7 18-20) Finally she said that she had never seen Mr. Garcia-Torres before March 16th,
8 2012 and had never seen the car he was associated with. (RT 1166-1167) She never
9 heard Sierra talk about him or anyone who worked as an arborist or used to work at
10 Safeway. (RT 1167: 4-14) And there was nothing that led her to believe Sierra would run
11 away. (RT 1171-1172) But she did indicate that Sierra used marijuana and was planning
12 on using cocaine—in fact, she thought that was her plan for the weekend she disappeared.
13 (RT 1174-1175) She said that Sierra was "... going through a lot, and she was like, 'Oh,
14 I'm going to go with Jocelyn and I'm going to try coke.'" (RT 1177: 3-5)

15 Alejandra Kendrick was also called to testify. (RT 1229) She went to Sobrato
16 High School with Sierra and cheered with her. (RT 1229-1231) The two were "pretty
17 close." (RT 1231: 10-12) They hung out every day at lunch, but never got the chance to
18 hang out outside of school. (RT 1231) They were on the same cheer squad outside of
19 school until Sierra quit. (RT 1235:6-15) Sierra didn't tell Alejandra before she quit. (RT
20 1235: 16-20)

21 She explained that Sierra didn't have a habit of skipping school. (RT 1238: 4-6) It
22 would surprise her to learn that Sierra borrowed Brittany Stonehouse's sweatshirt
23 because Sierra never brought Brittany up in conversation. (RT 1240: 9-19) She did not
24 know Sierra to have a bank account, job, car, driver's license, or financial support other
25 than her parents. (RT 1241-1242) She remembered Sierra having an inhaler, but never
26 saw her use it. (RT 1243: 19-27) She never had a conversation with Sierra that led her to
27 believe Sierra would run away. (RT 1245: 4-6)

1 They were supposed to hang out after school the day she disappeared. (RT 1245:
2 7-13) Those plans had been made a few days prior. (RT 1246: 2-3) They hadn't agreed
3 what they would do, but she thought they would go to the movies. (RT 1246: 10-13) She
4 testified that Sierra sent her a text three days before she disappeared asking if Alejandra
5 was "safe." (RT 1249: 7-9)

6 Alejandra testified that she last saw Sierra the day before she went missing. (RT
7 1251: 17-23) She has not seen or heard from Sierra since. (RT 1251: 24-28) She sent
8 Sierra a text after she disappeared asking her to call and saying that her mother would
9 pick her up and wouldn't tell Sierra's mother where she was and that Sierra could stay
10 with them. (RT 1257: 4-9) She had engaged in a few conversations with Sierra about
11 family life, but she didn't think it had reached the point where she would run away. (RT
12 1257: 11-18) She had never heard of Mr. Garcia-Torres and had never seen him or his car
13 prior to his being implicated in Sierra's disappearance. (RT 1258-1259)

14 Jocelyn Del Rio, another of Sierra's friends, testified as well. (RT 1261-1262) She
15 explained that she had known Sierra for about 7 months, starting when they were both
16 students at Sobrato High School. (RT 1263: 9-11) The two were getting close to being
17 best friends. (RT 1264: 12-15) They sometimes rode the bus home from school together.
18 (RT 1272: 23-27) She said that Sierra did not have a habit of skipping school. (RT 1273:
19 26-28) Like the other friends called to testify, Jocelyn did not know Sierra to have a bank
20 account, credit card, driver's license, or financial support outside her parents. (RT 1275:
21 7-16) Jocelyn, her sister Diana, and Sierra were planning to see a movie the weekend
22 before she disappeared. (RT 1276: 20-28) They had no plans to use drugs that weekend.
23 (RT 1277-1278) There was nothing Sierra told her that gave her reason to believe Sierra
24 would run away. (RT 1282: 9-19) She last saw Sierra the day before she went missing.
25 (RT 1282: 20-22) And she had not seen or heard from her since. (RT 1282: 26-28)

26 Anna Nohr, another of Sierra's friends, also testified. (RT 1284) She had known
27 Sierra since the 7th grade and they became friends in the 8th grade. (RT 1285:5-10) They
28 were "really close friends." (RT 1287: 2-4) But they separated when Sierra left Fremont

1 and moved to Morgan Hill. (RT 1287: 5-7) Sierra would see Anna when she came up to
2 Fremont. (RT 1287: 18-22) Anna testified that she didn't see Sierra at all in the week
3 before she disappeared. (RT 1288: 18-20) She said that Sierra had spoken with her
4 regarding Sierra's plans to use Ecstasy the weekend she disappeared. (RT 1291: 4-8) She
5 believed that Sierra was planning on coming to Fremont that weekend. (RT 1291: 9-12)
6 Sierra had told Anna that she would get the Ecstasy from someone in Morgan Hill. (RT
7 1292: 14-22) Anna knew that Sierra had obtained marijuana in Morgan Hill and brought
8 it to Fremont in the past. (RT 1293: 3-7)

9 The last time Anna spoke with Sierra was after school the day before she
10 disappeared. (RT 1293: 19-21) Sierra was waiting for the bus and talked about a boy she
11 liked. (RT 1293: 20-24) To Anna's knowledge, Sierra didn't have a job, a bank account,
12 credit cards, or access to money independent of her parents. (RT 1293-1294) She further
13 explained that, before he became a suspect in the case, she had never seen Mr. Garcia-
14 Torres and likewise had not seen his Jetta. (RT 1298: 17-25) There was nothing that
15 would cause her to believe Sierra would leave her friends and family and run away. (RT
16 1299: 3-8)

17 Channa Foreman also testified before the Grand Jury and explained that she was a
18 friend of Sierra's from Fremont. (RT 1392) She last saw Sierra the week before she went
19 missing. (RT 1392-1393) She said that Sierra was one of her best friends and that she
20 would visit her in Fremont frequently. (RT 1393: 14-27) Indeed, she explained that there
21 was a time when, instead of moving to Morgan Hill, Sierra thought of living with Channa
22 and going back to Washington High School. (RT 1393: 20-23) Sierra wasn't happy to be
23 moving to Morgan Hill and leaving her friends. (RT 1397: 15-17)

24 Channa did not know Sierra to have a job, a bank account, or an independent
25 source of finance. (RT 1397-1398) And she did not know of anything that would lead her
26 to believe that Sierra would run away. (RT 1430: 3-12) But she did know that Sierra
27 knew someone from school from whom she could get Ecstasy and that she was thinking
28 of using Ecstasy the weekend after she disappeared. (RT 1429: 1-16)

1 Outside of obtaining information from the media in relation to the case, she has
2 never heard of Mr. Garcia-Torres or the car that was associated with him. (RT 1431-
3 1432) The last time she heard from Sierra was the night before she disappeared. (RT
4 1432: 20-28)

5 The Investigation

6 Kristine Black is a teachers' aide who volunteers with the Sheriff's Department
7 Search and Rescue program. (RT 1588: 21-28) She serves as an Administrative
8 Coordinator and her duties included managing the search operation. (RT 1588: 5-13) She
9 explained that the searchers used cell phone data, GPS devices, profiling, and statistical
10 modeling to try to find Sierra. (RT 1591-1592) They also used helicopters with heat
11 sensing equipment and the Sheriff's Department used their dive teams. (RT 1594-1595)

12 Ms. Black explained that her search teams started working on the case on Saturday
13 the 17th. (RT 1598) She was aware that there was a group of civilians who were also
14 searching. (RT 1598: 18-26) When a searcher working with Ms. Black would locate
15 something that might be of interest they would call in evidence finders who are sworn
16 law enforcement agents. (RT 1599: 12-15) The official search efforts continued on a
17 daily basis for several months. (RT 1599: 22-25)

18 Searchers first located a cell phone they later learned belonged to Sierra. (RT
19 1606) Ms. Black explained that she went out to the site after it was found and assigned
20 searchers to fan out from that location to see if they could locate anything else. (RT 1606:
21 7-25) They spread out to do a grid search and had to deal with cold, wind, thunder and
22 lightning, and rain. (RT 1607-1608)

23 At approximately 6:44 pm on March 17, Sgt. Brian Randall was instructed to go to
24 a location where a search team had located what they later determined was Sierra's
25 phone. (RT 145: 1-13) Specifically, he went to a field near the corner of Santa Teresa and
26 Scheller, not far from Sierra's bus stop. (RT 146:9-12) The phone was lying screen-side
27 up in the dirt with some green vegetation around it. (RT 158-159) It had a small amount
28 of water on its face. (RT 159: 4-6) There was also some water inside the battery

1 compartment. (RT 174-175) No tire tracks or footprints were visible in the area. (RT
2 160:24-26) He proceeded to collect the phone. (RT 174-176)

3 Ms. Black was at the command post the next day when a different search team
4 reported finding a bag containing what they would later learned was clothing belonging
5 to Sierra. (RT 1610: 8-12) She and the other leaders of the effort sent out an officer to
6 look at the items. (RT 1611: 16-19) The search continued after the deputy collected the
7 items. (RT 1613)

8 Sgt. Randall was again called out to collect the items the search and rescue team
9 had found. (RT 177:1-5) This time, he was instructed to go to a field near Laguna and
10 Santa Teresa in Morgan Hill. (RT 178:10-13) The area was occupied with a small, barn-
11 like, structure that had corrugated metal on the outside. A pond was nearby. (RT 178:20-
12 26) He proceeded to collect a black bag that was in between some cacti. (RT 181:1-3)

13 Sgt. Randall looked through the contents of the bag when he got to the mobile
14 command post. (RT 184: 1-4) Inside, he found a black sweatshirt, a pair of grey shoes, a
15 bra, a pair of jeans and some paperwork. (RT 184-185; 196) He also found a pair of
16 panties and a bootie sock inside one of the shoes. (RT 198: 14-28; 199: 10-15) According
17 to Sgt. Randall's lay opinion, the jeans smelled of human urine. (RT 191: 5-10)

18 **DNA Results from Clothing**

19 Brooke Barloewen is a supervising criminalist at the Santa Clara County District
20 Attorney Crime Lab. (RT 1660) She serves as their CODIS (DNA database)
21 Administrator. (RT 1666: 12-14) She worked with the mixture that had been obtained
22 from the pants. (RT 1671: 2-18) According to Ms. Barloewen, it isn't surprising to get a
23 mixture of DNA from blue jeans—it is fairly routine to get all kinds of different persons'
24 DNA on a pair of pants. (RT 1680: 11-17) She explained that they do not put a victim's
25 DNA profile in CODIS so she had to interpret the mixture before uploading it. (RT 1671-
26 1672) She deleted Sierra's profile from the mixture and was left with a mixture that
27 appeared to be from at least two people. (RT 1673: 7-19) They then tried to determine
28 which alleles would be attributable to whom. (RT 1673: 20-27) At this time, they had no

1 idea that Mr. Garcia-Torres was a suspect in the case. (RT 1674: 4-8) The analyst, the
2 technical reviewer, the alternate CODIS administrator, and Ms. Barloewen worked to
3 interpret what DNA was truly attributable to the secondary male contributor. (RT 1676:
4 4-10) This is what they ran through CODIS. (RT 1676: 4-10) The profile she uploaded
5 did not contain alleles at all 15 CODIS locations; in fact, it only contained information at
6 11 and some number of those 11 did not have both alleles. (RT 1682:13-23)

7 Ms. Barloewen contacted the state Department of Justice after uploading the
8 sample to see if there was a hit. (RT 1682: 8-12) The Department of Justice reported back
9 12 potential candidate matches. (RT 1683: 4-9) The report gave each potential
10 candidate's DNA profile, identified it as belonging to either a convicted offender or
11 arrestee, and provided an identifying number. (RT 1683: 10-16) Ms. Barloewen then
12 looked at the candidate match profiles to see if they matched in places that had not been
13 uploaded; for example, in places where they had data but the results did not meet the
14 lab's analytical threshold. (RT 1684:11-26) She excluded 11 of the 12. (RT 1685: 3-6)
15 She decided that the 12th person "could be a possible source of the data" (RT 1686: 1-
16 7) The Department of Justice later informed her that the person was Mr. Garcia-Torres.
17 (RT 1690: 4-12) She then passed that information along to the lead investigator, Sgt.
18 Leon. (RT 1691: 12-15)

19 Michelle Ebert is a criminalist specializing in DNA testing and analysis for the
20 Santa Clara County District Attorney Crime Lab. (RT 474: 12-15) In addition to testing
21 the clothing from the bag, Ms. Ebert obtained DNA profiles from several people that
22 served as reference samples, including those of Ms. LaMar, Mr. LaMar, Danielle LaMar
23 (Sierra's sister), and Mr. Gardiner. (RT 502-503) She also obtained a DNA profile from a
24 toothbrush that Sierra purportedly used. (RT 503-504) This served as Sierra's reference
25 profile. (RT 503-504) (RT 503-504) And she obtained a reference sample developed by
26 her colleague, Kristin Cardosa, for Antolin Garcia Torres. (RT 507-508)

27 Ms. Ebert began testing the items from the bag on March 20, 2012. (RT 512: 3-6)
28

1 She took cuttings from different areas of the jeans to perform DNA analysis. (RT 534:
2 13-20) The first cutting she analyzed was from what she labeled area four. (RT 538: 14-
3 24) She analyzed the cutting for the presence of sperm and located one spermatozoon.
4 (RT 540: 6-10) She then performed a p30 test, a test that the Santa Clara County Crime
5 Lab believes to be confirmatory for the presence of semen. (RT 540: 12-20) She obtained
6 a negative result. (RT 540: 12-20) DNA testing revealed the presence of at least two
7 contributors, one of whom was male. (RT 544: 17-22) Sierra LaMar was included as a
8 possible contributor; Antolin Garcia Torres was excluded as a contributor. (RT 544: 21-
9 27 (emphasis added)).

10 Ms. Ebert also tested an area of the jeans called area five. (RT 546: 10-14) She
11 performed differential extraction, a process that allows a criminalist to divide the samples
12 between one with sperm cells and one without, and obtained results from the *non-sperm*
13 *cell fraction*. (RT 546:10-14 emphasis added) She told the grand jury that area five
14 included a mixture of profiles from at least three people, including at least one male. (RT
15 546: 18-20) Sierra LaMar was included as a possible contributor to the major component;
16 Antolin Garcia-Torres was included as a possible contributor to the minor. (RT 546:20-
17 23; RT 548: 4-7) Ms. Ebert further testified that, assuming there were only three
18 contributors and one of them is Sierra LaMar, it was 5.1 million times more likely within
19 the African American population, 6.9 thousand times more likely within the Caucasian
20 population, and 35,000 times more likely in the Hispanic population that this DNA
21 mixture profile would be obtained if it included Sierra LaMar, Antolin Garcia-Torres, and
22 an unknown individual than if it were Sierra LaMar and two unknown individuals. (RT
23 553: 2-13)

24 She also performed Y-STR testing on area 5. (RT 570-571) She explained that,
25 when doing Y-STR testing, they only look at certain regions on the Y chromosome. (RT
26 487: 18-20) Any DNA they find using this method can only originate from male
27 contributors. (RT 487: 20-21) Further, a man will have the same profile as his father and
28 anyone else in the same paternal line. (RT 487-488) Her testing showed the presence of a

1 mixture in the non-sperm cell fraction. (RT 571: 6-15) The mixture included at least three
2 males, and Antolin Garcia-Torres or any paternal relative cannot be excluded as being a
3 possible major contributor. (RT 571: 13-18) Ms. Ebert testified that the profile she
4 obtained that may pertain to Mr. Garcia-Torres appeared once in 746 times in the
5 African-American database, once in 221 times in the Asian population, once in 1,416
6 times in the Caucasian database, once in 737 times in the Hispanic population, and once
7 in 132 times in the Native American population. (RT 573: 3-21)

8 She also tested another area, labeled area 6. (RT 555: 7-11) She found no DNA in
9 the sperm cell fraction (RT 556: 7-10) and a mixture of at least two contributors in the
10 non-sperm cell fraction. (RT 555: 12-19) Sierra LaMar was identified as the source of the
11 major contribution, but not further conclusions could be made from the data. (RT 555:
12 12-19) She found at least one sperm at area 6. (RT 555: 20-23)

13 Yet another cutting was taken, this time from area 12. (RT 558:4-6) The
14 alternative light source showed light fluorescence, but the acid phosphatase test was
15 negative. (RT 558:14-25) Ms. Ebert obtained DNA results that showed a mixture of at
16 least two contributors. (RT 559:8-10) She testified that Sierra LaMar and Antolin Garcia-
17 Torres are included, but that if they are included, there had to also be a third contributor.
18 (RT 559:8-13) She determined that it was 11 million times more likely in the African-
19 American population, 18,000 times more likely in the Caucasian population, and 32,000
20 times more likely in the Hispanic population that Sierra LaMar, Antolin Garcia-Torres,
21 and an unknown individual are the contributors than if the mixture were composed of
22 Sierra LaMar and two unknown contributors. (RT 560:15-26)

23 A further cutting was taken from Area 13. (RT 562:14-16) She testified that she
24 obtained a mixture consisting of at least three individuals and that Sierra LaMar and
25 Antolin Garcia-Torres were both included as possible contributors. (RT 563: 3-8) She
26 calculated that it was 570,000 times more likely in the African-American population, 2.4
27 thousand times more likely in the Caucasian population, and 3.2 thousand times more
28 likely in the Hispanic population for the mixture to include Sierra LaMar, Antolin Garcia-

