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To: Andrew Solmark

From: Applicant

Date: July 30, 2019

Re: State v. Martin - Evaluation of Admission of Testimonies

### **Introduction**

The case we are currently working on, State v. Martin, includes an issue of admission of evidences. We have charged Ms. Martin with identity theft. There are three specific incidents that we plan to use as similar acts evidence to rebut the defenses that Ms. Martin would likely to offer.

These three specific incidents are: 1) a traffic stop incident where Ms. Martin presented a fake ID and license that belonged to her sister instead of her (the "traffic stop" incident); 2) a intoxicated incident where Ms. Martin shouted at an officer and got a warning (the "intoxication" incident); and 3) a threat of witness incident where Ms. Martin called Ms. Martinez not to testify or testify in Ms. Martin's favor (the "threat of witness" incident).

The problems presented in front of us are twofold. Under Columbia law, 1) whether any of these incidents are admissible as substantive evidence under Columbia Rule of Evidence ("CRE") Rule 404(b); and 2) whether any of these incidents are admissible as impeachment evidence under CRE Rule 608(b). In the discussions below, I will analyze these incidents respectively.

### **Discussion**

#### **1. Whether the "Traffic Stop" incident can be admissible under Rule 404(b) or Rule 608(b)?**

##### **a. Rule 404 (b) for admission of substantive evidence**

Rule 404(b) requires that the admission requirements for 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.

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Specifically, 404(b)(1) prohibits the admission of prior bad acts to establish an individual's character or propensity to commit a crime.

Yet 404(b)(2) permits that 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."

However, this list is not exhaustive. 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 facts. (*State v. Landreau*, (Supreme Court of Columbia (2011))).

The traffic stop incident is similar to the mortgage loan evidence that's offered by the prosecution in *State v. Landreau*. In that case, Landreau is convicted a passing of serious bad checks in her account. The prosecution offered an evidence where Landreau intentionally provided a false name and a fabricated SSN with a made-up birthday to defraud the loan officer. The bank later rejected her loan application after finding out her real identity. The court in *Landreau* ruled that the mortgage application indicated "an instance of deception to obtain a financial advantage for herself," and that it was sufficiently similar to the case at issue, and was close in time with the case at issue as well. Therefore, the court ruled that this evidence should be admitted into evidence for 404(b) substantive purposes to rebuts an innocent involvement defense.

Here, Ms. Martin might argue that according to 404(b)(1), this is likely an evidence that tends to show her propensity and thus should be excluded - she might try to say that the fact that she did defraud the police once will not necessary prove that she will conduct a similar crime.

However, we can argue using *Landreau* that the traffic incident is very similar to the SSN theft case at issue. It both involves a defraud intent and an absence of mistake presumption.

Moreover, the traffic incident happened three months ago, which is close in time with the SSN case at issue as well.

Therefore, on the traffic stop, it is likely that we will have more arguments to make for admission of substantive evidence purposes under 404(b).

#### **b. Rule 608 (b) for admission of impeachment**

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

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This rule is further elaborated in *State v. Proctor (Supreme Court of Columbia (2008))* that courts generally have three different views about what should constitute as truthfulness or untruthfulness.

The broad view allow testimony about almost anything that can show a witness's weak or bad character; the narrow view, however, requests 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.

The Columbia court follows the middle approach, which holds that anything that indicates a willingness to gain a personal advantage by dishonest means would be appropriate to be used for impeachment purposes under 608(b). This view is further supported in *State v. Voorhees*.

Here, Ms. Martin will argue that the current traffic stop incident is far from being similar to the shoplifting case indicated in *Proctor*. Shoplifting includes a personal advantage that providing fake traffic IDs does not have.

We have an argument that the traffic stop is exactly like *Proctor* in that it involves an intentional dishonest conduct, in this case lying and proving fake IDs to police officers, and in *Proctor* stealing things. Moreover, the court in *Proctor* did not suggest that the advantage would have to be a financial one. Giving fake IDs so as to avoid punishment can also be an advantage.

Therefore, we might have more arguments than Ms. Martin in the admission of traffic stop incident for 608(b) purposes.

