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OFFICE OF THE DISTRICT ATTORNEY

Concord Judicial Circuit

Sommerville, Columbia

TO: Andrew Solmark, Asstant District Attorney

FROM: Applicant

DATE: July 30, 2019

RE: State v. Martin

**MEMORANDUM**

**I. Admissibility as substantive evidence under Columbia Rule of Evidence (CRE) 404**

**a) Different name and driver's license / Sister's DL / Expired DL**

**Rule 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)** permits the admission of prior bad acts for the purpose of showing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Specific acts **can be the basis** for inferring that the defendant had a mental state that is inconsistent with innocence. See *State v. Landreau*, *State v. Rodgers*, *State v. Vargas*.

The court, when admitting the evidence, will determine whether the evidence has relevance for some purpose other than as proof of propensity and the list provided by CRE 404 (b)(2) is not exhaustive. For this purpose, the court will **consider** the **1) degree of similarity to the charged crime** and the **2) temporal relationship of the other acts** - *State v. Landreau*, *Supreme Court of Columbia (2011)*.

In *Laundreau*, the court found that a mortgage application filed falsely two years ago was relevant to show intent or absence of mistake since it rebuts an innocent involvement defense. Here, Martin was stopped three months ago and falsely provided information to the government. Since three months is a shorter period of time than two years, the temporal relationship favors admittance.

The defense is alleging that the traffic stop was a mistake, similarly to *Laundreau*, which was not deemed as an acceptable defense by the court in that case. Thus evidence will be admissible under 404(b) in our case.

**b) Visibly intoxicated / Shout at the officer / Walked away**

**- Degree of similarity**

In *Laundreau*, the court found no degree of similarity between a charge of assault and the mortgage application under Rule 404(b). Acts of violence or of intoxication are not sufficiently similar. Thus, the evidence will most likely not be admitted substantively by the court.

The defense's allegation that intoxication does not make the defendant a liar

**- Temporal relationship**

Here, Martin was at the sidewalk outside the bar where the shouting happened two months ago.

**c) Information that will be provided by the three witnesses**

*Constance Gainer - Blake Department's Store*

Bernice Martin answered a call intended for Bernecia Martinez who has a different SSN. Ms. Martin had her name and SSN used for a charged card to purchase nearly \$5,000 worth of goods.

*Henry Franks - Chiclet's Clothing*

The defendant used Bernecia Martinez's name and SSN to open a credit card account. These events happened

*Joan Timmons - FastComm*

The defendant had access to SSNs and names of customers and the records included Bernecia Martinez, who had the same SSN as in the above mentioned two incidents.

Timmons personally reviewed Martin's SSN and it only has two digits that are different from the victim.

**- Temporal relationship**

These events happened two weeks ago.

Defense is planning to contend that the is a result of computer error at the two stores.

**II. Use to impeach Ms. Martin if she takes the stand under CRE 608**

Under **Rule 608(b)**, a witness amy be asked about specific instances of conduct that are probative of a witness's character for truthfulness or untruthfulness.

The defense is trying to prevail on the argument that 608(b)(6) requires that the specific conduct go to truthfulness.

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Question #6 Final Word Count = 730

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