1 Torres, and an unknown individual that for it to include Sierra LaMar and two unknown
2 individuals. (RT 563:18-26)

3 Ms. Ebert also tested the underwear that was found in the bag. (RT 574: 3-6) In
4 particular, she tested an area near or on the waistband. (RT 579: 8-11) She chose this area
5 in the hopes that a person who would have removed the underwear from Sierra would
6 have left DNA. (RT 579: 11-14) Sierra's was the only profile she obtained. (RT 579: 8-
7 22)

8 DNA results from red Jetta

9 The Sheriff's department seized and searched Mr. Garcia-Torres' red Jetta as part
10 of their investigation. (RT 278) Ms. Ebert tested hairs that had come from a rope that had
11 been found inside the Jetta. (RT 584:18-21) She performed DNA testing on the hair and
12 concluded that Sierra was the source of the profile she found. (RT 586: 11-18)

13 She also processed cloth gloves that had been taken from the Jetta. (RT 586:26-27)
14 DNA testing of the left glove revealed a mixture of DNA profiles. (RT 593: 18-26) The
15 mixture included at least three individuals with Sierra LaMar, Antolin Garcia-Torres, and
16 Francine Sarmiento (Mr. Garcia-Torres' fiancée) included as possible contributors. (RT
17 593-594) The likelihood ratio was calculated and indicated that it was 9.3 trillion times to
18 one in the African-American population, 20 trillion to one in the Caucasian population,
19 and 360 trillion to one in the Hispanic population that the mixture included Sierra,
20 Antolin Garcia-Torres, and Francine Sarmiento than if it were Antolin Garcia-Torres and
21 two unknown contributors. (RT 594-595) The interior of the right glove yielded a mixture
22 of at least three people. Antolin Garcia-Torres and Francine Sarmiento were included as
23 possible contributors while Sierra was excluded. (RT 600:14-19) The interior of the left
24 glove yielded a mixture of at least three and Antolin Garcia Torres is the source of the
25 major profile. (RT 601:17-21)

26 Kristin Cardosa is another analyst from the Crime Lab who testified before the
27 Grand Jury. (RT 726: 22-27) She evaluated the Jetta three times: on April 9th and 10th and
28 May 9th of 2012. (RT 740; 752) Before processing the vehicle, she noticed that the

1 Sheriff's Department had already tried to obtain fingerprints. (RT 752) She was informed
2 that they had used new brushes and powder and therefore she proceeded to attempt to
3 recover DNA. (RT 752)

4 Ms. Cardoso tested many areas of the car. (RT 755:3-5) She only found DNA that
5 might be associated with Sierra at one location, labeled location 7. (RT 756-757) This
6 area was on the armrest connected to the interior of the rear driver's side door. (RT 756:
7 15-24) The results of the testing of that area revealed a mixture of at least three
8 individuals, including at least one male. (RT 756: 25-28) She was unable to distinguish a
9 major component at all 15 loci the kit tests. (RT 762: 3-14) Indeed, she was able to
10 distinguish a major component at only 7 locations and Sierra matched at those 7. (RT
11 762-763) Sierra was included as a possible contributor to the major component. (RT
12 757:1-3) The probability that a person chosen at random would be included as a possible
13 contributor to the major component (the so-called Random Match Probability statistic) is
14 one in 300 million in the African-American population, one in 220 million in the
15 Caucasian population, and one in 98 million in the Hispanic population. (RT 757: 6-9)

16 Ms. Cardoso also described further testing that was performed on the Jetta. (RT
17 774) Specifically, she explained that they looked for staining that might indicate the
18 presence of blood and found none. (RT 774:20-27) They found nothing that told her there
19 might be even a small amount of blood in the car. (RT 775:17-21) She testified that she
20 did not find obvious signs that Sierra or anyone else had bled a large amount in the car.
21 (RT 782:24-28; 783: 1)

22 Sgt. Herman Leon was the primary detective handling the investigation of Sierra's
23 disappearance. (RT 1705-1706) He explained that he reviewed records associated with
24 Mr. Garcia-Torres' Safeway Club card and noticed a March 13, 2012 purchase of bleach
25 and a turkey baster. (RT 1704-1705) It caught his attention because, in his opinion, those
26 things could be used to sanitize a crime scene or body. (RT 1705: 2-9) He proceeded to
27 obtain video from a U.S. Bank located inside the Safeway where the purchase was made
28 and identified Mr. Garcia-Torres as being in the store on the same day around the time

1 the purchase was made. (RT 1708: 6-20) He was carrying both a container of bleach and
2 a turkey baster. (RT 1709: 19-26) Sgt. Leon later participated in a search of Mr. Garcia-
3 Torres's residence and was unable to locate the items. (RT 1711-1716)

4 He testified that he spoke with Francine Sarmiento during the search of the
5 residence. She told him that any time Mr. Garcia-Torres purchased bleach he would have
6 been with her and that he would have no need to purchase a turkey baster. (RT 1717: 4-
7 12) Sgt. Leon noted that the records showed other times when bleach was purchased and
8 the card was used, but none where turkey basters were purchased. (RT 1719)

9 He further explained that he directed deputies to collect all the video they could
10 find from the day Sierra disappeared. (RT 1731) They were unable to find footage of
11 Sierra and they had no footage of Mr. Garcia-Torres from 7 am (when security video
12 showed him leaving his RV park) to 1 pm (when he went to the bank). (RT 1731-1734)
13 He further said that he set up 24-hour surveillance on Mr. Garcia-Torres after he was told
14 of the DNA hit. (RT 1738) The round-the-clock surveillance continued from March 28th
15 through the date of Mr. Garcia-Torres' arrest, May 21st, 2012. (RT 1739:9-15) Mr.
16 Garcia-Torres never led them to a location where they found Sierra. (RT 1739: 24-26) He
17 also told the grand jury that he determined that Genaro Garcia, Mr. Garcia-Torres's
18 father, was in custody at the time Sierra disappeared. (RT 1745:10-22)

19 Sgt. Leon spoke with Mr. Garcia-Torres on April 4, 2012 at the Maple Leaf RV
20 park. (RT 1752-1753) They spoke again on April 7, 2012 at the Sheriff's Department
21 substation. (RT 1754: 2-11) The purpose for speaking with Mr. Garcia-Torres on April 4,
22 2012 was to get a statement from him that would either include or exclude him, "because
23 there very well could have been a reasonable, lawful explanation for the presence of his
24 DNA." (RT 1769: 14-25)

25 Mr. Garcia-Torres told Sgt. Leon on April 4 that he had never had any interaction
26 with Sierra. (RT 1774: 22-27) He said that she had nothing to do with his car. (RT 1786:
27 4-8) He explained that he worked as an arborist and would start work at 8 am. (RT 1776-
28 1777) He normally worked Monday through Thursday. (RT 1777: 2-6) He worked in San

1 Jose and would get there by various routes. (RT 1777: 21-22) He said he would
2 occasionally frequent the area near Sierra's house when he would visit his friend Maria.
3 (RT 1779: 7-14) Sgt. Leon noted that these visits occurred before Sierra moved to
4 Morgan Hill. (RT 1779-1780) After Sierra moved in, he would only go to that area to
5 visit a bait and tackle store or on his way to work. (RT 1781: 6-11) Mr. Garcia-Torres
6 provided Sgt. Leon with his cell phone number and explained that he was the only one
7 who used the phone. (RT 1783-1784)

8 The discussion with Mr. Garcia-Torres on April 7 was designed to confront him
9 with the investigators' belief in his involvement, and to serve a search warrant to obtain a
10 buccal swab. (RT 1789: 17-25) Sgt. Leon *Mirandized* Mr. Garcia-Torres before speaking
11 to him and Mr. Garcia-Torres waived his rights. (RT 1791-1792) Mr. Garcia-Torres
12 explained that he remembered that he had gone fishing on March 16, 2012. (RT 1795:
13 17-23) He said he was alone when he left his residence between 7 and 7:10 am. (RT
14 1796: 5-28) He fished at Chesbro Reservoir and then worked his way around to Uvas
15 Reservoir. (RT 1797: 13-16) He got to Chesbro by going northbound on Monterey and
16 taking a left on Palm. (RT 1798: 4-6) Turning at Palm is not the most direct route to
17 Chesbro; Mr. Garcia-Torres said he went too far on Monterey when he mistakenly drove
18 past his normal turn. (RT 1800: 15-28) Sgt. Leon said he noticed some physical changes
19 that "seemed like he was trying to suppress a physiological reaction to what [they] were
20 asking him" (RT 1806: 13-28)

21 Sgt. Leon and his partner told Mr. Garcia-Torres that they were getting lab results
22 every day and that they wanted to know if there would be any reason for his fingerprints
23 or DNA to at the scene or on Sierra's belongings. (RT 1810: 22-27) They did not mention
24 sperm or a sexual assault scenario. (RT 1810-1811) They discussed DNA generally and
25 Mr. Garcia-Torres asked if blood was a source of DNA and then whether or not sperm
26 was a source. (RT 1812: 6-23) Mr. Garcia-Torres then explained that he was embarrassed
27 because he liked to masturbate. (RT 1812: 19-23) He explained that he masturbated
28 multiple times a day, oftentimes in his car. (RT 1813) He said that he would use Kleenex

1 or tissue to clean up and would sometimes throw the tissue in a garbage can or just liter.
2 (RT 1813-1814) Mr. Garcia-Torres speculated that, if his DNA were found with Sierra's
3 belongings, it could be the result of his throwing out these tissues. (RT 1814: 12-20) He
4 went on to deny kidnapping or killing Sierra. (RT 1816: 7-11)

5 Fiber Results

6 Another criminalist from the crime lab testified regarding trace evidence. (RT 615-
7 616) At the time he testified, Trevor Gillis was assigned to the chemistry trace evidence
8 unit. (RT 616:17-19) Among his other duties, Mr. Gillis performs fiber analysis. (RT
9 617-618) He explained that "it is near impossible to take a look at an individual fiber and
10 trace it back to a source." (RT 624: 10-11) His task, therefore, is to characterize material
11 containing fiber and see if he can find fibers exhibiting the same characteristics
12 somewhere else. (RT 624:14-17)

13 Mr. Gillis began his work by asking for all of the evidence that had been collected
14 that might contain fiber. (RT 624: 24-25) He then assessed the characteristics of the fiber
15 he found. (RT 624: 24-25) His next step was to ask for reference samples from the LaMar
16 home and vehicles as well as the home and vehicles associated with Mr. Garcia-Torres.
17 (RT 624-625) He ultimately received samples from a red Volkswagen Jetta and from
18 clothing that had apparently belonged to Sierra. (RT 626:6-21)

19 Mr. Gillis explained that the "ultimate goal" of fiber analysis is to try to
20 discriminate fibers and, if you can't, one can reasonably conclude they are the same. (RT
21 632:17-23) He evaluated fibers that had been tape lifted from Sierra's clothing and from
22 the Jetta. (630:9-14) First, he performed a gross visual inspection. (RT 628:21-28) He
23 then viewed them under a microscope and then again using a higher magnification. (RT
24 628:21-28) He then used light, spectrometry, and heat. (RT 628:21-28) His conclusions
25 were presented on a slide that was shown to the grand jury. (RT 650: 18-22) He
26 explained that he found three floor mat fibers and two carpet fibers from the Jetta on
27 Sierra's sweatshirt and one floor mat fiber from the car on her pants. (Grand Jury Exhibit
28 24, Slide 9) He also found one floor mat fiber in the debris collected when he analyzed

1 the pants. (Grand Jury Exhibit 24, Slide 9) He said that the fibers from Sierra's clothing
2 originated from the Jetta or another source comprised of the same physical, chemical,
3 optical, and thermal properties. (RT 659)

4 Mr. Gillis expanded on his testimony by discussing the possible ways the fibers
5 might have been transferred. (RT 651) Specifically, he described primary transfer as that
6 which occurs when two objects come into contact and share fibers. (RT 651:4-9)
7 Secondary transfer occurs when an object transfers fibers to another object and the
8 second object then transfers it to a third object. (RT 651: 10-15) In his opinion, "in the
9 case of fibers, finding a stray fiber here or there would—it's difficult to tell the difference
10 between primary transfer and secondary transfer, but when you start finding varieties and
11 you start finding a few more than just one, you can't rule out the possibility of being
12 secondary, but in all likelihood, it's from a primary transfer." (RT 651: 16-22) He opined
13 that the sweatshirt and jeans came into contact with the interior of the vehicle. (RT 651:
14 27-28)

15 Cell Phone Analysis

16 Sgt. Kurtis Stenderup assisted in the investigation. (RT 795-796) He was primarily
17 responsible for authoring search warrants for several items. (RT 796: 3-23) These
18 warrants permitted searches of phones, RV's, homes, cars, bank records, surveillance
19 videos, and other items. (RT 796:5-23) He was also responsible for analyzing data on cell
20 phones, including one that was purported to belong to Sierra. (RT 797:2-7)

21 Sgt. Stenderup used a Cellbrite machine to analyze Sierra's phone. (RT 797:2-7)
22 Cellbrite machines allow the user to make a copy of much of the data stored on a phone.
23 (RT 797: 10-24) He noted a photo of Sierra on the phone. (801) He also received records
24 form Verizon in relation to the phone. (RT 801-802) He similarly received records related
25 to phones associated with Marlene LaMar, Rick Gardiner, and Steve LaMar. (RT 803: 1-
26 18)

27 He was ultimately able to obtain text messaging data from the phones through a
28 combination of the Cellbrite machine and data kept by Verizon. (RT 804-805)

1 Specifically, he located text messages on Sierra's phone that started before 8 am the
2 morning of the day she disappeared. (RT 806-807) The message was sent from a person
3 named Karissa Pugh. (RT 807:4-20) Ms. Pugh's message was sent at 7:05 am and said
4 "Could you bring your stuff for me." (RT 809: 4-6) Someone using Sierra's phone
5 responded "Y-E" at 7:11 am. (RT 809: 7-18) The Sergeant was permitted to offer his
6 speculation that Y-E meant yeah. (RT 809: 15-18) A second message was sent from
7 Karissa's phone at 7:11 am and there is no record of a response from Sierra's phone. (RT
8 814: 10-13) Sierra's phone also received a message at 6:57 that morning from a phone
9 associated with Marlene LaMar saying "Hi, don't forget to wise (sic) down the tub,
10 thanks." (RT 816: 16-20)

11 The next message arrived on the network at 9:45 am and said "are you getting
12 together with Allie?" (RT 818: 5-11) This message was not actually delivered to the
13 phone, however, until 10:46 pm. (RT 818: 23-27) Sgt. Stenderup testified that the fact the
14 message was not delivered to the phone until that night meant that there was a period of
15 time that the phone was not reachable by the network. (RT 819-820) He said that this
16 could mean the phone was off or was otherwise unable to receive a signal. (RT 820: 4-7)
17 He added that there are ways to intentionally prevent a phone from communicating with
18 the network, including by simply placing it in airplane mode. (RT 820: 15-23) He
19 summarized his findings in this regard by saying that for some reason the phone was off
20 the network from sometime after 7:11 am until 10:46 pm. (RT 821:22-28)

21 Sgt. Stenderup also analyzed phone records he received through various search
22 warrants. (RT 827: 2 to 828:1) This included a search of the call detail records related to
23 a phone he had seen in Mr. Garcia-Torres's car. (RT 842-843) The first recorded
24 information from the phone on the day Sierra disappeared occurred at 12:49 pm and was
25 an outgoing call to a number associated with Francine Sarmiento's mother. (RT 847: 3-
26 14)

27 As part of his review, Sgt. Stenderup tried to determine if there was a "digital
28 intersection" between Sierra LaMar and Mr. Garcia-Torres. (RT 848: 15-19) Specifically,

1 he reviewed phone records associated with both as well as those of their respective
2 friends and family, as well as social media accounts such as Twitter and MySpace. He
3 found no connection. (RT 848-850)

4 Brian McGovern has been an arborist for over 24 years. (RT 1401: 1-14) He
5 employed Mr. Garcia-Torres as his sole employee. (RT 1402: 7-11) Mr. Garcia-Torres
6 worked for him four days per week—Monday through Thursday from 7:30 am to 3:30 or
7 4 pm. (RT 1404: 3-12) Mr. Garcia-Torres did not work on March 16, 2012. (RT 1406:
8 13-17) He testified that he was familiar with Sierra from television and news articles, but
9 that he had never done any work for her family. (RT 1401: 26-27)

10 Mr. Garcia-Torres would take his personal protective gear home from work. (RT
11 1407: 10-17) Mr. McGovern also gave him some rope to learn how to tie knots. (RT
12 1407:10-17) He gave him the rope before March 16, 2012. (RT 1409: 4-13) He further
13 testified that the gloves found in the Jetta looked like gloves he would have provided to
14 Mr. Garcia-Torres. (RT 1411: 20-24) He explained that he had access to a wood chipper
15 as part of his job, but that there is no way Mr. Garcia-Torres would have access to it
16 without his supervision. (RT 1418: 14-22) The chipper is stored in his backyard and he
17 keeps the keys to it. (RT 1418-1419)