## **2. Whether the "Intoxication" incident can be admissible under Rule 404(b) or Rule 608 (b)?**

### **a. Rule 404 (b) for admission of substantive evidence**

The rules are established in the prior section. Here, the intoxication incident presents a more difficult case for us.

We may try to argue that intoxication is like *Landreau* in that the intoxication incident is close in time, which happened 2 months ago and showed Ms. Martin's bad character traits.

However, Ms. Martin might have a stronger argument under 404(b) that this is exactly the type of evidences that 404(b)(1) disallows. Moreover, Ms. Martin has a strong argument in that this is similar to the "physically assault bartender" case in *Landreau*, in that it shows an act of violence or intoxication, which the court in *Landreau* specifically ruled as "not sufficiently similar" to the

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case at issue.

Thus, we might have a weak argument for intoxication incident to be admitted for 404(b) purposes.

### **b. Rule 608 (b) for admission of impeachment**

The rules are established in the prior section. Here, the intoxication incident also presents a difficult argument for us to make under 608(b).

Here, Ms. Martin might argue that there is no indication of willingness that she tends to "gain an personal advantage" through being intoxicated and being rule with the police officer. Moreover, she might argue that she was not being "dishonest" or using any "dishonest means." Lastly, she might argue that she did not intend to cause any consequences, as she hailed a cab after receiving a warning.

We might try to argue that the intoxication will likely show a trait of her behaviors towards police officers. However, this won't be helpful for our SSN theft case at issue. If the court can rule the case under the "broad approach", we might have a better argument for using it as impeachment evidence.

Thus, we might have a weak argument for intoxication incident to be admitted for 608(b) purposes.

### **3. Whether the "Threat of Witness" incident can be admissible under Rule 404(b) or Rule 608(b)?**

#### **a. Rule 404 (b) for admission of substantive evidence**

The rule is established in section 1. Here, we might have a good argument of admitting such evidence as substantive.

Our argument can be based on the *Landreau* case in that a threat of witness can be a case to show intent, absent of mistake, and knowledge.

Here, the case at issue, Ms. Martin and its counsel argues that it is a computer error and a complete mistake that has nothing to do with Ms. Martin - in other words, Ms. Martin is trying to establish her having entirely innocent intentions.

The "threat of witness" incident, however, clearly shows that Ms. Martin knows about the theft and has been intentional about it all the time. Otherwise, she would not have said to Ms. Martinez that "it would be better if Ms. Martinez would testify that she authorized and permitted

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the opening of those accounts."

On the other hand, Ms. Martin can argue that this is similar to the "physical assault of bartender" evidence at Landreau, in that it only tends to indicate a "violence" character traits. However, we have a stronger argument by applying the court's reasoning in Landreau, that this incident is so close in time with the current case, which just happened two weeks ago, and is sufficient enough to indicate knowledge of the matter.

Therefore, we have a very strong argument in admission of the "threat of witness" incident for 404(b) purposes.

### **b. Rule 608 (b) for admission of impeachment**

The rule is established in section 1. Here, there is also a strong argument for us to make that this is likely to be impeach a witness by showing her "dishonest approach" to gain a personal advantage.

Here, we can argue pursuant to Proctor that Ms. Martin tried to scare Ms. Martinez out of her testifying, saying that "she'd regret it if she testifies." This clearly indicate that Ms. Martin tries to gain an personal advantage by asking Ms. Martinez to not stand in court against her. Further this approach is dishonest as she does not do it in good faith.

Ms. Martin can rebut that this is merely a "violent" prior bad character trait that should be excluded. However, the legislative intent of 608(b) as well as the views court hold in Proctor will probably give us a stronger argument here.

Thus, we will have a strong argument in admit the "threat of witness incident" for 608(b) purposes.

### **Conclusion**

To conclude, there are more sound arguments to make under the traffic stop incident and witness threat incident, both in terms of its substantive value and its impeachment value under 404(b) and 608(b), and the court is likely to rule in favor of us.

However, Ms. Martin might have more arguments to make in terms of the intoxication incident both with regards to its substantive value or its impeachment value. The court is likely to rule the evidence inadmissible under both 404(b) and 608(b).

Question #6 Final Word Count = 1747

**END OF EXAM**