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OFFICE OF THE DISTRICT ATTORNEY

Concord Judicial Court

Sonnerville, Columbia

MEMORANDUM

TO: Andrew Solmark, Assistant District Attorney

FROM: Applicant

DATE: July 30, 2019

RE: State v. Martin

INTRODUCTION

Here is what I have prepared for you on the Martin case, where she has been charged with identity theft . Below, you will find my objective analysis as to the admissibility of the prior specific acts by Ms. Martin. I have analyzed them under both Columbia Rule of Evidence 404 (substantive admissibility) as well as Columbia Rule of Evidence 608 (impeachment admissibility).

THE LAW

Substantive rule

Columbia Rule of Evidence(CRE) 404 (b) governs specific instances of conduct offered "to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." State v Landreau (2011) CRE 404(b)(1) prohibits the admission of prior bad acts to establish an individual's character or propensity to commit a crime.Landreau But Rule 404(b)(2) allows for the admission of prior bad acts "for other purposes, such a motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Landreau

In Landreau, the court found that an instance that is sufficeintly similar, and close in time to the current matter at hand, are sufficient to show inference of knowledge and intent. Landreau was charged with fraud. The court admitted evidence of a prior occasion where Landreau had provided a false name and fabricated social security number in an application for a bank loan.

Finding the circumstances to be sufficiently similar and close in time, to the charge at hand. The court concluded that the lower court had erred in admitting evidence of a prior assault as it was not sufficiently similar to the charge at hand.

Impeachment rule

CRE 608(b) provides that a witness may be asked about specific instances of conduct that are probative to the witness' character for truthfulness. State v. Proctor(2008). In Proctor that court allowed for questioning about a prior shoplifting occurrence finding it was probative to the truthfulness of the witness pursuant to 608 (b).

The court discussed three approaches to determining if a specific act is probative of truthfulness. Ultimately the court adopted the middle approach whereby the court incorporates the narrow approach which limits the inquiry to acts to that of false statement or deception. but also indicating a willingness to to permit questions that indicate a willingness to to gain personal advantage by dishonest means, including taking from others or encouraging dishonest behavior.

SPECIFIC ACTS BY MS. MARTIN

GIVING HER SISTER'S ID WHEN PULLED OVER FOR A BROKEN TAIL LIGHT

Substantively

The court Landreau provided a rule for admissibility being that the instance must be sufficiently similar to the matter at hand and close in time. Further, In State v Vargas the court found that it was not an abuse of discretion to admit evidence of prior fraudulent transactions to rebut a claim that the defendant has been duped into joining the charged transactions.

Here, we seek to introduce evidence of a prior act where Martin gave her sister's ID because her's was expired. In the current matter she gave false information to obtain credit under another person's name.

While the defense would argue that these matters are dissimilar, they are very much the same. Both instances involve giving the information of another for a benefir. . In the the prior instance the benefit was not getting in trouble for driving with an expired license. In this instance, the benefit was having credit that may not have been offered under her own identity. This also occurred a mere three months ago, and the court would likley find this is close enough in time.

Further the evidence is admissible to rebut the defense's theory that this was all an error on the side of the credit card companies.

The court will likely admit this evidence substantively under rule 404(b).

Impeachment

The court in Proctor determined that evidence of bad acts can be used to impeach a witness when the act is probative of truthfulness. The court adopted the middle approach whereby inquiry to acts to that of false statement or deception. but also indicating a willingness to to permit questions that indicate a willingness to to gain personal advantage by dishonest means, including taking from others or encouraging dishonest behavior.

The act of giving false information indicates a willingness to gain advantage by dishonest means, and the court would likely find that providing the ID of another qualifies as false information and that the act should be admitted for impeachment purposes.

This prior act should be admitted for both substantive and impeachment purposes.

DRUNKENLY YELLING AT AN OFFICER OUTSIDE OF A BAR

Substantively

In Landerau, the court found that assault was not sufficiently similar to her charge of fraud to allow the evidence of the specific act. Here, there is evidence of Martin drunkenly yelling at an officer. In Landareu the court found that "acts of ...intoxication are not sufficiently similar to the crime of passing bad checks. This is a identify theft case, and the defense would be correct to argue that this is not sufficiently similar to the matter at hand to be admissible under 404(b)

Martin being drunk and disorderly has nothing to do with her propensity to commit identity theft. and as such the evidence would not likely be admitted substantively.

Impeachment

The court in Proctor determined that specific acts can only be used for impeachment if the act is probative the witness's truthfulness. Again, the defense would be correct to assert that Martin's drunk and disorderly conduct of yelling at an officer has nothing to do with her propensity to commit identify theft and the court would not allow this evidence to be used as impeachment.

The court would not likely allow this specific act to be admitted wither substantively or for impeachment purposes.

THREATS TO BERNECIA MARTINEZ (THE VICTIM)

Substantively

In Landreau the court found that "acts of violence.. are not sufficiently similar to the crime of passing bad checks. The defense would be correct to assert that the act of violence towards the victim would not be sufficiently similar. However, Rule 404(b)(2) allows for the admission of prior bad acts "for other purposes, such a motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Landreau.

The specific act could still be argued to be admitted to show knowledge, identity and absence of mistake or accident. Ms. Martin called the victim, identified herself and threatened her "if she testified at trial in this case, she would regret it." This clearly shows knowledge, and absence of the mistake the defense is claiming occurred.

While the evidence is not admissible under the plain reading of 404, it would be admissible for substantive purposes under 404 (b)(2)

Impeachment

Under the middle approach adopted in Proctor the court determined that evidence is admissible for impeachment purposes, specifically including taking from others or encouraging dishonest behavior.

Here, Ms Martin is threatening the victim to lie, which as the prosecution, we should argue is a the indirectly encouraging dishonest behavior. While the defense wil argue that this is a merely an act of violence the court would likely rule in our favor

This specific act should be admissible for both substantive as well as impeachment purposes.

CONCLUSION

After conducting my research as to the relevant case law , the above analysis is where I have landed as to the admissibility for substantive and impeachment purposes as to the specific acts the Ms. Martin had committed. It appears to me the only act we will not be able to get into evidence would be the drunken yelling at an officer.

Signed,

S/

Applicant

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