18 Francine Sarmiento also testified. (RT 1434) She explained that Mr. Garcia-Torres
19 was her fiancé. (RT 1436: 13-16) She did not know Sierra, her family, or any of a list of
20 Sierra's friends she was given. (RT 1444-1445) She testified that she worked a normal
21 day on Friday March 16, 2012. (RT 1449: 14-18) She couldn't remember the exact hours,
22 but her normal work schedule was from 5:30 pm to 10 pm. (RT 1452: 11-18) She said
23 that she probably spent that morning doing wash at her mother's house. (RT 1452: 19-26)
24 Mr. Garcia-Torres drove her there. (RT 1453: 5-11) (Sgt. Leon spoke with Francine on
25 several occasions and she never told him that she was with Mr. Garcia-Torres the
26 morning Sierra disappeared. (RT 1756: 7-11)) She added that her sister, Victoria
27 Sarmiento, was present when they were at her mother's home. (RT 1470: 14-28) They
28 were there all day, except when they went to the bank to cash her check. (RT 1472-1473)

1 Her bank is Wells Fargo and she could not recall going to Bank of America—where Mr.
2 Garcia-Torres maintained his account. (RT 1473: 9-20) She said that she could not
3 remember telling a detective that she couldn't recall what she or Antolin did that
4 morning. (RT 1456: 21-24) She, Antolin, his best friend Danny, and Danny's cousin went
5 skiing that weekend at China Peak. (RT 1450: 12-18)

6 She said that Mr. Garcia-Torres has tattoos on both of his forearms. (RT 1458: 23-
7 26) They are located right before the crease of his elbow on the inside of his arms. (RT
8 1458-1459) She further explained that she didn't remember ever giving him gloves as a
9 gift. (RT 1462: 21-24) But upon being shown cloth gloves that had been taken from his
10 car, she recalled buying them for him for Christmas. (RT 1464: 10-23) She ended her
11 testimony by conceding that she had been convicted of petty theft in January of 2012.
12 (RT 1474: 3-10)

13 Joanna Moore was subsequently called to testify. (RT 1565) She said that she was
14 familiar with Morgan Hill and knew about the structure near where Sierra's clothing was
15 found. (RT 1568-1569) She said that she would occasionally pull over and feed several
16 kittens that were often there. (RT 1568) She started keeping cat food in her car so she
17 could feed the kittens in the beginning of February 2012. (RT 1572: 6-9) She had seen
18 what she believed to be evidence that someone else had also taken to feeding the cats.
19 (RT 1576: 23-26) Specifically, she found paper plates that she presumed had been left to
20 feed the cats. (RT 1577) She later learned that other people were feeding the cats,
21 including some of her friends. (RT 1577: 20-25) She used to the feed cats right in the area
22 where Sierra's clothing was found. (RT 1585: 21-25)

23 Ms. Moore explained that she had contacted the police after Sierra disappeared
24 because she had seen a blue truck in the area of the shed near where Sierra's clothing had
25 been found. (RT 1574:10-16) She saw the truck either during the weeks of February 27th
26 or March 5th 2012 and she had never seen it there before. (RT 1574: 10-20) She believed
27 the blue truck could have been associated with Sierra's disappearance because of the
28 person she saw in the car. (RT 1575: 17-25) She obtained the photo in January of 2014

1 and said that the person could have been Mr. Garcia-Torres. (RT 1581: 3-16) She said
2 that she called the police because the person who had been in the truck wasn't making
3 any kind of movement and there was a white towel in the driver's side window. (RT
4 1579-1580) She believed the truck seemed out of place and suspicious. (RT 1580)

5 She associated the person with the disappearance because she had seen a photo of
6 a person when she performed a Google search for "Sierra LaMar" and the person with the
7 blue truck fit the description. (RT 1578) She said she had not seen the person actually
8 feeding the cats. (RT 1581: 25-28) She had never seen the blue truck or the person again.
9 (RT 1582: 2-8)

10 Sgt. Leon further testified that he interviewed Joanna Moore. (RT 1819: 25-27)
11 Based on that interview, he tried to find out if he could associate a blue vehicle with Mr.
12 Garcia-Torres. (RT 1819-1829) He could not. (RT 1820)

13 **Lundy incident (March 19, 2009)**

14 The District Attorney didn't just present evidence to the Grand Jury regarding the
15 disappearance of Sierra LaMar, he also presented evidence of three assaults at two
16 Safeways in Morgan Hill that occurred several years earlier.

17 The first to testify regarding the assaults was a woman named Cynthia Lundy. (RT
18 860-861) Ms. Lundy lived in Morgan Hill in 2009 and used to do her shopping at
19 Safeway. (RT 861) She was shopping alone at the Safeway on Dunne Avenue around 11
20 pm on March 19, 2009. (RT 862-863) She walked back to her car after finishing her
21 shopping. (RT 868: 5-7) Something didn't feel right and she saw a man walking in the
22 parking lot. (RT 868-869) She picked up her pace and headed straight towards her car.
23 (RT 868-869) She did not associate the man with any particular car. (RT 870: 2-4) She
24 got to her car and locked the doors. (RT 872: 21-24) After locking the doors, she noticed
25 what seemed like the same person at her door. (RT 872-873) The person was wearing a
26 dark, hooded sweatshirt that had a zipper. (RT 872: 27-28; 882: 9-12) He grabbed the
27 driver's side door handle "really hard," but because it was locked, the car shook and he
28 fell. (RT 874: 16-22) She saw his profile and noticed that he had a very odd look she

1 described as a "look of defeat but almost like it was a game for him." (RT 874:25-27) She
2 never heard the person say anything or demand her property, including her car keys. (RT
3 875:4-9) He husband called 911 when she got home. (RT 876: 1-4)

4 She described the person as a man who stood about 5 feet, 11 inches. (RT 877: 6-
5 20) He seemed to be a little heavy, approximately 200 pounds. (RT 878:10-21) She had
6 difficulty describing his hair color because he was wearing a hood, and she didn't recall if
7 the person had facial hair. (RT 878-879) She didn't get a good look at him, but would
8 "put him in his mid-20's at the time." (RT 879: 20-28) However, she allowed that he
9 could have been a large teenager. (RT 880: 1-9) She believed he had the features of a
10 Hispanic male. (RT 892:8-13)

11 Ms. Lundy was shown a photo lineup by representatives of the Sheriff's
12 Department in May of 2012. (RT 887:13-16) Mr. Garcia-Torres was included in the
13 array. (RT 1069: 6-9) She did not identify anyone. (RT 887:20-25) She saw Mr. Garcia-
14 Torres's picture on the news the night he was arrested and, although perceived a smirk on
15 his face that was similar to the one she had seen before, she was unable to say if he was
16 the person from the parking lot. (RT 889-890)

17 Walters Incident (March 19, 2009)

18 The next witness was Annette Walters. (RT 895-896) She testified that she was
19 shopping at the Tennant Safeway in Morgan Hill on the evening of March 19, 2009. (RT
20 896:22-24) It could have been as late as 11:30 pm. (RT 897:19-26) She went to her car
21 once she completed her shopping. (RT 902: 3-5) She got inside and put her purse on the
22 front passenger seat. (RT 904-905) She shut the driver's door and put the keys in the
23 ignition. (RT 905: 7-10) And then she got "tazed." (RT 905:9-14) She testified that the
24 person pulled her hair and pulled her head down and kept tazing around her neck. (RT
25 906: 17-23) She didn't hear the person say anything to her when she offered to give him
26 what she had, including her purse and her car. (RT 908: 20-24; RT 913:5-15)

27 Ms. Walters had burns on her neck and felt shaky; it felt like she was having a
28 seizure. (RT 910: 1-9) At some point, she was able to lower all the windows in the car.

1 (RT 911: 15-28) She screamed, the man started punching her in the face, and a struggle
2 ensued. (RT 914:14-23) She was having trouble getting away and was trying to get
3 attention. (RT 916: 6-12)

4 Because of the relative strength of his arms, Ms. Walters felt that the attacker was
5 right handed. (RT 917:24-28) She was able to see the person's eye and part of his lip and
6 chin. (RT 918:23-24) He wore a black hoodie and she could see his skin color and hair.
7 (RT 918:25-27) Specifically, she was able to see from approximately where one would
8 wear a watch to the whole hand. (RT 919:3-4) She believed the person was Hispanic or
9 light-skinned African-American. (RT 926-927) It was difficult for her to tell the person's
10 age, but he seemed young. (RT 927: 11-20) She didn't get a very good look him. (RT
11 927:24-26) In fact, she didn't see enough of the person "to identify somebody for certain
12 at all." (RT 928: 2-7) Ms. Walters testified that the person was approximately 5 foot 5
13 inches to 5 foot 10 inches. (RT 928:18-28) She could not say whether the black hooded
14 sweatshirt he was wearing had a zipper or not. (RT 932:14-26)

15 The punching stopped around the time she saw a gentleman a few car lengths
16 away flash his high beams. (RT 919-920) Her attacker then got out and started running.
17 (RT 920:15-18) She chased him in her car but was unable to stop him as he ran toward
18 the train tracks. (RT 921: 20-25; RT 923: 15-17) She then went back to the area where
19 the person who turned on the high beams was parked and called 911. (RT 924-925)

20 Representatives of the Santa Clara County Sheriff's Department showed Ms.
21 Walters a photo lineup in May of 2012. (RT 935:14-17) Mr. Garcia-Torres's photo was
22 included. (RT 1069: 6-9) She did not identify any of the persons as being her attacker.
23 (RT 939: 2-5) In fact, when Mr. Garcia Torres' photo was shown, she said no, it wasn't
24 him. (RT 1069: 12-18) But she noted that another man's picture was "pretty close"
25 though she was "not sure." (RT 1071: 8-22) She made similar comments about two other
26 photos in the lineup containing pictures of other men. (RT 1071-1072) She further
27 testified that she saw a picture of Mr. Garcia-Torres on the news and said his was the
28

1 right skin color, but that she could not identify him, and would be uncomfortable saying
2 he was the attacker. (RT 944-946)

3 Morgan Hill Police Officer Demetrick Caballero responded to Ms. Walters's 911
4 call on the night of the incident. (RT 957-958) He interviewed her in the Safeway parking
5 lot. (RT 963:24-25) He searched her car and found a black stun gun device. (RT 965:9-
6 15) The stun gun was located, as best the officer could recall, behind the driver's seat in
7 the floorboard area. (RT 967:3-6) It was intact and he booked it into evidence. (RT
8 969:3-9) The battery and battery cover were in place. (RT 975: 24-26)

9 Officer Mario Ramirez testified that he was a Morgan Hill Police officer. (RT
10 1625) He explained the dispatch and CAD print-out system and said that the Lundy 911
11 call came in 25-30 minutes before the Walters 911 call. (RT 1633: 14-16) He explained
12 that a person could jog between the two Safeways in about 30 minutes. (RT 1634: 5-7)
13 The distance between the two stores is approximately two miles. (RT 969-970) He further
14 explained that he heard the Walters call go out while he was interviewing Ms. Lundy.
15 (RT 1634: 20-25) Finally, he said that, after Mr. Garcia-Torres's arrest, he researched
16 whether he might be a suspect in Morgan Hill open crimes and he could not find any. (RT
17 1645-1646)

18 Bruce Dudley was a temporary part-time employee with the City of Morgan Hill
19 working as a crime scene investigator when he testified before the Grand Jury. (RT 977:
20 15-27) He had been trained to develop fingerprints off various types of surfaces. (RT
21 979: 4-7) In March and April of 2009 he processed the stun gun that had been recovered
22 from the car for fingerprints. (RT 980: 6-10) The battery was in the device and connected
23 to the power connector when he examined the item. (RT 981-982) He used fumes from
24 heated Super Glue to attempt to develop fingerprints from the stun gun, the battery cover,
25 and the battery itself. (RT 982: 2-18) He developed fingerprints on the stun gun and the
26 battery and photographed them so they could be examined by a fingerprint expert. (RT
27 983: 18-22) He obtained some ridge detail from the battery itself. (RT 984:23-25)

1 Vincent Deitchman, a criminalist with the Santa Clara County Crime Lab,
2 followed Mr. Dudley. (RT 988: 14-25) He spent about five years working in the latent
3 print section of the lab. (RT 989: 6-8) He also examined the stun gun. (RT 992) He
4 observed possible latent prints on the stun gun, but did not observe anything of potential
5 value on the battery or its cover. (RT 994:7-12) Because it appeared that Super Glue
6 fuming had already been done, he proceeded to use fluorescent dye. (RT 995: 11-17) The
7 dye causes the fingerprint ridges to glow and he was able to identify a print on the
8 Duracell battery. (RT 995-996) He took photos of the prints and uploaded them into a
9 central server called ADAMS (the Authenticated Digital Asset Management System).
10 (RT 1000: 1-15)

11 Timothy Fayle, a latent print examiner for the Santa Clara County Sheriff's Office,
12 testified that he performs latent print examinations daily. (RT 1006-1007) He examined
13 the prints that had been uploaded into ADAMS in relation to this investigation. (RT
14 1011: 18-22) He also went to the jail and obtained a set of fingerprints from Mr. Garcia-
15 Torres. (RT 1013: 8-12) He compared the latent prints from the ADAMS database that
16 were associated with the battery of the stun gun device to the prints for Mr. Garcia-Torres
17 and determined that his left thumb print was on the battery. (RT 1014: 11-19) He noted
18 that there were a number of other impressions on the battery as well. (RT 1014: 14-15)
19 But Mr. Fayle believed they were of no value because they contained insufficient detail
20 to compare. (RT 1016-1017) He also compared a latent print recovered from the stun gun
21 itself, but found it was inconclusive when he compared it to Mr. Garcia-Torres's prints.
22 (RT 1029-1030)

23 Orozco Incident

24 Eva Hernandez Orozco was called to testify as well. (RT 1191) She explained that
25 she went to the East Dunne Safeway in Morgan Hill during the evening hours of March
26 26, 2009. (RT 1192: 1-10) It was around 7:30pm and she was going to get a sandwich.
27 (RT 1192: 11-23) She testified that she parked her car and reached to get her purse to go,
28 but the back door opened. (RT 1197: 16-19) She grabbed a knife that was in her glove

1 compartment. (RT 1197:16-22) At that point, someone's hand was placed over her hand
2 and pulled her hand—with the knife—to her neck. (RT 1197:23-24)

3 The person didn't say anything to her. (RT 1200: 6-8) She tried to turn to see him,
4 but she couldn't because he pressed the knife harder against her neck. (RT 1202:11-13).
5 She was, however, able to see his hand and a little part of his left arm. (RT 1202:18-23;
6 1202: 24-28) Specifically, she saw what appeared to be ink from a tattoo on his arm. (RT
7 1208: 1-2) The ink was in the middle of his forearm closer to his wrist than his elbow.
8 (RT 1208: 7-15) She testified that the person had brown skin, was heavier set, and was
9 less than six feet tall. (RT 1210: 2-8) He was wearing dark clothing, including a dark-
10 colored hooded sweatshirt. (RT 1211: 9-17)

11 At some point, while he was holding the knife to her neck, the man started
12 punching her leg. (RT 1203:23-27) She tried to scream, but every time she did it would
13 get tighter around her neck. (RT 1205: 5-11) She asked him to "please, don't do this" and
14 told him she was pregnant (though she wasn't). (RT 1205: 20-28) She was crying and he
15 let go of her hand, pushed her arm down, and ran out of the car. (RT 1205-1206) The
16 man didn't take anything from her car. (RT 1206: 27-28) He never touched her in a
17 sexual location. (RT 1207: 5-7) He never attempted to take her keys or her car. (RT 1207:
18 8-14)

19 Ms. Orozco went to a friend's house around the corner and called 911 after the
20 incident. (RT 1212: 12-23) She was emotional, scared, crying, hysterical, and unstable.
21 (RT 1213: 9-15) She remembered telling the officer who responded that the person was
22 either Hispanic or a light-skinned African-American. (RT 1214: 23-27) She remembered
23 telling the officer that she had seen ink on the person's right arm and told the Grand Jury
24 that it was possible he had ink on both arms. (RT 1217-1218) She could not see the
25 person's head hair or tell if he had facial hair. (RT 1218: 15-24) She only saw the
26 person's face for a few seconds. (RT 1219: 17-20) She remembered being shown a photo
27 line-up in 2012 and picking the two photos that made her feel really uncomfortable. (RT
28 1221: 24-27) But she could not say that either of the people depicted in the photos was

1 the person who attacked her. (RT 1221-1222) She was also shown photos of the some
2 tattoos. (RT 1222: 18-19) She didn't remember being able to identify any of the tattoos as
3 being the one that was on her attacker. (RT 1223: 15-17) She remembered a black muscle
4 car and some men near it in the area and said that after the attack the person went toward
5 the same area, but she couldn't associate the man with the car. (RT 1225-1226)

6 Officer Luis Espejo testified that he put together a photo line-up of tattoos. (RT
7 1618) Mr. Garcia-Torres' arm tattoo was included in the line-up. (RT 1620: 23-26) His
8 tattoo is located close to his elbow. (RT 1621: 9-12) Officer Espejo showed the lineup to
9 Eva Hernandez Orozco. (RT 1621: 18-21) She told him that, after viewing each of the
10 photos, she did not recognize any of the tattoos. (RT 1623: 19-24)

