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Memorandum

To: Andrew Solmark, Assistant District Attorney

From: Applicant

Date: July 30, 2019

RE: State v. Martin

I. Issue

This memorandum is to address two issues (1) whether the state can admit any of Ms. Martin's incidents as substantive evidence and (2), if not allowed as substantive evidence, whether the evidence can be used to impeach Ms. Martin if she takes the stand.

II. Legal Analysis

a. Admittance of incidents as substantive evidence

Columbia Rules of Evidence ("CRE"), provides that the admission of prior bad acts to establish an individual's character or propensity to commit a crime a crime is prohibited. CRE 404(b)(1). However, CRE does permit the admission of prior bad acts for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. CRE 404(b)(2)

To allow Ms. Martins specific acts, there needs to a showing that the bad acts are not admitted to show propensity of a crime, but rather for some other purpose.

Specific acts of dishonesty

In *State v. Landreau*, Supreme Court of Columbia (2011), which is controlling under Columbia's jurisdiction, Ms. Landreau attempted to open checking accounts with four different banks over a 2 week period. In the States case, the court allowed two of Ms. Landreau's previous incidents (1) application for mortgage using false name, social security number, and birth date, as well as

(2) evidence of Ms. Landreau in a physical altercation of assaulting another patron at a bar after a heated fight. *Landreau*. The Landreau court looked to see if admissibility under CRE 404(b) was relevant for some other purpose other than to show propensity, the court considers that degree of similarity to the charged crime and the temporal relationship to the other acts.

Landreau.

Ms. Landreau's false mortgage application of providing a false name, social security number, and birth date was found to be similar to the charged crime of falsely opening up bank accounts. This is very similar to Ms. Martin in her specific past acts of opening up a credit line at Banks with the victims name and social security number, as well as a second attempt at Chciklets clothing with again the victims name and social security number is similar to the charged crime of identity theft. Both rest on a mental state, as the Landreau court came to the conclusion that, "specific acts can be the basis for inferring that the defendant had a mental state that is inconsistent with innocence" *Landreau*.

The Landreau court, has also allowed specific acts when it can shown for opportunity . . . *Landreau*. Ms. Martin's former job incident can be shown that there was ample opportunity for Ms. Martin to access the victims information as Ms. Martin was in a position to review and see the victims name as well as personal information like social security number, thereby showing opportunity on Ms. Martins part.

All of Ms. Martin's specific prior acts relating to Blake's department store, Chicklets, and FastCom will likely be admissible as substantive evidence as they show willingness to deceive and were close in time, and similar to the charge.

Specific acts of violence or intoxication

The Landreau court has provided that acts of violence or intoxication are not sufficiently similar to the crime of passing checks to permit any inference. *Landreau*. The same can be said here, Ms. Martins intoxication incident with the police officer at the Blue Moon Bar is not closely related to identity theft and should not be allowed to be used for substantive evidence.

b. Impeachment of Ms. Martin

In *State v. Proctor*, Supreme Court of Columbia (2008), the court held that there are three categories of view for the definition of truthfulness or dishonesty, the narrow, middle, and broad. The court adopted the middle as it incorporates the views of the narrow but permit questioning conduct that indicates a willingness to gain a personal advancement by dishonest means.

Persuading a witness to lie on the stand under *State v. Voorhees* can be used to impeach same as Ms. Martins threat to victim.

III. Conclusion

Question #6 Final Word Count = 678

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