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**To: Andrew Solmark**

**From: Applicant**

**Date: July 30, 2019**

**Re: State v. Martin**

### **Admissibility of Similar Acts Evidence**

The State in the current case State v. Martin intend to introduce similar acts evidence to rebut the defense that is expected to be raised by Ms. Martin. The State will like to admit the specific incidents as substantive evidence under Columbia Rule of Evidence 404 and to impeach Ms. Martin if she takes the stand under Columbia Rule of Evidence 608.

Specifically, the State intends to introduce: (1) Traffic Stop of Ms. Martin for broken tail light where she produced a different name and driver's license; (2) Officer Stop involving Ms. Martin being Intoxicated; and (3) a phone call to Ms. Martin threatening her in which she wrote down the number identifying it came from FastCom phone account. State v. Landreau.

CRE 404 (b)(1) prohibits the admission of prior bad acts to establish an individual's character or propensity to commit a crime. Rule 404(b)(2) does permit, however, the admission of prior bad acts "for purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ie.

In determining the admissibility of evidence under Rule 404(b), the courts must first determine whether the evidence has relevance under Rule 404(b) for some purpose other than as proof of propensity. To determine whether proffered evidence has relevance for one of the other purpose, the court considers: (1) the degree of similarity to the charged crime and (2) the temporal relationship of the other acts. ie.

Specific acts can be the basis for inferring that the defendant had a mental state that is inconsistent with innocence. Prior cases have often established that similar acts may be admitted to rebut a claim of innocent involvement. State v. Rogers. The other bad act need not be identical to the crime charged so long as it is sufficiently similar to permit a reasonable

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inference of knowledge or intent. ie.

**Act 1 - Traffic stop where Ms. Martin gave wrong name and license belonging to someone else.**

Under Rule 608(b), a witness may be asked about specific instances of conduct that are probative of a witness's character for truthfulness or untruthfulness. The rule does not explain how to determine if an act is probative of truthfulness. *State v. Landreau*. Prior decisions have held a wide variety of conduct to be probative of the witness's truthfulness: proving false information to a police officer; intentionally failing to file tax returns; and misrepresenting financial information to obtain a loan. In contrast, our courts have prohibited questioning about some acts because they are not probative of truthfulness: act of violence; instances of drug use; driving under the influence of drugs; and bigamy. ie. The Court went on to state that a thorough review of state and federal case law indicates that the law is not well-settled. a majority of federal courts and some state courts have held that acts of theft are not probative of truthfulness or do not involve dishonest. in contrast, a number of courts have concluded that theft is probative of truthfulness of dishonesty.

These cases can be grouped into three categories, based on their view of the definition of truthfulness or dishonesty: broad, middle, and narrow. The broad approach would allow testimony about instances of weak or bad character as probative of veracity. This approach improperly subjects a witness to questioning about almost any event in her past. Almost no modern decision adopts this view.

In contrast, the narrow approach requires the act to have an affirmative element of false statement or deception, limiting the inquiry to acts such as perjury, false statement, criminal fraud, embezzlement, or false pretense. a majority of federal courts take this view.

Here, depending on what view the court will take, the court may allow this incident as a way to impeach for truthfulness because lying to a police officer is a conduct that would be conduct to be probative of the witness's truthfulness.

Therefore, it is not clear if this prior incident will be admitted to impeach. However, this evidence will not be able to be admitted as substantive.

**Incident 2 - Ms. Martin Incident with Intoxication**

In *State v. Landreau*, the Court found that the incident of the altercation in the bar did not satisfy the requirement of Rule 404(b). It held that acts of violence or of intoxication are not sufficiently similar to the crime of passing bad checks to permit any inference of knowledge or intent. The Court did however, rule that the altercation did not have an impact on the verdict.

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Here, an officer stopped Ms. Martin on the sidewalk outside a Bar. Ms. Martin was intoxicated, barely able to stand and with a strong smell of alcohol. Therefore, the incident of Ms. Martin being stopped while intoxication will likely not be admitted. However, the State can argue that looking at the whole of the evidence, this too, would not effect the verdict.

**Incident 3 - Call from Account Number by FastCom Threatening Ms. Martin**

In determining the admissibility of evidence under Rule 404(b), the courts must first determine whether the evidence has relevance under Rule 404(b) for some purpose other than as proof of propensity. To determine whether proffered evidence has relevance for one of the other purpose, the court considers: (1) the degree of similarity to the charged crime and (2) the temporal relationship of the other acts. State v. Proctor.

Specific acts can be the basis for inferring that the defendant had a mental state that is inconsistent with innocence. Prior cases have often established that similar acts may be admitted to rebut a claim of innocent involvement. State v. Rogers. 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 or intent.

Here, the call that Ms. Martin got from account number will be able to be used as substantive evidence because it is not being used to show prove of propensity. The court will consider the similarity to the charged crime, which here, the crime is for Identity Theft. Incident 3 is a specific act that can be a basis for inferring that the defendant had a mental state that is inconsistent with innocence. Additionally, similar acts may be admitted to rebut a claim of innocent involvement.

Therefore, it is likely that Incident 3 will be admitted as substantive evidence and evidence used to impeach.

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**END OF EXAM**