11 Joe Martinez testified that he was a meat clerk at the Safeway on Tennant in
12 Morgan Hill. (RT 1319: 2-13) He knew Mr. Garcia-Torres from work. (RT 1320: 22-28)
13 Mr. Garcia-Torres would come and visit the Tennant store even when he wasn't
14 scheduled to work. (RT 1323: 18-20) He believed that he had seen Mr. Garcia-Torres
15 with a stun gun at one time prior to March 19, 2009. (RT 1332: 3-7) He wasn't sure it
16 was a stun gun, however, and said it looked like a rectangle box and a stun gun was the
17 first thing that came to mind. (RT 1338: 13-18) A photo of the stun gun that was in
18 evidence was shown to Mr. Martinez and he said that it did not look familiar and that it
19 looked different than what he had seen before. (RT 1339-1340) He remembered telling
20 the Sheriff's Department in 2012 that Mr. Garcia-Torres told him that the stun gun
21 belonged to a friend, but at the time of his testimony he couldn't remember if Mr. Garcia-
22 Torres said that or if Mr. Martinez guessed that. (RT 1344: 7-14) He ultimately said that
23 he saw a shock device at some point before March 2009 at Mr. Garcia-Torres's residence
24 associated with a black Chevy he knew belonged to Mr. Garcia-Torres. (RT 1345-1346)
25 But the device he was shown in the picture was not the device he saw in March 2009.
26 (RT 1346: 3-6)

27 Adriana Garcia also testified before the Grand Jury. (RT 1349) She is Mr. Garcia-
28 Torres's sister. (RT 1357: 17-18) She testified that she used to work at the Tennant

1 Safeway in 2009 or 2010. (RT 1350: 17-21) She believed that, in the beginning of her
2 employment, they offered her a Safeway Club card and she may have signed up for it.
3 (RT 1353: 7-14) She said that she never had the actual card with her, but she used her
4 phone number. (RT 1355: 15-18) Her family and friends sometimes used her card. (RT
5 1357: 5-12)

6 She explained that Mr. Garcia-Torres used to work at Safeway with her; in fact,
7 she got him the job. (RT 1358: 14-18) She testified that she didn't think she bought
8 batteries at Safeway, even though such a purchase was reflected on her Club card record
9 for March 19, 2009. (RT 1376) She explained that other people could have used her card
10 by using her phone number, including her brother. (RT 1374: 4-12)

11 She further testified that there were times that Mr. Garcia-Torres did not have a
12 car and that he could have walked along the train tracks to get to work. (RT 1381-1382)
13 She explained that in March of 2009, he was working at the Tennant store. At some point
14 he was transferred to the Dunne store. (RT 1382-1383) She told the Grand Jurors that she
15 never saw her brother in possession of a stun gun. (RT 1386: 5-7)

16 Argument

17 **I. The Indictment should be dismissed because the prosecutor failed to inform** 18 **the Grand Jury of exculpatory evidence of which he was aware**

19 "A grand jury should never forget that it sits as the great inquest between the State
20 and the citizen, to make accusations only upon sufficient evidence of guilt, and to protect
21 the citizen against unfounded accusation, whether from the government, from partisan
22 passion, or private malice." (*In re Tyler* (1884) 64 Cal. 434). These old words eloquently
23 demonstrate the grand juries' twin purposes: to assess the facts and to be an independent
24 check on the government's awesome power to charge an individual with a crime. Indeed,
25 under the ancient English system of law . . . "the most valuable function of the grand jury
26 was not only to examine into the commission of crimes, but to stand between the
27 prosecutor and the accused, and to determine whether the charge was founded upon
28 credible testimony or was dictated by malice or personal ill will." (*Johnson v. Superior*

1 Court (1975) 15 Cal.3d 248, 253) This recognition is embodied in the 5th Amendment's
2 guarantee that a civilian cannot be held to answer without an indictment. This right
3 presupposes a grand jury "acting independently of either prosecuting attorney or judge,
4 whose mission is to clear the innocent, no less than to bring to trial those who may be
5 guilty." (Id. citing *United States v. Dionisio* (1973) 410 U.S. 1, 16-17)

6 The grand jury's role as protector of individual rights is as well-established in
7 California as it is in the federal system. (*Jonson v. Superior Court*, supra, 15 Cal.3d at p.
8 254; *In re Tyler* (1884) 64 Cal. 434, 437) Indeed, that role is reinforced by statute. (Pen.
9 Code § 939.7) Specifically, section 939.7, requires that, when the grand jury has reason
10 to believe that evidence within its reach will explain away the charge, it must order that it
11 be produced and may require the district attorney to issue process for the witness. (Pen.
12 Code § 939.7)

13 Importantly, the grand jury system excludes the participation of the defendant. He
14 is not permitted to listen to the testimony presented, object to inadmissible evidence, or
15 confront his accusers. (*Jonson v. Superior Court*, supra, 15 Cal.3d at p. 254 (citing
16 *People v. Foster* (1926) 198 Cal. 112, 120 and *People v. Dale* (1947) 79 Cal.App.2d
17 370)) When he is aware that proceedings have been instituted against him, he may
18 request that evidence be brought forward by the District Attorney, but that evidence will
19 be presented only through the prosecutor. Thus, "... irregularities at grand jury
20 proceedings should be closely scrutinized because protection of the defendant's rights is
21 entirely under the control of the prosecution without participation by the defense."
22 (*Berardi v. Superior Court* (2007) 149 Cal.App.4th 476, 495-496)

23 The prosecutor's obligation to be more than an advocate is heightened during the
24 grand jury process. As opposed to proceedings where defense counsel plays a role, the
25 prosecutor must be proactive in ensuring the jurors hear exculpatory evidence. Therefore,
26 "... "when a district attorney seeking an indictment is aware of evidence reasonably
27 tending to negate guilt, he is obligated under section 939.7 to inform the grand jury of its
28 nature and existence, so that the grand jury may exercise its power under the statute to

1 order the evidence produced.” (Id. at p. 255) This obligation has been enshrined in
2 section 939.71, which says that an indictment should be dismissed when the prosecution
3 is aware of exculpatory evidence yet fails to inform the grand jury of its nature and
4 existence and that failure results in substantial prejudice to the defendant. (Pen. Code §
5 939.71)

6 It will be shown in the following pages that the prosecution failed to inform the
7 Grand Jury of exculpatory evidence it possessed. Once that is established, this Court
8 should consider whether Mr. Garcia-Torres has suffered substantial prejudice. Doing so
9 requires it to keep in mind the need for the Grand Jury to be independent of the
10 prosecutor. “*If the prosecution fails to comply with its disclosure duty and its failure*
11 *undermines the grand jury’s ability to perform an independent investigation, this may be*
12 *a significant indication that the disclosure error affected the grand jury’s finding.*” (Id.
13 (citing *Berardi v. Superior Court* (2007) 149 Cal.App.4th 476, 494) (emphasis added))

14 When applying the substantial prejudice test, the court should evaluate the record
15 as a whole and consider both the evidence presented and any exculpatory evidence that
16 was withheld. (*Breceda v. Superior Court* (2013) 215 Cal.App.4th 934, 959) “If the
17 accused shows it is reasonably probable that the grand jury would not have found
18 probable cause to indict absent the disclosure error, the accused is entitled to dismissal of
19 the indictment at the pretrial stage.” (*ibid.*) “Pertinent inquiries include the extent of the
20 impact on the grand jury’s independence and the extent to which the material could
21 ‘explain away the charge.’” (*ibid.*)

22 Importantly, the analysis doesn’t end if the court finds that sufficient evidence of
23 probable cause existed even after the undisclosed evidence is considered. “The fact that
24 the record can support a finding of probable cause does not mean there is no reasonable
25 probability the jury would have rejected such a finding.” (*ibid.*) “[T]he court must still
26 determine if there is ‘such an equal balance of reasonable probabilities as to leave the
27 court in serious doubt’ as to whether a properly informed jury would have declined to
28 find probable cause to indict had it known of the omitted evidence. [Citation.] If so, the

1 defendant has established the requisite substantial prejudice and is entitled to dismissal of
2 the indictment.” (*ibid.*)

3 An example of the analysis may be found in *Berardi v. Superior Court* (2007) 149
4 Cal.App.4th 476. Berardi had been indicted for murder and conspiracy to commit murder
5 based on the prosecutor’s theory that he had conspired with another man to kill a third
6 person. The grand jury heard testimony from a detective who summarized the actual
7 killer’s arrest and the interviews he had given to the police. It also heard from a person
8 who knew the killer and Berardi, Ms. Anna Tong. Ms. Tong told the grand jury that she
9 and Berardi had gone to a pizza parlor at his suggestion on the day of the killing. She said
10 that Berardi received several phone calls during that period of time and that he indicated
11 he wanted the victim killed. In fact, she said that he told her the actual killer was going to
12 kill the victim and that he was keeping the receipts from the pizza place so he would have
13 an alibi. Ms. Tong further explained that she had sought immunity and that she failed to
14 tell the police about her story until several months after she was initially interviewed. The
15 grand jury also heard from witnesses who described Berardi’s animosity toward the
16 victim.

17 The prosecution presented some of the exculpatory evidence, but its presentation
18 was misleading. For example, it presented a summary of the actual killer’s statement to
19 the police admitting to killing the victim. The court found that, “as worded, the
20 prosecutor’s summary could be viewed as suggesting that May had told the police that he
21 had agreed in advance with others (whom he refused to identify) to murder [the victim].”

22 The prosecution failed to present other exculpatory evidence. The grand jury was
23 not told that a complete reading of May’s statement made clear that the agreed-upon
24 meeting was to consummate a drug deal, not to kill the victim. They were also not told
25 that May’s statement was that he killed in self-defense and that he was the only person
26 responsible for the shooting—that Berardi and others had nothing to do with it. The
27 prosecutor also failed to disclose prior inconsistent statements Ms. Tong had made as
28 well as another witness who said that Ms. Tong had expressed to him her intention to lie

1 and blame Berardi for the killing. Finally, the jurors were not informed that a witness
2 existed who explained that Ms. Tong's demeanor at the pizza parlor never changed—
3 even after she had learned of the killing.

4 The Court found that the prosecution had failed to introduce exculpatory evidence
5 and went on to apply the 'reasonably probable' test to determine if Berardi had suffered
6 substantial prejudice. (Id. at p. 493) Discussing its analysis, the Court said that, "[A]
7 reasonable probability of a more favorable result . . . exists [where there is] "such an
8 equal balance of reasonable probabilities as to leave the court in serious doubt as to
9 *whether the error affected the result.*" (Id. at p. 494 (citing *People v. Russell* (2006) 144
10 Cal.App.4th 1415, 1432 (emphasis added)) Significantly, it said that, "if the record shows
11 that sufficient evidence of probable cause remains even after considering the undisclosed
12 evidence, this does not end the analysis." (Id. at p. 495) The Court found that the
13 undisclosed evidence of May's complete statement and questions about Tong's
14 credibility were significant. By failing to present the information to the grand jury, the
15 prosecution interfered with its independence by presenting a misleading factual scenario
16 that strengthened its case. Ultimately, the court found that the "grand jury was deprived
17 of the opportunity to exercise its discretion to consider important items of exculpatory
18 evidence and likely concluded the prosecution's case was stronger than it was." (Id. at p.
19 496) *Though the Court recognized that the grand jury might have indicted even if he had*
20 *been notified of the exculpatory evidence, it said that there was a reasonable probability*
21 *they would not have if they had been given the evidence and ordered the indictment*
22 *dismissed. (ibid.)*

23 The prosecution's presentation to the Grand Jury in this case left out important
24 exculpatory evidence and left the impression that the case was stronger than it is. In that
25 way it suffered from the same failings as did the presentation in *Berardi*. As will be
26 shown, the errors affected the result in a way that caused Mr. Garcia-Torres to suffer
27 substantial prejudice.

1 **A. Sierra's writings**

2 One of the hurdles the prosecution had to overcome in its presentation was
3 showing the most fundamental element of the most serious charge: that Sierra is
4 deceased. (See Pen. Code § 187) Doing so was made difficult by the fact that law
5 enforcement has never located her body. Indeed, the grand jurors had to decide if it was
6 shown that Sierra had not run away or been kidnapped and kept alive.

7 The prosecutor's strategy was to use Sierra's friends and family to try to show that
8 she would not have run away. In fact, he started his closing remarks by asking the jurors
9 to not be . . . "distracted, because all objective evidence was that Sierra was going to
10 school that morning. The text messages, the dress, everybody who knew Sierra looked at
11 this picture and said this is normal Sierra, happy-go-lucky Sierra, she's in a good mood."
12 (R.T. 1853:16-21) He told the jurors that he presented information regarding Sierra's
13 state of mind so that they could put the case in its "proper perspective." (RT 1853:25-28)
14 He further claimed that on the day she disappeared, "Sierra LaMar is (sic) prepared to go
15 to school. *It's like any other day.*" (RT 1857: 21-23 (emphasis added)) He acknowledged
16 that no one wants to believe Sierra is dead, "but that's just the reality as demonstrated by
17 the evidence." (RT 1870: 6-7) He reiterated that she had "no reason to abandon
18 everything she knew ..." (RT 1896: 27) Finally, he claimed that the evidence showed
19 Sierra was going to be near where Mr. Garcia-Torres told the police he went that
20 morning. He claimed, "And that's where all the evidence says she was going that
21 morning, whether it be by text message, whether it be by photographs showing another
22 happy-go-lucky day for the trials and tribulations of a 15-year-old girl who had been
23 moved from an environment she was comfortable with up in Fremont. There's going to
24 be ups and downs. But none of that negates probable cause, ladies and gentlemen." (RT
25 1909: 3-10)

26 The evidence presented to the Grand Jury, in conjunction with the prosecutor's
27 closing comments, made it seem like Sierra had no intention of running away. Indeed, he
28

1 represented to the jury that the 'objective evidence' that existed showed that the only
2 reasonable explanation for her disappearance was that she had been killed.

3 But the presentation left out significant evidence that Sierra was planning on
4 leaving her home in Morgan Hill and did not intend on going to school on the day she
5 disappeared. The objective evidence that was kept from the grand jurors showed Sierra's
6 state of mind through her own words.

7 The police searched Sierra's school locker as part of the investigation. Inside the
8 locker, they located two significant notebooks that contained Sierra's writings. These
9 writings suggested that, contrary to the picture painted by the prosecutor, Sierra was a
10 troubled youngster who was planning on running away. The first notebook was for
11 Spanish class. It contained a note wherein Sierra said, "*I hate my life. ... no ever sees
12 this. I will be in San Francisco by 3/16/12.*" (Exhibit A) These are Sierra's words directly
13 contradicting those of the prosecutor. Contrary to the misleading picture the grand jury
14 received, Sierra wasn't planning on going to school on the day she disappeared. Rather,
15 she planned to be in San Francisco. This note was not written by the 'happy-go-lucky'
16 Sierra the prosecutor tried to offer. This is the note of a person who believed she had
17 reasons to leave all she knew. This is the note of someone who wanted a change. This is
18 the note of someone who had a plan—to leave on or about the same date she disappeared
19 and for no one to know she was going. Unlike the prosecutor's statement to the grand
20 jury, the day she disappeared was not "like any other day."

21 Lest anyone seek to disregard or minimize Sierra's clear expression of intent in the
22 Spanish notebook, we should also look to her other writings to see if they support it.
23 Thankfully, the police recovered another notebook from her locker. In it, Sierra wrote: "*I
24 really just wanna run away. You know like take a road trip to Las Vegas/Hollywood.
25 Away from problems just lay on a beach and chill. We should some day. NO JOKE. Like
26 we should fuck around get drunk and get lost with some HAWWT ass strangers.*"
27 (Exhibit B) This second note makes it clear; Sierra wanted to get away from her troubles
28 and she wanted to run away. Yet the prosecutor failed to present this statement as well.

1 The entire 'proof' of Sierra's demise came from circumstantial evidence. The
2 circumstantial evidence presented to the Grand Jury painted a picture of a person who
3 would have no reason to run away or leave her home. But that wasn't an accurate
4 reflection of her state of mind and, despite being in possession of evidence showing her
5 true state of mind—embodied in her own writings—the prosecutor failed to present the
6 evidence to the Grand Jury. These statements of intent help to 'explain away the charge'
7 in that they lay serious doubt about what happened and about whether or not Sierra is
8 actually deceased. And the failure to present this exculpatory evidence to the Grand Jury
9 deprived it of its ability to be an independent actor. It is reasonably likely that the grand
10 jury would not have indicted had they been presented with Sierra's own words. The
11 failure to make the grand jury aware of this exculpatory evidence caused Mr. Garcia-
12 Torres to suffer substantial prejudice and impacted the ultimate result.

13 **B. Sighting of Sierra After March 16, 2012**

14 The Grand Jury was presented with evidence that Sierra had not had contact or
15 been seen by anyone after the morning of March 16, 2012. But the prosecution failed to
16 present credible evidence from witnesses who said that they had, in fact, seen her in the
17 days following March 16th.

18 **A. Brad Johnson**

19 Brad Johnson called the Fremont Police Department on March 20, 2012 and told
20 them that he had seen four young people the night before in Meyer Park. (Exhibit C) He
21 noticed two of them exit a Ford vehicle and walk toward the playground. They appeared
22 to be avoiding making visual contact with him as he passed. At the time, he had no idea
23 that Sierra had gone missing. But he was moved to call the police when he saw her
24 picture on the news the next morning because he believed she had been one of the people
25 who exited the car. He explained that Sierra looked very similar to the subject he had
26 seen the previous evening and that, while he couldn't be positive, he was "pretty certain it
27 was her (LaMar)" and the likelihood of it being Sierra was "better than 50/50."
28

1 Again, this evidence contradicted the picture the prosecution tried to paint for the
2 Grand Jury. Instead of leaving the Grand Jury to believe that no one had seen Sierra, the
3 presentation of this report would have shown there was reasonable cause to believe that
4 she was alive three days after her disappearance. And that she was seen in Fremont—a
5 place where Sierra had lived, wished she could have stayed, and still had friends—creates
6 a strong suggestion that Sierra was alive and with people unrelated to Mr. Garcia-Torres
7 several days after she disappeared. Considering this in light of Sierra's statements that
8 she wanted to run away gives significant force to this sighting.

