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To: Andrew Slomark, DA

From : Applicant

Date; July 30, 2019

RE: State v. Martin

INTRODUCTION

Per your request, this memorandum analyzes whether we can admit any of the incidents involving Ms. Martin as either 1. Substantive Evidence under CRE 404(b)(1) or; impeachment under CRE 608(b). Here we find that a court will

DISCUSSION

A COURT WILL FIND THAT FRAUD TO A POLICE OFFICE TWO MONTHS AGO IS ADMISSIBLE BECAUSE ITS SIMILAR TO THE CHARGE AT HAND AND HAS A CLOSE TEMPORAL CONNECTION

Under CRE 404(b)(1) the admission of prior bad acts to establish an individual's character or propensity to commit a crime is prohibited. However, rule 404 (b)(2) permits the admission of prior bad acts for other purposes such as motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake. A court must determine that evidence is relevant for some other purpose than propensity to be admissible. To determine if evidence can be used for some other purpose the court considers: 1. The degree of similarity to the charged crime; 2. The temporal relationship of the other acts Landreau. Specific acts can be the basis for inferring that the defendant has a mental state that is not innocent. The other bad act need not be identical to the crime charged so long as it is sufficiently similar to permit a reasonable inference of knowledge of intent Landreau.

Here, in our case, Ms. Martin lied to a police officer a different name and driver's license three months ago. This is fraudulent misrepresentation. She is now being charged with a similar crime in stealing SNN's and committing fraudulent misrepresentation. This act is not the same, but sufficiently similar to have an inference of motive. Similarly in Landreau the court

found that false statements on a mortgage application provided a false name and fabricated SSN and made up Bday. Then she opened a number of checks with different banks the checks bounced. These two crimes were similar enough for the court to find an inference of knowledge or intent. Like in Landreau, we have a temporal connection. In that case two years was enough to consider a temporal element. Here, we only have three months. Therefore a court will find that 1. The acts are similar to the crime charged and 2. There is a temporal relationship.

Thus, the court should admit this substantive evidence of a prior bad act.

THE STATEMENTS MADE TO MS. MARTINEZ ARE PERMISSIBLE PRIOR BAD ACTS FOR IMPEACHMENT BECAUSE THEY SHOW A WILLINGNESS TO GAIN A PERSONAL ADVANTAGE, WHILE BEING INTOXICATED IS NOT PROBATIVE FOR IMPEACHMENT. LYING TO POLICE OFFICERS IS ALWAYS PROBATIVE FOR IMPEACHMENT.

Rule 608(b) allows for impeachment. The rule does NOT explain how to determine if an act is probative of truthfulness Proctor. However, caselaw has determined that the rule must establish that the witness "was untruthful about the issue when questioned by someone on that topic." Proctor. There is a wide variety conduct to be probative such as false info to a police officer and misrepresenting financial info. In contrast acts of violence, drug use, driving under the influence are not probative. The law is not well settled. There are 3 approaches the courts use 1. broad, 2. middle and 3. narrow. Modern courts never use the broad approach. The narrow approach is limiting because the act needs an element of the crime. The middle approach permits questioning about conduct that indicates a willingness to gain personal advantage by dishonest means including taking from others by rights violation or encouraging dishonest behavior in other. An example of this is persuading a witness lie on the stand. Proctor

In Proctor a court found that lying to a police officer is probative for impeachment. Like in that case, Ms. Martin lied to a police officer.

Thus, the statement to the police officer may be used to impeach Ms. Martin.

In Proctor, acts of drug use were not found to be probative. Like in Proctor, Ms. Martin was under the influence when she was outside the Bar. Therefore a court will not find that this is act is probative for impeachment.

In Proctor, the middle approach allowed conduct of encouraging dishonest behavior for impeachment. Like in Proctor, Ms. Martin threatened Ms. Martinez by saying that if she testified she would "regret it." She also suggested that Ms. Martinez commit perjury. These two facts, encouraging dishonest behavior and urging perjury are enough to show a willingness to gain a

personal advantage under Proctor and permitted for impeachment purposes under rule 608(b)

Thus, the statements in the phone call to Ms. Martinez should be used to impeachment purposes.

Question #6 Final Word Count = 775

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