9 The sighting is given even more strength by the statement one of Sierra's friends
10 made to Deputy DeSantiago the day Sierra disappeared. The deputy was calling Sierra's
11 contacts to see what they knew and Claire Normyle, one of her friends, told him that she
12 had a conversation with Sierra on March 15—the day before her disappearance—when
13 Sierra said she was going to Fremont to visit old friends. This statement, too, was kept
14 from the Grand Jury. (Exhibit D)

15 **B. Tyler Putnam**

16 Law enforcement received many tips following Sierra's disappearance. Many of
17 the tips included information that was either incorrect or impossible to verify. But others
18 yielded useful information. One such tip came on May 22, 2012 from a man named Tyler
19 Putnam. (Exhibit E) Mr. Putnam explained that approximately one month prior to his
20 call, he had seen a young Hispanic female juvenile at Conners State College in
21 Oklahoma. The woman appeared to be 14 to 16 years old, was 5'2" to 5'3", had dark
22 brown hair and weighed about 110 pounds. She told him that her name was Sierra LaMar
23 and showed him a California High School ID card. The woman further told Mr. Putnam
24 that she was from California and was visiting her cousin who attended college at Conner
25 State. She said that she would be returning to California after the semester ended. Ms.
26 LaMar told the Grand Jury that Sierra was 5'1" and 110 pounds. (RT 1488: 14-21) She
27 also told the Grand Jury that Sierra had a California High School ID card. (RT 1499: 25-
28 27)

1 The Sheriff's Department called Mr. Putnam on June 4, 2012 and he told them that
2 he had not seen the woman since their first encounter. The LaMar family was also
3 contacted and indicated they did not have family residing in Warner, Oklahoma—the
4 home of Conners State College.

5 The woman Mr. Putnam spoke with may have given some information that was
6 inconsistent with the family history, but he would have testified to seeing a person who
7 looked like Sierra, asserted that she was Sierra, and produced a student ID. Yet the
8 prosecution only presented information suggesting Sierra was deceased. It failed to alert
9 the grand jurors to the evidence that raised a reasonable probability that she had been
10 seen, alive, several weeks after she disappeared. The grand jury was therefore left with a
11 misleading picture of the state of the evidence—they were only shown evidence
12 suggesting Sierra was dead. Indeed, they were left with the impression that she had not
13 been seen alive, by anyone, since her disappearance. This impression wasn't accurate.
14 Mr. Putnam could have testified to his observations and provided evidence showing that
15 Sierra was alive.

16 **C. Dog scent evidence**

17 Sgt. Leon interrogated Mr. Garcia-Torres during the investigation. Mr. Garcia-
18 Torres voluntarily spoke to him and explained that he went fishing the morning Sierra
19 disappeared. He said that he left his mobile home park, went north on Monterey Road,
20 took a left on Palm, took a left on Santa Teresa, took a right onto Willow Springs, and
21 finally entered the parking area at Chesbro Lake. (RT 1800) He never went into [REDACTED]
22 [REDACTED] Court, where Sierra lived.

23 The prosecutor argued that Sierra disappeared while she was on her way to her bus
24 stop. (RT 1857) Her bus stop was on the southwest corner of Daugherty and Palm. His
25 argument placed her along Mr. Garcia-Torres's path. This was potentially incriminating
26 as it gave rise to the suggestion that Mr. Garcia-Torres was close to Sierra the morning
27 she disappeared. It also helped solve a problem: that if this were a planned abduction, Mr.
28 Garcia-Torres would have to have known Sierra's schedule and that cannot be proved.

1 Rather, if she were simply along his path, the kidnapping could have been conducted on
2 the spur of the moment.

3 But the prosecutor left out exculpatory evidence that would have contradicted the
4 story. The Sheriff's Department and Santa Clara County Search and Rescue used dogs to
5 track Sierra's scent shortly after Sierra was reported missing. (Exhibit F) They started at
6 her home on [REDACTED] and lost track of her scent about half way out of her court—
7 before she would have gotten to Dougherty and well before she would have arrived at her
8 bus stop on Palm. (Exhibit F)

9 The dog scent evidence shows that, contrary to the picture painted for the grand
10 jurors, Sierra wasn't in Mr. Garcia-Torres's path the morning she disappeared. Instead,
11 she disappeared near her home. Indeed, the lost scent leads to the inference that she got
12 into a car on [REDACTED] likely with someone who knew she would be there since
13 [REDACTED] is a court and not a thoroughfare. There would be no reason for anyone to
14 drive down it unless they had a purpose. And there was no evidence that Mr. Garcia-
15 Torres knew where she lived or was where Sierra disappeared—in the court near her
16 home.

17 **D. Evidence that the hair found on a rope was deposited there after the rope**
18 **was in law enforcement custody**

19 The Santa Clara County Sheriff's Department seized Mr. Garcia-Torres's vehicle
20 pursuant to a search warrant on April 7, 2012. (Police Reports, BATES 000768)
21 Detective Fisher searched the vehicle on April 9, 2012 and located a thick white rope in
22 the trunk. A photograph was taken of the rope. (Exhibit G). The photo shows no hair on
23 the rope.

24 The rope was subsequently transported to the Santa Clara County District
25 Attorney Crime Lab. Criminalist Trevor Gillis was tasked with examining evidence in the
26 case in an attempt to compare fibers. He examined the rope obtained from the trunk of
27 the Jetta. During his examination, Mr. Gillis noted that several hairs were on the rope —
28 some loosely attached. He took a photo of the rope with the hair. (Exhibit H) The hair

1 was later subjected to DNA testing and the criminalist concluded the hair belonged to
2 Sierra LaMar.

3 The two photos of the rope—the first without hair and the later with hair—leads
4 one to suspect when and how Ms. LaMar’s hair came to be on the rope. The prosecutor
5 left the grand jurors with the impression that the hair must have been deposited on the
6 rope during the course of a criminal act. Yet he was in possession of photos that raised
7 reasonable cause to believe the hair was deposited after the rope was seized and was in
8 law enforcement’s possession.

9 The hair on the rope was a substantial piece of evidence against Mr. Garcia-Torres
10 in the presentation to the Grand Jury. Indeed, it may have been the prosecutor’s strongest
11 evidence. The presentation left the grand jurors with the impression that the hair was
12 deposited prior to the rope’s seizure and that there was no innocent explanation for its
13 presence. However, given the strong evidence suggesting the hair was actually deposited
14 after the rope came into law enforcement’s possession—either through mistake or some
15 other process—the grand jurors were left with a misleading picture of the strength of the
16 evidence.

17 **E. Absence of bleach and stun gun damage to Sierra’s clothing**

18 The prosecution presented evidence that Mr. Garcia-Torres had purchased bleach
19 and a turkey baster in the days before Sierra disappeared. Sgt. Leon then testified that he
20 thought those items were important because they could be used to clean a crime scene.
21 He further added that he was unable to locate those items when Mr. Garcia-Torres’
22 residence was searched. This left the grand jury to speculate that more evidence would
23 have been found had the bleach and baster not been used.

24 But the grand jury was never told that Trevor Gillis, a criminalist from the crime
25 lab who testified about other matters before the grand jury, that evaluated the Sharks
26 sweatshirt and jeans for signs of damage from bleach or chemicals. In a report dated
27 April 10, 2013 (eight months before the grand jury proceedings started), he reported that
28

1 “damage, stains, and marks attributable to bleach or other chemicals were not detected on
2 the sweatshirt or the jeans reportedly belonging to Sierra LaMar.” (Exhibit I)

3 The prosecutor also instructed the grand jury that it could use the Safeway
4 incidents and Sierra’s disappearance to show intent or the existence of a common scheme
5 in the charged crimes. Obviously, this would require the grand jurors to consider whether
6 the incidents were similar and, if so, to use that similarity (or lack thereof) to draw
7 reasonable inferences. Given that the strongest evidence of Mr. Garcia-Torres’
8 involvement in the Safeway incidents is his fingerprint on the battery of a stun gun, it
9 would be important to know if a stun gun was used in relation to Sierra’s disappearance.

10 Despite its importance, no evidence was presented about whether or not a stun gun
11 was used in Sierra’s disappearance. Instead the grand jury was left to speculate. But the
12 prosecution knew that a stun gun was not used. In the same report noted above, Mr. Gillis
13 reported that “damage and marks attributable to a stun gun discharged were not detected
14 on the sweatshirt or jeans reportedly belonging to Sierra LaMar.” (Exhibit J)

15 These two facts, that there was no evidence of bleach being used and that there
16 was no evidence of a stun gun being used, were significant in the case. The absence of
17 bleach means the prosecutor’s suggestion that the absence of more DNA evidence can be
18 explained by the mysterious purchase of bleach is likely incorrect. And, therefore, the
19 absence of that evidence when one would reasonably expect it, would lead the grand jury
20 to doubt Mr. Garcia-Torres’ involvement in the disappearance. Likewise, the absence of
21 stun gun damage when a stun gun was used in a case the grand jury was encouraged to
22 use to find a common scheme—and therefore establish Mr. Garcia-Torres’ as the
23 perpetrator, would weaken to common scheme argument. Both of these facts, if
24 presented, would have made it less likely the grand jury would have returned an
25 indictment on the murder charges. They aren’t insignificant oversights; indeed, the
26 prosecutor spent a good deal of time talking about Safeway cards, the search, security
27 video, and other testimony establishing that Mr. Garcia-Torres purchased the items, that
28

1 such purchase was unusual, and that the items were missing. The devotion of that time
2 alone demonstrates the importance the prosecution placed on these items.

3 **F. Misleading statistics related to DNA evidence**

4 Christine Ebert, a criminalist with the Santa Clara County District Attorney Crime
5 Lab, testified regarding DNA work she performed in the case. Specifically, she testified
6 that she tested area 5 of the jeans. She explained that the autosomal testing revealed a
7 mixture of profiles from at least three people, at least one of whom was male. She
8 provided statistics using the assumption that there were only three contributors. She then
9 described Y-STR testing she performed on the same area. It showed a mixture of at least
10 three males and she provided statistics without disclosing any assumptions she may have
11 made.

12 This presentation led the grand jurors to believe that the statistics were correct.
13 Indeed, no reason was given why they would be wrong. But the combination of results
14 shows that the statistics could not be correct. If there were at least three males
15 contributing to the sample in addition to Sierra, there would have to have been a
16 minimum of four contributors to the autosomal sample. Therefore, the key assumption
17 Ms. Ebert used to come up with the statistics is invalid. Yet, in spite of having this
18 information, neither the prosecutor nor Ms. Ebert alerted the grand jurors to this
19 discrepancy. Instead, the grand jurors were given a misleading picture of the meaning
20 that could be given to the DNA results.

21 **G. Cumulative effect of errors**

22 The evidence the prosecution failed to present to the grand jury is impactful. Each
23 piece of evidence impacted the result and could, standing alone, be sufficient basis for a
24 dismissal of the indictment—or at least the charges related to the homicide charge. When
25 put together, however, their impact is even stronger. The evidence that was kept from the
26 grand jury both raised reasonable inferences that Sierra was not kidnapped or killed and
27 that Mr. Garcia-Torres wasn't involved. Especially when one considers the near complete
28 absence of evidence showing how Sierra disappeared, the withheld evidence has

1 significant meaning. The prosecution had the obligation to make the grand jurors aware
2 of it so that they could exercise their responsibility to have the prosecutor bring the
3 evidence forward so they could consider it. (See Pen. Code § 939.7) Keeping the
4 existence of exculpatory evidence from the grand jury prevented it from remaining
5 independent of the prosecutor and performing its role as the “. . . great inquest between
6 the State and the citizen” (See *In re Tyler*, supra, 64 Cal. 434)

7 **II. The Indictment should be dismissed because the Grand Jury was improperly**
8 **presented with evidence of the three Safeway incidents**

9 A grand jury should not receive any evidence except that which would be
10 admissible over objection at the trial of a criminal action. (Pen. Code § 939.6, subd. (b))
11 An indictment returned after the grand jury was presented with inadmissible evidence
12 should be dismissed when there is insufficient competent evidence left over to support it.
13 (Id.; *Arteaga v. Superior Court* (2015) 233 Cal.App.4th 851) Indeed, when the extent of
14 the inadmissible evidence is such that it would be unreasonable to expect that the grand
15 jurors could limit its consideration to admissible, relevant, evidence, the defendant is
16 denied due process of law. (*People v. Backus* (1979) 23 Cal.3d 360, U.S. Const. amend.
17 V, Cal. Const. art. I, § 30) As the *Backus* court explained, “If the grand jury cannot fulfill
18 its obligation to act independently and to protect citizens from unfounded obligations
19 [cite] when not advised of relevant exculpatory evidence, neither can it do so if it is
20 invited to indict on the basis of incompetent and irrelevant evidence.” (*People v. Backus*,
21 supra, 23 Cal.3d at p. 393)

22 The Grand Jury considering this case was presented with four discrete incidents.
23 On top of the evidence regarding Sierra’s disappearance, the prosecutor presented
24 evidence of three assaults occurring outside of two different Safeway stores in Morgan
25 Hill that occurred in 2009. It appears from the jury instructions that the theory of
26 admissibility was intent and common scheme or plan under Evidence Code section
27 1101(b). (See GJ Tx 1851)
28

1 **A. Improper Joinder**

2 An indictment may charge two or more different offenses if they are either
3 connected in their commission or are of the same class of crimes. (Pen. Code § 954) Even
4 if joinder of counts may be permissible under section 954, their existence in the same
5 indictment is improper if it causes the defendant to suffer undue prejudice. (*Alcala v.*
6 *Superior Court* (2008) 43 Cal.4th 1205)

7 Sierra’s disappearance and the Safeway incidents are in no way connected in their
8 commission, but they may be considered to be of the same class of crimes. The charges,
9 specifically kidnapping, may establish that they are of the same class. Although, without
10 any facts about how Sierra disappeared, it cannot be said that the incidents are factually
11 similar. If this Court believes the offenses could qualify for joinder under section 954, it
12 should proceed to consider whether joinder would cause undue prejudice.

13 The prejudice analysis requires the Court to consider and weigh four separate
14 factors: whether the offenses would be cross-admissible, whether one charge would
15 unusually inflame the jury, whether a weak case would be joined with a strong case or
16 another weak case so that the total evidence may alter the outcome, and whether one
17 charge is a capital offense or joinder makes it capital. (Id.)

18 **1. Cross-Admissibility**

19 Evidence of other crimes evidence “is so prejudicial that its admission requires
20 extremely careful analysis. [Citations.]” “Since substantial prejudicial effect [is] inherent
21 in [such] evidence,” other crimes evidence is only admissible if it has substantial
22 probative value.” (*People v. Ewoldt* (1994) 7 Cal.4th 380)

23 **a. Intent**

24 The instructions to the grand jury told them that they could use each of the
25 offenses to prove intent to commit a kidnapping if the offense had been proved by a
26 preponderance of the evidence. (GJ Tx 1851) Of the proper theories for admissibility
27 under section 1101(b), intent requires the least degree of similarity between the incidents.
28 (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402) As the state Supreme Court has recognized,

1 “if a person acts similarly in similar situations, he probably harbors the same intent in
2 each instance...” (*People v. Gallego* (1990) 52 Cal.3d 115, 171 (citing *People v. Robbins*
3 (1988) 45 Cal.3d 867, 879-880))

4 Evidence of other crimes is admissible to prove intent only if it is sufficiently
5 similar to the other offense to support a rational inference that the person acted with the
6 same intent on both occasions. (*People v. Carter* (2005) 36 Cal.4th 1114, 1149) The
7 analysis required is necessarily fact-specific.

8 An example of the similarity required for other crimes evidence to be admissible
9 to show intent may be found in the *Gallego* case. The defendant in that case was charged
10 with murder and the prosecutor sought to admit evidence of another murder to show that
11 his intent was the same in each incident. The court found that the crimes were similar in
12 that in each there was evidence that he forced a woman to drive with him to a Sacramento
13 mall to look for victims, he lured the victims into his car, he tied their hands behind their
14 backs, he took them to rural locations, removed them from his colleague’s presence, and
15 finally took them to a separate location where they were killed. The Supreme Court ruled
16 that these facts supported the trial court’s decision that the uncharged crime tended to
17 show intent by reasonable inference. (*Id.* at p. 171)

18 Another example is *People v. Foster* (2010) 50 Cal.4th 1301. Other crimes
19 evidence was admitted to show intent in *Foster* based on similarity of known facts. The
20 evidence showed that the defendant had a pattern of visiting an office in the middle of the
21 day, determining that a woman was alone in the office, returning in the middle of the day,
22 removing the woman to a remote area, demanding her money, and violently attacking her
23 when she resisted. (*People v. Foster* (2010) 50 Cal.4th 1301, 1329)

24 The other end of the spectrum, where the evidence showed insufficient similarity,
25 is represented by *People v. Earle* (2009) 172 Cal.App.4th 372. Earle was charged in
26 relation to two separate incidents, each involving one count of misdemeanor indecent
27 exposure and one count of felony sexual assault. The evidence supporting the indecent
28 exposure charges was strong, but the evidence that he committed the sexual assaults was

1 weak. The state argued that the indecent exposure evidence could be used to show that
2 the sexual assaults were committed with the intent to rape. The Sixth District rejected the
3 argument explaining that it rested on two questionable assumptions: first, that a person
4 willing to expose themselves would also be willing to commit rape and, second, that it
5 assumed that the defendant was the person responsible for the sexual assaults—even
6 though the jurors had reason to doubt that and no reason to doubt the sexual intent of
7 whomever committed the crime. The Court reversed Earle's sexual assault conviction
8 because the indecent exposure counts were improperly joined to and admitted in the
9 sexual assault trial. It found that the argument that one who would expose themselves
10 would also rape was tenuous at best and that the admissibility theory required the
11 unwarranted assumption that Earle committed both crimes.

12 The cases describing other crimes evidence shows that such evidence may only be
13 admitted when it logically proves a contested fact. The only way to demonstrate that is by
14 showing facts that are similar between the incidents. The problem in this case is that we
15 have so few proven facts that could be used to show intent.

16 Homicide Charge

17 There is no direct evidence proving how Sierra came to disappear. In fact, there is
18 no direct evidence that she was kidnapped. We do know that whatever happened didn't
19 occur in a store parking lot at night. It also appears that a stun gun was not used (lab
20 report re lack of damage to her clothing). The prosecutor put together circumstantial
21 evidence that she didn't disappear of her own volition, but the evidence on that point is
22 contradictory. Indeed, she could have gotten into a car voluntarily and only subsequently
23 been kidnapped—if she was kidnapped at all.

24 Safeway Incidents

25 We have more facts about the Safeway incidents, but those facts fail to
26 demonstrate the intent with which the incidents were carried out. All involved a struggle,
27 but the witnesses said that the perpetrator never told them what he wanted to do. The
28 intent may not have been to rob since nothing was taken, but given that in one incident

1 the person could not gain entry to the car and significant struggles ensued in the other
2 two, it is possible that robbery was intended but put off until the assailant gained control
3 of the situation. In any event, the intent with which the conduct occurred is unclear.

4 The Incidents do not have enough similarity to be admitted to show intent

5 The absence of facts showing how and why Sierra disappeared deprives it of the
6 ability to prove the intent with which the Safeway incidents occurred. Similarly, the
7 absence of those facts means that it cannot be shown that the Safeway incidents are
8 similar to known facts of Sierra's disappearance. Indeed, many of the facts related to
9 Sierra's disappearance show that it is different than the Safeway cases. In other words,
10 the evidence presented related to Sierra's disappearance in no way proves the intent with
11 which the Safeway attacks were carried out and the evidence of the Safeway attacks
12 doesn't show the intent with which anything that occurred with Sierra happened. Indeed,
13 to use the Safeway attacks in this way is to engage in the same problem the Sixth District
14 highlighted in *Earle*—it requires one to assume the perpetrator is the same in all of the
15 incidents...a fact very much in dispute. Evidence of Sierra's disappearance would not be
16 admissible to show intent in the Safeway incidents and vice versa.

17 **b. Common Scheme or Plan**

18 A greater degree of similarity is required to prove the existence of a common
19 design or plan. The other crimes evidence must demonstrate "not merely a similarity in
20 the results, but such a concurrence of common features that the veracious acts are
21 naturally to be explained as caused by a general plan of which they are the individual
22 manifestations." (*People v. Ewoldt*, supra, 7 Cal.4th at p. 402)

23 The notion of 'common plan' evidence refers to a methodology or peculiar pattern
24 of behavior. (*People v. Chambers* (1964) 231 Cal.App.2d 23, 31) For example, the court
25 of appeal in *People v. Garnica* admitted evidence of a prior assault in case where the
26 defendant—a member of a criminal organization—was charged with murder in the death
27 of an enemy of the organization. The similarities included the fact that the offenses
28 occurred in the same city, occurred within 1 week of each other, each occurred at the

1 defendant's direction and involved the same 'hit man,' and both were committed to
2 eliminate an enemy of the organization. (*People v. Garnica* (1981) 121 Cal.App.3d 727)
3 Thus, each incident showed a plan to eliminate enemies and involved the same scheme—
4 using a hit man.

5 No such common plan connects the Safeway offenses and Sierra's disappearance.
6 Unlike the common methodology—use of a hit man to eliminate an enemy—in *Garnica*,
7 the known facts of both the homicide case and the Safeway cases show no common
8 method. Apparently, Sierra disappeared during the day, was not in a parking lot when any
9 alleged kidnapping took place, and is younger than the victims in the Safeway cases. Of
10 the limited facts we know about Sierra's disappearance, there are more differences than
11 similarities between it and the Safeway cases. The evidence of the incidents, Sierra's
12 disappearance and the Safeway incidents, should not have been admitted to show
13 common scheme or plan.

14 **2. Unusually Inflamm Jury**

15 Sierra's disappearance has been a highly publicized event. Until recently,
16 searchers combed the South County area looking for her with many wearing shirts
17 claiming her as 'everyone's daughter.' It is the type of crime that causes people to feel
18 insecure in their homes and gives them pause about whether to allow their children to
19 walk or take the bus to school. And when charges of capital murder are added to the mix,
20 the case gives rise to very strong emotions.

21 The Safeway incidents, on the other hand, are much less inflammatory. They
22 occurred several years prior and the victims were adult women. No children were
23 involved as victims and no one disappeared or was alleged to have been killed. The
24 charges evoke less emotion and are much less inflammatory.

25 Adding evidence of Sierra's disappearance to the Safeway cases unnecessarily
26 inflames the jury deciding those incidents. It will make the jurors more likely to
27 convict—or in this case indict—Mr. Garcia-Torres for the Safeway incidents without
28 strengthening the evidence in any legitimate way.

1 **3. Joining weak cases**

2 The cases against Mr. Garcia-Torres are weak. Indeed, there are no facts that show
3 how, exactly when, or why Sierra disappeared. The prosecutor presented some DNA
4 evidence connecting Mr. Garcia-Torres to Sierra, but he was unable to describe how the
5 DNA was deposited. It could have been deposited through criminal agency, but it also
6 could have been deposited through innocent transfer between two people living in a small
7 town.

8 If anything, the Safeway cases are even weaker. None of the assault victims
9 identified Mr. Garcia-Torres as the attacker—even after knowing that he was the suspect
10 in Sierra's disappearance. The only evidence tying Mr. Garcia-Torres to the Safeway
11 incidents is the one where a stun gun was used. His fingerprint was alleged on a battery in
12 the stun gun. There is no evidence about when it may have been deposited there or even
13 that Mr. Garcia-Torres was in the Safeway parking lot that night.

14 The prejudice of joining weak cases comes from the idea that the total evidence
15 presented might alter the outcome of the charges. The risk is that the grand jury could
16 decide that one person could not be a suspect in all these incidents without being
17 responsible for them. Such reasoning would be inappropriate and a rich source of
18 prejudice. The introduction of the Safeway incidents strengthen the Sierra LaMar
19 prosecution and vice versa simply by multiplying the allegations and not be creating
20 legitimate inferences.

21 **4. Capital Offense**

22 The District Attorney is seeking the death penalty in relation to Sierra's
23 disappearance. But the Safeway incidents are not capital crimes.

24 Mr. Garcia-Torres suffered substantial prejudice when the grand jury was
25 permitted to consider the evidence of Sierra's disappearance in the same proceeding as
26 the evidence of the Safeway incidents. While they may be of the same class of crimes,
27 their joinder caused the cases to be impermissibly strengthened simply through the effect
28 of multiple accusations and not any degree of similarity. But for the joinder rules, the

1 incidents would not have been cross-admissible and the addition of a highly
2 inflammatory charge (the homicide) would have improperly impacted the grand jury's
3 consideration of the Safeway incidents.

4 **III. The indictment should be dismissed because of the prosecutor's improper**
5 **closing argument regarding Sierra's cell phone**

6 The prosecutor used part of his closing argument to address Sierra's cell phone
7 coming back on the network the night she went missing. He asked the rhetorical question:
8 how is that, according to Sgt. Stenderup's testimony, Sierra's found starts receiving text
9 messages at 10:46 or 10:47 pm and Mr. Garcia-Torres's car is parked at the RV parked
10 starting at 9:17 pm?

11 It is a good question. Before providing an answer, he told them that he suspected
12 "that someone might suggest this is absolute evidence that the Defendant didn't have any
13 culpability." Then he asked them about what they know about electronics, specifically
14 that "they don't like water." He talked about his own experience with electronics going
15 through the washing machine. He said, "They turn off. They turn on. They do all kinds of
16 crazy things that we don't want and don't expect." He suggested, though he told them not
17 take his experience as evidence, that the phone turned back on because it got wet and not
18 because someone other than Mr. Garcia-Torres was with it—and by extension, with
19 Sierra.

20 The prosecutor had an expert at hand in Sgt. Stenderup. In fact, Sgt. Stenderup had
21 testified earlier and was never asked about the impact of water on a phone. He likely
22 would have explained that a cell phone would not magically go back on the network
23 simply because of rain. If so, that evidence was withheld.

24 But even if he would not have so testified, the prosecutor's argument was
25 improper argument. Even though he said he wasn't testifying, he effectively was. By
26 encouraging the grand jurors to speculate about the water's impact on the phone and
27 suggesting his own experience was that the phone would do crazy things—like go back
28 on the network on its own—he inject his own testimony into the proceedings. The

1 argument was improper and centered on a significant point that was a problem. If
2 someone was with Sierra's phone while Mr. Garcia-Torres was home, did they person
3 kidnap her? Was that person with her either consensually or otherwise? Was Mr. Garcia-
4 Torres even involved in the disappearance at all? The prosecutor's argument sought to
5 solve the problem through a combination of his own personal experience and speculation.

6 Statements of supposed facts not in evidence because they were never offered are
7 a highly prejudicial form of prosecutorial misconduct. (*People v. Hill* (1998) 17 Cal.4th
8 800, 828) The danger in such statements is that they make the prosecutor his own witness
9 without being subjected to cross-examination. (*ibid.*) "It has been recognized that such
10 testimony, 'although worthless as a matter of law, can be "dynamite" to the jury because
11 of the special regard the jury has for the prosecutor, thereby effectively circumventing the
12 rules of evidence.' [Citation.]" (*ibid.*)

13 Admittedly, the prosecutor told the jurors they shouldn't rely on his personal
14 experience because he wasn't testifying. But this statement hardly helps. In fact, it may
15 fall under a type of argument called paraleipsis. This is a device of giving emphasis by
16 professing to say little or nothing about a subject. (Oxford Dictionaries,
17 www.oxforddictionaries.com/us/definition/american_english/paralipsis?q=paraleipsis
18 (accessed Aug. 31, 2015). Its use by a prosecutor was condemned in *People v. Wrest*
19 (1992) 3 Cal.4th 1088. Given the context of the argument, the prosecutor's statement that
20 they should not consider what happened with his person experience served only to
21 encourage the grand jury to think that water exposure was the reason the phone went
22 back on the network. Added to the other errors in the process, the improper argument
23 requires dismissal of the indictment.

24 **IV. The cumulative effect of the errors made during the grand jury proceedings**
25 **produced a violation of federal and state due process**

26 The 5th and 14th Amendments to the United States Constitution require a grand
27 jury indictment or some analogous proceeding. (*Hurtado v. California* (1884) 110 U.S.
28 516) When a grand jury is presented with incompetent or irrelevant evidence such that it

1 is unreasonable to expect that the jurors could limit their consideration to the admissible,
2 relevant, evidence, due process is violated and the resulting indictment must be
3 dismissed. (*People v. Backus* (1979) 23 Cal.3d 360, 392) Indeed, "California law
4 provides that a defendant has a due process right not to be indicted in the absence of a
5 determination of probable cause by a grand jury acting independently and impartially in
6 its protective role." (*People v. Superior Court (Mouchaourab)* 78 Cal.App.4th 403, 424)

7 The failure to alert the grand jury to exculpatory evidence prevented it from
8 exercising its responsibilities under Penal Code section 939.7. In so doing it deprived the
9 grand jury of the ability to be independent of the prosecution and deprived Mr. Garcia-
10 Torres of his right to a grand jury acting in its protective role. In addition, the improper
11 presentation of both Sierra's disappearance and the Safeway incidents in the same
12 proceeding violated due process. It cannot be expected that the grand jurors limited their
13 consideration to admissible evidence when they were presented with inflammatory
14 information and then specifically instructed they could use it.

15 Thus, the errors committed during the grand jury process, both singularly and
16 cumulatively, violated Mr. Garcia-Torres' right to due process under the federal and state
17 constitutions.

18 Conclusion

19 Mr. Garcia-Torres suffered substantial prejudice when the prosecution failed to
20 alert the grand jury to exculpatory evidence it possessed. This evidence directly
21 contradicted the prosecutor's theory of the case and its absence created a misleading
22 picture both about what may have happened and the strength of the prosecution case. It
23 included statements Sierra made indicating she wanted to run away, including one that
24 specifically said she intended on being in San Francisco the very day she went missing. It
25 included sightings of her after she disappeared strongly suggesting she wasn't kidnapped.
26 And it included evidence that Sierra was not in Mr. Garcia-Torres' path the morning she
27 disappeared and that showed that anyone kidnapping her would have to have known
28

1 where she would be since her scent was lost in the court in which she lived—not on a
2 thoroughfare.

3 The *Johnson* error wasn't the only error in the grand jury proceedings that
4 warrants a dismissal of the indictment. The other significant error was exposing the grand
5 jury to the Safeway incidents in the same proceedings as Sierra's disappearance. Their
6 joinder was highly prejudicial and improperly impacted the results.

7 Finally, the prosecutor engaged in improper argument regarding the impact of
8 water on the cell phone. This was significant error because Sierra's phone went back on
9 the network at a time when security video had Mr. Garcia-Torres at home. Who was in
10 control of the phone—and, assuming she was kidnapped, Sierra, at the time? It wasn't
11 Mr. Garcia-Torres. But the prosecutor suggested without the benefit of evidentiary
12 support that the rain that night caused the phone to go back on the network. This
13 improper testifying prevented the grand jurors from giving due consideration that the fact
14 that Mr. Garcia-Torres wasn't near the phone when it went back on the network.

15 All of these errors combined to give the grand jury a misleading picture of the
16 strength of the prosecution's case. They combine to form a process that violated Mr.
17 Garcia-Torres' statutory and constitutional rights, including his right to due process of
18 law under the 5th and 14th Amendments to the U.S. Constitution.

19 The defense respectfully requests that this Court dismiss the indictment or, in the
20 alternative, dismiss the charges and allegations regarding Sierra's disappearance.

21
22 Dated: September 1, 2015

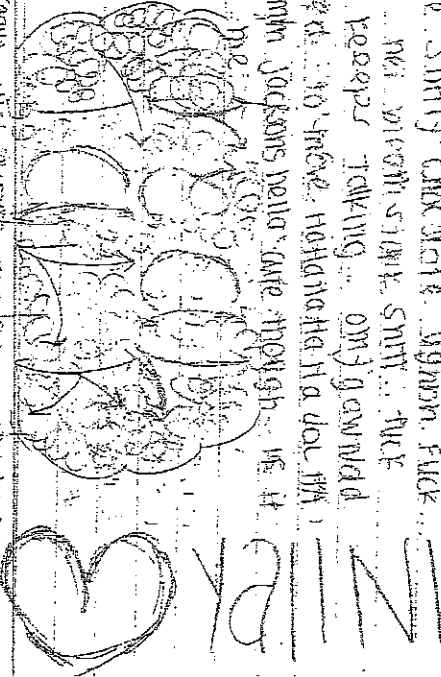
23
24 Respectfully submitted,

25 
26 Brian Matthews
27 Deputy Alternate Defender
28

4

- KARISSA

WOW, THIS MEGA THAT NEXT TO ME SMELLS
LIKE SHITTY CARBONATE MARIJUANA FUEL
AND NOT BIRTH CONTROL SHIT... FUCK
SHE KEEPS TALKING... OH MY GAWD
I NEED TO MOVE HAHANHAHA HA HA HA
SO AMIN JACKSONS BELLA CARE THOUGH HE IS
JUST THE PROBLEM



I REALLY JUST WANT TO RUN AWAY - YOU KNOW
LIKE TAKE A WHEEL TRIP TO LOS ANGELES

/HOLY SHIT AWAY FROM PAINKILLERS JUST
LEG ON A BOAT AND CHILL, WE SHOULD
SOME DAY NO JOKE! LIFE WE SHOULD
SUCK DOWN A 999 DRINK AND GET HIGH
WITH SOME HANNY ASS STRONGERS



PAGE

13085

UNCLASSIFIED//FOUO
DRAFT

IP ID: SCCSO-C000866

ORION INFORMATION PACKAGE IP# SCCSO-C000866

Current Date: 03/30/2012 03:26 AM EDT **Precedence:** Routine
Created By: Woehl, Paul (SCCSO - Investigations at Santa Clara JOC) - 03/28/2012 08:15 PM PDT
Received By: Sgt. Carrasco - 03/20/2012 08:21 AM PST

SOURCE(S) OF INFORMATION

Contact Method: Other
Reporting Person: Brad Johnson
Male
Residence Address: [REDACTED]
[REDACTED]
Reporting Person: Jeffrey Lawrence
Male
Government Address: [REDACTED]
[REDACTED]
Contact Info: Business Phone: [REDACTED]

NARRATIVE

(U)RP reported to Fremont PD (Case [REDACTED]) he saw a girl matching the description of Sierra at Mey Park in Fremont. The female was very affectionate toward one of the males in the group. RP said he was n 100% sure, but was better then 50/50 on who the female was.[Woehl, Paul (SCCSO - Investigations at Santa Clara JOC) - 03/28/2012 08:15 PM PDT]

DESCRIPTIVE DATA

Person: Role: Person of Interest
Female, White including Hispanic, 14 to 16 Years Old, 5'2" to 5'2"
Misc.: Female has dark hair. She was wearing "skinny" jeans and a dark colored shirt.

Person: Role: Person of Interest
Male, White including Hispanic, 14 to 16 Years Old, 5'10" to 5'10"
Misc.: Male had a thin build and dark hair. He was wearing "skinny" jeans and a dark colored shirt. He had shaggy hair and large "hoop" earrings in his right ear.

Person: Role: Person of Interest
Male, White including Hispanic, 30 to 40 Years Old
Misc.: Male had dirty blonde hair and 2-3 days of scruffy facial growth. He was wearing a light colored shirt.

Person: Role: Person of Interest
Female, White including Hispanic, 12 to 13 Years Old
Misc.: Female had dirty blonde hair and "chubby cheeks." No clothing descriptor

Organization: Type: Government
~~Fremont Police Dept.~~
Business/Employment [REDACTED]
Address: [REDACTED]
[REDACTED]

Vehicle: Type: Automobiles and Light-Duty Trucks/Vans Style: Sedan
Blue, Ford Fusion, OR / USA, Sedan
Newer model with bar code sticker on rear passenger window.

LEADS FROM Santa Clara Investigations

Lead Number: SCCSO-C000866-01
Type: Information Only Status: Awaiting Assignment
To: SCCSO - Investigations
Lead: Possible Sierra sighting in Fremont at Meyer Park possibly on 3/20/2012.

ADMINISTRATIVE SECTION

IP Status: Leads Set - 03/29/2012 01:00 PM PDT
Submitted By: Woehl, Paul (SCCSO - Investigations at Santa Clara JOC) - 03/28/2012 08:15 PM PDT
ASSESSMENT Relevant
Assessment By: Woehl, Paul (SCCSO - Investigations at Santa Clara JOC) - 03/28/2012 08:18 PM PDT

LEAD EVALUATION

Investigations: Leads Required
Evaluated By: Roggia, Mark (SCCSO - Investigations at Santa Clara JOC) - 03/28/2012 11:30 PM PDT

LEADS

Lead Number: SCCSO-C000866-01 Type: Information Only
Status: Awaiting Assignment
Created By: Bork, Julie (SCCSO - Investigations at Santa Clara JOC) - 03/29/2012 11:50 AM PDT
Approved By: Cardenas, James (SCCSO - Investigations at Santa Clara JOC)
Entered By: Cardenas, James (SCCSO - Investigations at Santa Clara JOC) - 03/29/2012 01:00 PM PDT

INDEX RECORDS ASSOCIATED WITH IP# SCCSO-C000866

The following Index Records are currently associated with the information contained within this IP. Since Index Records are subject to update at any time, it should be recognized that viewing or printing this IP at later date may produce Index Records that could be significantly different than those displayed here.

Person: Jeffrey Lawrence
Male
Government Address:

Contact Info: Business Phone:

Related IP ID(s):

Person: Female, White including Hispanic, 12 to 13 Years Old
Misc.: Female had dirty blonde hair and "chubby cheeks." No clothing descriptor
Related IP ID(s):

Person: Female, White including Hispanic, 14 to 16 Years Old, 5'2" to 5'2"
Misc.: Female has dark hair. She was wearing "skinny" jeans and a dark colored shirt.

Related IP ID(s): [REDACTED]

Person: Brad Johnson
Male
Residence Address: [REDACTED]
Fremont, CA

Related IP ID(s): [REDACTED]

Person: Male, White including Hispanic, 30 to 40 Years Old
Misc.: Male had dirty blonde hair and 2-3 days of scruffy facial growth. He was wearing a light colored shirt.

Related IP ID(s): [REDACTED]

Person: Male, White including Hispanic, 14 to 16 Years Old, 5'10" to 5'10"
Misc.: Male had a thin build and dark hair. He was wearing "skinny" jeans and a dark colored shirt. He had shaggy hair and large "hoop" earrings in his right ear.

Related IP ID(s): [REDACTED]

Organization: Type: Government
Fremont Police Dept.

Government Address: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Related IP ID(s): [REDACTED]

Vehicle: Type: Automobiles and Light-Duty Trucks/Vans Style: Sedan
Blue, Ford Fusion, OR / USA, Sedan
Newer vehicle that had the appearance of a rental car. Newer model with bar code sticker on rear passenger window.

Related IP ID(s): [REDACTED]

DRAFT
UNCLASSIFIED//FOUO

IP ID: SCCSO-C000866

CONFIDENTIAL - Juvenile Non-disclosure
Fremont Police Department

120320008

Supplement No
ORIG



[REDACTED]
[REDACTED]
[REDACTED]

Reported Date
03/20/2012
Nature of Call
SC
Officer
LAWRENCE, JEFFREY

Administrative Information						
Agency	Report No	Supplement No	Reported Date	Reported Time	CAD Call No	
Fremont Police Department	120320008	ORIG	03/20/2012	08:21	120021755	
Status	Nature of Call					
REPORT TO FOLLOW	SUSPICIOUS CIRCUMSTANCES					
Location			City	Rep Dist	Arms	BCR
EGGERS DR/GLENMOOR DR			Fremont	530	2	2 2
From Date	From Time	To Date	To Time	Officer		
03/19/2012	17:30	03/19/2012	17:30	7448/LAWRENCE, JEFFREY		
Assignment		Entered by	Confidential			
Day Shift, A Team, Zone 2		7448	Juvenile Non-disclosure - Minor Involved			
RMS Transfer	Report Title	Approved By				
Successful	CONFIDENTIAL - Juvenile Non-disclosure	2796				
Approving Officer	Approval Date	Approval Time				
2796	03/21/2012	08:09:37				

Person Summary						
Invl	Invl No	Name				
FBR	1	See Confidential Page				
Invl	Invl No	Type	Name	DOB	Race	Sex
REP	1	I	JOHNSON, BRAD	[REDACTED]	W	M

Summary Narrative

SUBJECT #1: WFJ 14-16yo, 5'2, thin build, dark colored hair and eyes. Last seen wearing dark colored "skinny" jeans and a dark colored shirt.

SUBJECT #2: WMJ 15-16yo, 5'10, thin build, dark colored "shaggy" hair, large hoop earring in right ear (the type that extends the earlobe). Last seen wearing dark colored "skinny" jeans and a dark colored T-shirt.

SUBJECT #3: WMA, mid-30's, dirty blond hair, 2-3 days of "scruffy" facial hair. Last seen wearing a light colored shirt.

SUBJECT #4: WFJ 12-13yo, dirty blond hair, "chubby cheeks", unknown clothing.

OBSERVED VEHICLE: Newer model blue Ford Fusion 4-door with unknown Oregon license plates. Vehicle had a bar code sticker on the rear passenger-side window.

On 3/20/12, I was dispatched to a call of a suspicious circumstance. The reporting party, Brad Johnson, called FPD Dispatch to advise on the evening of 3/19/12, he saw a female who looked similar to missing juvenile Sierra Lamar at Meyer Park located at the intersection of Glenmoor Dr/Eggers Dr.

I contacted Johnson via telephone at his listed cell phone number. In summary, Johnson stated the following:

On 3/19/12, at approximately 1730 Hrs, Johnson was walking his dog n/b along the west sidewalk of Glenmoor Dr. As Johnson passed by Meyer Park, he observed the listed Ford parked facing s/b on the west curb of Glenmoor Dr, just east of the community pool. Johnson noticed SUBJECT #3 seated in the driver's seat of the Ford, and SUBJECT #4 seated in the front passenger seat. Johnson also noticed SUBJECT #1 and SUBJECT #2 exit the rear doors of the Ford and begin walking towards the playground in the park, located just north of the community pool.

Johnson noticed that SUBJECT #1 and SUBJECT #2 appeared to be avoiding making visual contact with him as he passed them, as they turned their faces and bodies away from him while walking towards the playground.

Johnson had never seen the Ford before and did not recognize any of the persons associated to the vehicle from prior contacts. As he walked past the Ford, Johnson noticed that SUBJECT #3 appeared to be looking away from

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7448/LAWRENCE, JEFFREY	05/18/2012 11:22	1 of 5

CONFIDENTIAL - Juvenile Non-disclosure
Fremont Police Department

120320008

Supplement No
ORIG

Summary Narrative

him (Johnson) while smoking a cigarette. Johnson believed it odd for SUBJECT #3 to be looking away from him, as it appeared SUBJECT #3 was attempting to avoid eye contact with Johnson.

Johnson continued walking n/b on the sidewalk and watched as SUBJECT #1 and SUBJECT #2 walked towards the playground area holding hands. SUBJECT #1 and SUBJECT #2 then sat down on the playground equipment next to one another and appeared affectionate towards one another, hugging and placing their arms around one another. Johnson then got into his vehicle which was also parked on Glenmoor Dr and maintained visual contact with SUBJECT #1 and SUBJECT #2, as well as the Ford, for several moments. Johnson noticed SUBJECT #1 and SUBJECT #2 look at him in his vehicle several times and thought it to be odd, as they appeared to have previously been trying to avoid visual contact with him. Johnson then left the area after a few moments without any further contact with any of the listed subjects.

It should be noted that at the time of this incident, Johnson had no knowledge of the missing juvenile, Sierra Lamar, who'd gone missing from Morgan Hill on 3/16/12 (Morgan Hill PD report #120760368). Furthermore, at the time of this incident, Johnson had not seen any pictures or media coverage regarding Lamar and had no knowledge of her physical appearance.

On the morning of 3/20/12, Johnson was watching the news and saw coverage of the Sierra Lamar story. Johnson saw pictures of Lamar broadcast via the news, and immediately noticed that Lamar looked very similar to SUBJECT #1, who he'd seen the previous evening (3/19/12) at Meyer Park. Johnson had to leave for work, so he called FPD to report the incident upon arriving for work and remained at work until contacted via telephone by FPD.

After obtaining Johnson's statement, I asked him how certain he was that SUBJECT #1, who he'd seen in the park on 3/19/12, was Sierra Lamar. Johnson stated that he "couldn't be 100% sure", but that he was "pretty certain it was her (Lamar)", and the likelihood that SUBJECT #1 was Lamar was "better than 50/50."

I asked Johnson if SUBJECT #1 appeared to be in distress, upset, or injured, and he stated "No." Johnson added that SUBJECT #1 and SUBJECT #2 appeared "lovey dovey", and that the only thing alerting him to SUBJECT #1 on 3/19/12 was the fact that she, SUBJECT #2, and SUBJECT #3 all appeared to be avoiding visual contact with him when he walked past them on Glenmoor Dr.

I asked Johnson if he thought he'd be able to identify any of the aforementioned subjects if he were to see them again, or see pictures of them. Johnson stated that he believed he could identify SUBJECT #1 and SUBJECT #3 if he were to see them again, but not SUBJECT #2 or SUBJECT #4.

I asked Johnson how certain he was that the vehicle he saw them in was a Ford, and he stated he was positive it was a blue, 4-door Ford with Oregon license plates. Johnson also stated he was "90% sure" the model was a Fusion, and that he believed the Ford may be a rental car as it had a bar code sticker affixed to the right, rear passenger side window.

After speaking to Johnson, I conducted an RMS check for any blue Ford Fusions contacted by FPD in the past several years. RMS yielded 5 different blue Ford Fusions contacted by FPD, however none had Oregon license plates and none of the associated persons to any of these vehicles matched the description of SUSPECT #1.

I recommend a copy of this report be forwarded to FPD Detective Cochran and Santa Clara County Sheriff's Office Sgt. Carrasco for review.

Nothing further by this officer.

Cc: FPD Detective Cochran, SCCSO Sgt. Carrasco

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CONFIDENTIAL - Juvenile Non-disclosure
Fremont Police Department

120320008

Supplement No
ORIG

PERSON 1: Confidential			
Involvement	Inv No	Name	
PER	1	See Confidential Page	
REPORTING PERSON 1: JOHNSON, BRAD			
Reporting Person	Inv No	Type	Name
REPORTING PERSON	1	Individual	JOHNSON, BRAD
Race	Sex	Juvenile?	Sort order
		No	470
Type	Address		City
Home			Fremont
State			
California (Not for boat RES)			
Type	ID No	DL#	
Operator License/ID		California (Not for boat RES)	
Phone Type	Phone No	Phone Type	Phone No
Cellular		Home	

Narrative

SAME AS SUMMARY:

- SUBJECT #1:** WFJ 14-16yo, 5'2, thin build, dark colored hair and eyes. Last seen wearing dark colored "skinny" jeans and a dark colored shirt.
 - SUBJECT #2:** WMJ 15-16yo, 5'10, thin build, dark colored "shaggy" hair, large hoop earring in right ear (the type that extends the earlobe). Last seen wearing dark colored "skinny" jeans and a dark colored T-shirt.
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 - SUBJECT #4:** WFJ 12-13yo, dirty blond hair, "chubby cheeks", unknown clothing.
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Johnson noticed that SUBJECT #1 and SUBJECT #2 appeared to be avoiding making visual contact with him as he passed them, as they turned their faces and bodies away from him while walking towards the playground.

Johnson had never seen the Ford before and did not recognize any of the persons associated to the vehicle from prior contacts. As he walked past the Ford, Johnson noticed that SUBJECT #3 appeared to be looking away from him (Johnson) while smoking a cigarette. Johnson believed it odd for SUBJECT #3 to be looking away from him, as it appeared SUBJECT #3 was attempting to avoid eye contact with Johnson.

Johnson continued walking n/b on the sidewalk and watched as SUBJECT #1 and SUBJECT #2 walked towards the playground area holding hands. SUBJECT #1 and SUBJECT #2 then sat down on the playground equipment next to one another and appeared affectionate towards one another, hugging and placing their arms around one another. Johnson then got into his vehicle which was also parked on Glenmoor Dr and maintained visual contact with SUBJECT #1 and SUBJECT #2, as well as the Ford, for several moments. Johnson noticed SUBJECT #1 and SUBJECT #2 look at him in his vehicle several times and thought it to be odd, as they appeared to have

Report Officer: 7448/LAWRENCE, JEFFREY	Printed At: 05/18/2012 11:22	Page 3 of 5
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CONFIDENTIAL - Juvenile Non-disclosure
Fremont Police Department

120320008

Supplement No
ORIG**Narrative**

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It should be noted that at the time of this incident, Johnson had no knowledge of the missing juvenile, Sierra Lamar, who'd gone missing from Morgan Hill on 3/16/12 (Morgan Hill PD report #120760368). Furthermore, at the time of this incident, Johnson had not seen any pictures or media coverage regarding Lamar and had no knowledge of her physical appearance.

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I recommend a copy of this report be forwarded to FPD Detective Cochran and Santa Clara County Sheriff's Office Sgt. Carrasco for review.

Nothing further by this officer.

Cc: FPD Detective Cochran, SCCSO Sgt. Carrasco

Report Officer 7448/LAWRENCE, JEFFREY	Printed At 05/18/2012 11:22	Page 4 of 5
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CONFIDENTIAL - Juvenile Non-disclosure
Fremont Police Department

120320008

Supplement No
ORIG

Confidential Section									
Do not distribute									
PERSON 1: LAMAR SIERRA									
Involvement	Invl No	Type	Name	DOB	Sex				
PERSON	1	Individual	LAMAR, SIERRA						
DOB	Age	Juvenile?	Race	Height	Hair Color	Eye Color	Confidential	Case Number	
		Yes					Juvenile Non-disclosure	150	

Report Officer	Printed At	
7449/LAWRENCE, JEFFREY	05/18/2012 11:22	Page 5 of 5

REPORT TYPE [O] Missing Juvenile	<input type="checkbox"/> SUPPLEMENTAL	Office of the Sheriff Santa Clara County NARRATIVE	CASE NO. 12-076-0368G
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LOCATION OF ORIGINAL EVENT (IF KNOWN) [REDACTED]	VICTIM NAME (LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)) Lamar Sierra
---	---

1 to the comment stating they had not seen V1 Sierra or heard from her.

2 I spoke on the telephone to numerous friends of V1 Sierra throughout

3 the investigation. One of her friends ¿Claire¿ told me she had a

4 conversation with V1 Sierra on 3/15/2012 at approximately 1600 hours,

5 about going to Fremont and visiting V1 Sierra¿s old friends. Claire

6 also told me V1 Sierra had said in the past when she waits for her

7 bus there are ¿creepy people¿ around her.

8

9 I also spoke with ¿Clarissa¿ who was the last person V1 Sierra had

10 contacted this morning at 0711 hours via text message. Clarissa

11 informed me the text conversation entailed the two of them meeting at

12 school to compare homework before class. Clarissa told me V1 Sierra

13 was not in school today and when she asked her friends where she was

14 they told her V1 Sierra did not take the bus to school this morning.

15

16

17 Deputy Furtado, Whaley and I conducted a sweep of the property

18 surrounding [REDACTED]

19

20 [REDACTED]

21 [REDACTED] I asked O1 Steve his whereabouts

22 during 0700 hours this morning. O1 Steve said he was at his house in

23 Fremont with his girlfriend and his 21 year old daughter Danielle

24 Lemar.

25

26 At approximately 2104 hours, a BOL was broadcasted by County

27 Communications.

28

29 Sgt Frechette notified Lt. Oberst of the incident and passed all the

30 information to the midnight deputies.

OFFICER'S NAME De Santiago	ID NUMBER 2024	DATE 03/16/12 2359	SHIFT/DAYS OFF III SSM	SUPERVISORS REVIEW VanderEsch, Douglia	ID NUMBER 1763	DATE 03/17/12 536	PAGE 5	OF 8
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UNCLASSIFIED//FOUO

IP ID: SCCSO-C002029

ORION INFORMATION PACKAGE IP# SCCSO-C002029

Current Date: 07/10/2013 03:23 PM EDT **Precedence:** Routine
Created By: Somerville, Steven (SCCSO - Investigations at Santa Clara JOC) - 05/22/2012
11:37 AM PST
Received By: Somerville, Steven - 05/22/2012 12:34 PM PST

SOURCE(S) OF INFORMATION

Contact Method: Telephonic
Reporting Person: Putnam Tyler
Male
Contact Info: Home Phone: [REDACTED]

NARRATIVE

(U)On 05/22/2012 I received a telephone call from Tyler Putnam. Approximately one month ago Tyler Putnam came in contact with a young Hispanic female juvenile on at Conner State University in Oklahoma. The young female juvenile appeared to be 14 to 16 years old, approximately 5' 2" to 5' 3", dark brown or black hair and weighed approximately 110 lbs. The young female juvenile told Tyler Putnam her name was Sierra Lamar. Tyler Putnam was shown a California High School ID card. Tyler Putnam was not able to remember what the name of the California High School in which the young juvenile attended. The young juvenile told Tyler Putnam that she was from California and was visiting her cousin who attended college at Conner State University. The female juvenile stated she would be returning to California when her cousin's semester ended for summer break. Tyler Putnam did not have any additional information, however, he stated if he saw her again on campus he would alert authorities of her location. [Somerville, Steven (SCCSO - Investigations at Santa Clara JOC) - 05/22/2012 11:37 AM PST]

LEADS FROM Santa Clara Investigations

Lead Number: SCCSO-C002029-01
Type: Information Only **Status:** Covered
To: SCCSO - Investigations
Lead: Reporting party was contacted via telephone on 06/04/2012. RP has not had any additional sightings of juvenile subject since he contacted the Sheriff's Office Tip line. The LaMar family was contacted and told investigators that they do not have any family members attending Conner State University nor do they have family that reside in Warner Oklahoma. No additional leads to follow IP should be closed.

Disposition Data for Lead Number SCCSO-C002029-01

Disposition: No further follow up required IP will be closed.

ADMINISTRATIVE SECTION

IP Status: Completed - 01/14/2013 10:08 AM PST
Submitted By: Somerville, Steven (SCCSO - Investigations at Santa Clara JOC) - 05/22/2012
11:37 AM PST
ASSESSMENT
Assessment By: Anderson, Genieve (SCCSO - Investigations at Santa Clara JOC) - 05/22/2012
05:14 PM PST

LEAD EVALUATION

Investigations: Leads Required
Evaluated By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012
03:27 PM PST

LEADS

Lead Number: SCCSO-C002029-01 **Type:** Information Only
Status: Covered
Created By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:31 PM PST
Approved By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC)
Entered By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:31 PM PST
Assigned To: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:33 PM PST
Assigned By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:33 PM PST
Disposition By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:34 PM PST
Entered By: Quintana, Gerardo (SCCSO - Investigations at Santa Clara JOC) - 06/04/2012 03:34 PM PST
Approved By: McAllister, Paula (SCCSO - Investigations at Santa Clara JOC)
Entered By: McAllister, Paula (SCCSO - Investigations at Santa Clara JOC) - 01/14/2013 10:08 AM PST

INDEX RECORDS ASSOCIATED WITH IP# SCCSO-C002029

The following Index Records are currently associated with the information contained within this IP. Since Index Records are subject to update at any time, it should be recognized that viewing or printing this IP at a later date may produce Index Records that could be significantly different than those displayed here.

Person: Putnam Tyler
Male
Contact Info: Home Phone: [REDACTED]
Related IP ID(s): SCCSO-C002029

UNCLASSIFIED//FOUO

IP ID: SCCSO-C002029



REPORT TYPE [O] Missing Juvenile	<input checked="" type="checkbox"/> SUPPLEMENTAL	Office of the Sheriff Santa Clara County NARRATIVE FORM	CASE NO. 12-076-0368G
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LOCATION OF ORIGINAL EVENT (IF KNOWN) Paquiza Espana Avenue / Morgan Hill / 95037	VICTIM NAME (LAST, FIRST, MIDDLE (FIRM, IF BUSINESS)) Lamar Sierra	10/19/1996
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1 hair. I transferred the 3-26-12 interview with R01 Marlene onto CD.

2 I later booked the original CD into evidence and submitted copies as

3 attachments to this report.

4

5 On Sunday 4-1-12 at approximately 1000 hours, I met with Criminalist

6 Hengoad at the Sheriff's Office evidence garage in order for her to

7 inspect the tires and collect any potential evidence from them. I

8 stood by as Criminalist Hengoad completed her tasks and collected

9 several hairs from the tires. Refer to Criminalist Hengoad's Lab

10 report for details.

11

12 At approximately 1130 hours, I spoke with Santa Clara County SAR

13 Leader J. Thomas who clarified that during the initial canine search

14 on 3-17-12 in the area of V01 Sierra's residence at [REDACTED]

15 Court, the tracking dog(s) lost V01 Sierra's scent approximately

16 halfway down the street in the area of [REDACTED] Court and on

17 the way out of the court. This was in contrast to my initial

18 understanding that the dog(s) had lost V01 Sierra's scent at the

19 entrance to her driveway. Refer to SAR search maps for GPS

20 coordinates and details.

21

22 I was contacted by Sgt. Benner from the surveillance teams and advised

23 that the GPS tracker placed on S01 Antolin's JETTA was no longer

24 operating. Sgt. Benner also told me that S01 Antolin had been

25 stopped in his vehicle by a marked Sheriff's Office patrol unit.

26 Refer to Dep. Barton's supplemental report for details regarding the

27 vehicle stop, statements made by S01 Antolin, the subsequent driving

28 under the influence investigation and the surreptitious obtaining of

29 a DNA sample from S01 Antolin.

30

OFFICER'S NAME Leon, Herman	ID NUMBER 1685	DATE 01/14/13 1250	SHIFT/DAYS OFF Det F-Su	SUPERVISORS REVIEW Lera, Thea	ID NUMBER 1708	DATE 01/22/13 1239	PAGE 13	OF 16
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EXHIBIT A

STATEMENT OF FACTS

Santa Clara County Sheriff's Office Case #12-076-0368G

Suspect: Antolin Garcia Torres

Victim: Sierra LaMar

On Friday, March 16, 2012, Sierra LaMar, age 15, was living with her mother and her mother's boyfriend in Morgan Hill, California. Sierra was a student at Sobrato High School. On a school day, Sierra would normally leave her home by 7:15 a.m. and walk several blocks to her unmarked school bus stop, where the bus was scheduled to pick her up by 7:24 a.m. Sierra was the only student who used that stop.

That morning, Sierra was up by 6 and getting ready for school. By that time her mother's boyfriend had already left for work, and her mother left shortly thereafter. At 7 a.m., Sierra posted a photograph of herself on a social media website. At 7:11 a.m., Sierra exchanged a text message with a classmate, and the two of them agreed to meet at school that day before class to compare homework and share makeup.

Sierra never got on her bus that morning, she never made it to school that day, and she was not home when her mother returned from work that day, which was unusual because Sierra was routinely home before her mother. Later that evening, Sierra's mother contacted the Santa Clara County Sheriff's Office and reported her daughter missing.

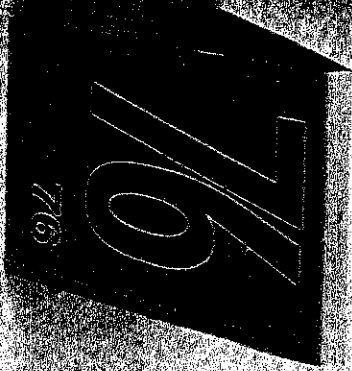
The following day, an extensive ground and air search was initiated to locate Sierra using Santa Clara County Search and Rescue personnel and equipment. A tracking canine traced Sierra's scent from her house to a point approximately mid-way down her street, where the dog appeared to lose the scent. Later that day, Sierra's mobile phone was located in a field less than a mile from her home.

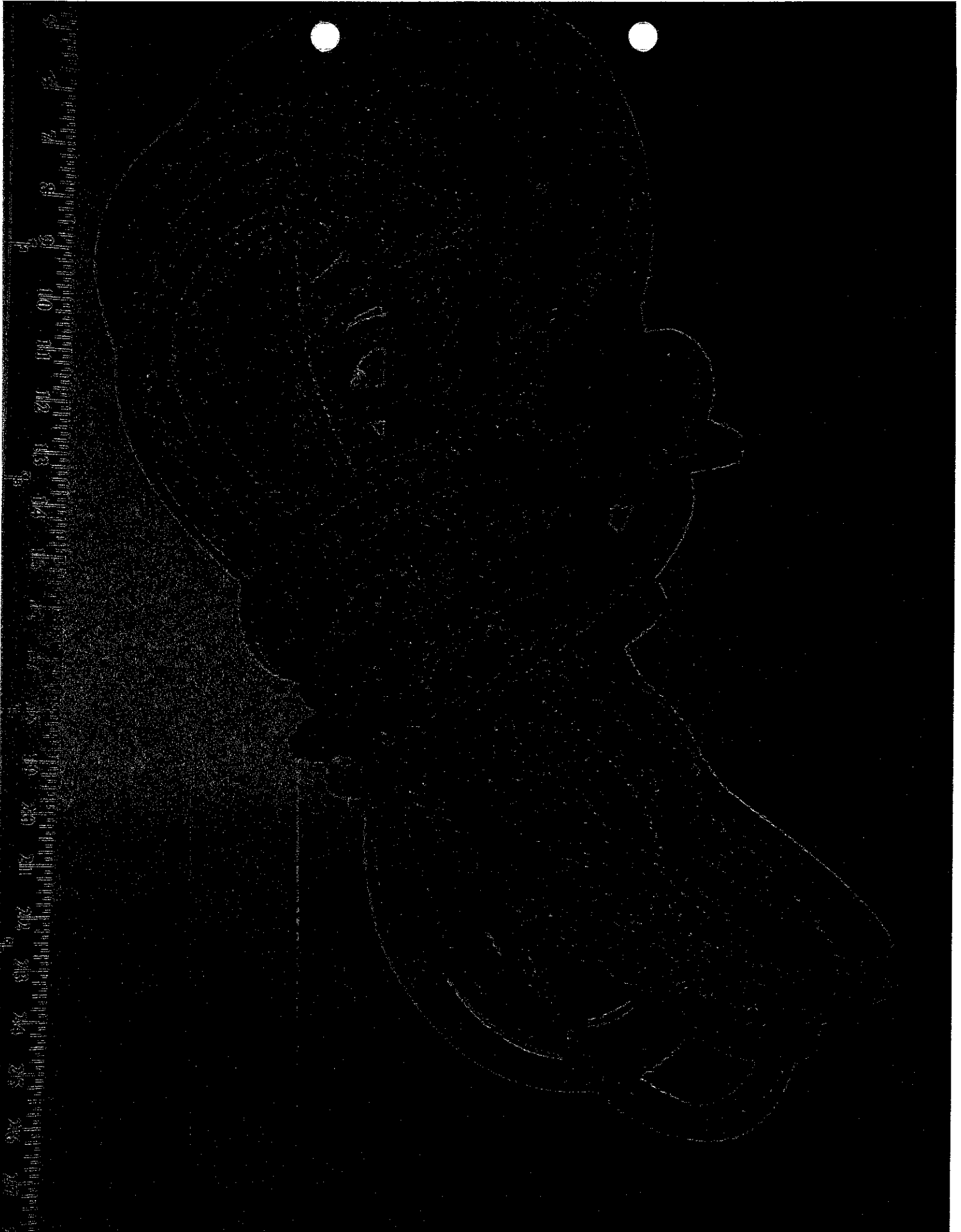
On Sunday, March 18, 2012, Sierra's purse, school books and clothing were located near a shed in a field fewer than 2 miles from her home.

Sierra's discovered clothing was submitted to the Santa Clara County District Attorney's Office Crime Laboratory for analysis. Forensic examination of the clothing revealed the presence of DNA foreign to Sierra. The profile of the foreign DNA was entered into the Combined DNA Index System (CODIS), which is an FBI database that stores DNA profiles created by federal, state and local crime laboratories in the United States, and can be used by criminalists to assist in the identification of crime suspects. A search of the database identified a strong association between the foreign DNA from Sierra's clothing and the DNA profile of Antolin Garcia Torres. On March 28, 2012, investigators were notified of this potential suspect.

Antolin Garcia Torres lived approximately 7 miles from Sierra's home, and drove a 1998 VW Jetta. On April 7, 2012, investigators seized the Jetta and submitted it to the crime laboratory for processing and analysis. Criminalists located DNA foreign to Antolin Garcia Torres within the car, and found a strong association between that foreign DNA and the DNA profile of Sierra LaMar.









County of Santa Clara Crime Laboratory

Office of the District Attorney
250 West Hedding Street
San Jose, California 95110-1717
(408) 808-5900
(408) 275-6245 FAX

PHYSICAL EVIDENCE EXAMINATION REPORT Supplemental Report Number 35

Agency Case Number 120760368G	Agency Santa Clara County Sheriff's Office	Laboratory Number M120319	
Suspect(s) Garcia Torres, Antoin	Offense N/A, 187 PC	Analyst Trevor Gillis	
Victim(s) LaMar, Sierra	Report Date 4/10/2013	Requesting Officer H. Leon, M. Carrasco	

EVIDENCE AND SOURCE

D. Giovanetti from the Santa Clara County Sheriff's Office submitted the following properly packaged items to Property/Evidence Technician T. Roberts on March 19, 2012:

Bar Code / SO Bar code	Description
AA130685 / 169109	Black sweatshirt with Sharks logo reportedly belonging to Sierra LaMar
AA130758 / 169108	Jeans reportedly belonging to Sierra LaMar

REQUESTED ANALYSIS

Search for textile damage on the submitted items, specifically searching for signs of bleach, chemical, and stun gun damage.

RESULTS AND CONCLUSIONS

The sweatshirt and jeans were visual and microscopically searched for signs of textile damage from bleach, chemicals, or a stun gun using a stereomicroscope.

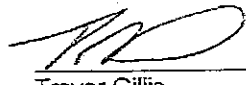
Damage, stains, and marks attributable to bleach or other chemicals were not detected on the sweatshirt or the jeans reportedly belonging to Sierra LaMar.

Damage and marks attributable to a stun gun discharge were not detected on the sweatshirt or the jeans reportedly belonging to Sierra LaMar.

Digital images were uploaded to the Laboratory Information Management System.

DISPOSITION OF EVIDENCE

All items will be released to the Property/Evidence Unit upon completion of the review process. Once available, please arrange to retrieve your evidence at your earliest convenience.


Trevor Gillis
Criminalist
4/10/2013

Electronically stored instrumental data files generated in the course of analysis may be available upon specific request only. These files may require specialized software to open and view; the Laboratory cannot provide any such software.

Review: *DR LS 4/30/13*
MS 4-24-13 TR
AR AB 4-29-13
Page 1 of 1

1 LAW OFFICE OF THE ALTERNATE DEFENDER
2 DAVID EPPS, # 160173
3 ALFONSO LOPEZ, # 203564
4 BRIAN MATTHEWS, # 191508
5 701 Miller Street, First Floor
6 San Jose, CA 95110
7 Telephone: (408) 299-7234
8 brian.matthews@ado.sccgov.org

9 *Attorneys for Antolin Garcia Torres*

FILED
SEP 02 2015
Superior Court
DIANA GUTIERREZ

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

12
13 People of the State of California,

Case No.: 213515

14 Plaintiff,

PROOF OF SERVICE

15 vs.

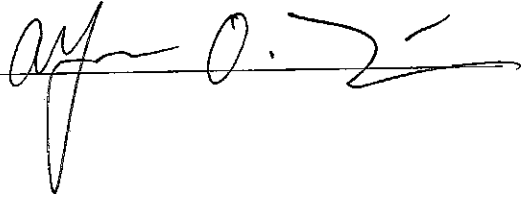
16
17 Antolin Garcia Torres,

18 Defendant

19
20
21 I am a citizen of the United States and employed in Santa Clara County. I am over
22 the age of eighteen years and not a party to this action. My business address is 701 Miller
23 Street, San Jose, CA 95110.

24 On September 2, 2015 I served the within *Order Permitting Filing in Excess of*
25 *Page Limit, Declaration of Counsel in Support of Order Permitting Filing in Excess of*
26 *Page Limit, and Notice of Motion and Motion to Dismiss Indictment* on the Plaintiff in
27 this action by leaving a true and correct copy at the clerk's office at the Hall of Justice.
28

1 I declare under penalty of perjury that the foregoing is true and correct. Executed
2 on this 2nd day of September at San Jose, California.
3

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