Dan Dow
District Attorney
State Bar #237986
County of San Luis Obispo
Courthouse Annex, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 6/6/2022 8:49 AM
By: Renee Inofuentes, Deputy

Attorney for the People of the State of California

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
PAUL RUBEN FLORES AND RUBEN RICARDO FLORES,
Defendant.

Monterey Case Nos. 22CR003712 and 22CR003713
SLO Case Nos. 21F-02402-A&B

MOTION EXCLUDING SUSPECTED DEFENSE QUESTIONS AND ARGUMENTS ON THIRD PARTY CULPABILITY

Date: June 6, 2022
Time: 8:30 PM
Dept. 4

TO: THE HONORABLE JENNIFER OKEEFE, AND TO THE DEFENDANTS, PAUL FLORES AND RUBEN FLORES, AND THEIR COUNSEL:

STATEMENT OF THE CASE

At Preliminary Hearing defense attempted to introduce numerous third parties as speculative suspects in this case. Each one has been systematically eliminated by Investigators. Defense lists several possible suspects in their Motion to Suppress, therefore the People are filing this motion in anticipation of similar attempts at Jury Trial.

//

//

//

STATEMENT OF FACTS

Sean Ferrell

Ferrell went on only one date with Kristin Smart, and they dated for less than one month. Ferrell spent most of that month after the one date trying to convince Smart that he was not interested in her. Other than the "one night scam" Ferrell had not spoken to Smart in the three weeks prior to her disappearance. Smart at one point tell Ferrell she was pregnant, but he did not believe her and said Smart was a very interesting person but not someone he would have a long-distance relationship with. There is no proof of an actual pregnancy.

Ferrell told investigators he was not in San Luis Obispo Memorial Day Weekend because he was in San Francisco. Ferrell went to San Francisco to visit family and go to his sister's roommate's graduation. Ferrell said his father Edward Ferrell could verify Ferrell was in San Francisco and with family during the time Smart disappeared. Ferrell has a valid alibi for the time frame Smart went missing.

Felipe Arias

Arias was a good friend to Kristin Smart and Smart would sometimes stay overnight with Arias because Smart did not like her roommate, Crystal Calvin. Arias was interviewed multiple times and was extremely cooperative with Investigators. On July 16, 1996, Detective Stewart called Arias to question him, and Arias asked Detective Stewart to come to his residence instead of talking on the phone. Arias freely and openly admitted he and Smart had sexual relations a couple of times.

Arias last saw Smart on May 23, 1996 when she stayed the night with Arias which she did approximately 5-6 times. Smart was more interested in dating Arias's friend Eric Swartz than Arias which is corroborated by Swartz. Arias told Detective Stewart Smart left lip gloss and sandals at his house and turned those items over to Detective Stewart. Arias and Smart were good friends, there is absolutely nothing that would suggest Arias and Smart had any issues or why Arias would be involved in her murder.

//

Janusz

Janussz lived in the same dorm as Kristin Smart (Muir dorm). One night, Janusz was asleep in his dorm and sensed someone was there. When he woke up, he saw Smart standing in his dorm room. Janusz reported this to Cal Poly staff. Janusz felt like Smart had a crush on him and he did not feel the same about Smart, so he told a friend he got a restraining order on her.

Smart was interested in Janusz along with many other men at Cal Poly, but there are no other documented incidents or contacts between the two. Once Janusz reported the one incident there are no other known contacts between them. Janusz was frustrated with Smart but there is absolutely no documentation or reports of further contacts or why this incident would lead to murder.

Trevor Boelter

Boelter was at the Crandall Way party and had an interaction with Kristin Smart. Smart kissed Boelter several times at the party and brought him to the bathroom with her. Smart asked Boelter if she was pretty and which of two other guys at the party was cuter at the party. They exited the bathroom and Boelter saw Smart outside later very intoxicated outside the house. He held her up until she stabilized herself and went back in the house. Boelter said that was the last time he ever saw Kristin Smart. There is absolutely no evidence that Boelter would be involved in the murder of Smart because she kissed him at a college party. Boelter was and continues to be very cooperative with Investigators.

Trent Buckle

Buckle left San Luis Obispo and Cal Poly shortly after Kristin Smart went missing. He was later convicted of murdering is female roommate in Long Beach. Buckle ran an escort service. Deective Kenney received a tip that Buckle had an escort named "Roxy", a name Smart used for herself. Detective Kenney did extensive investigation on Buckle and identified the Roxy working for Buckle, and it was not Kristin Smart.

Roxy is a common nickname; Detectives received numerous tips of people named Roxy being identified as Kristin Smart, but none of them turned out to be Kristin. Detective Kenney could find no connection between Buckle and Smart and wrote a report documenting his findings. Buckles killing of his roommate was not sexually motivated, he killed her because she would not move out. There is absolutely no connection between Buckle and Smart.

Ted Munley

Munley was at the Crandall Way party and saw Kristin Smart hugging on several guys. Munley left the party at approximately 0115 hours and went to his dorm and discovered his roommate had a girl in the dorm. Munley went to the dorm that was Kristin Smarts and her roommate Crystal Calvin's dorm where his friend Jana Schrock was staying. Munley stayed the night in Smart's dorm with Schrock until he left at approximately 0900 hours. Mr. Munley reported that he and Schrock "hooked up a little bit." He noticed Kristin Smart did not return to her dorm that night and he thought was suspicious.

Munley was interviewed several times and was always cooperative with Investigators. Schrock confirmed Munley was in the dorm all night with her, and Smart did not return to her dorm. Munley has an alibi confirmed by Schrock and left before Smart left the party with Paul Flores. Munley passed a polygraph given by the FBI on May 7, 2002. There is absolutely no evidence that Munley had anything to do with Smart's murder.

Scott Peterson

Detective Crawford did an extensive investigation on Scott Peterson and any possible links to Kristen Smart. Detective Crawford checked the class schedules of Scott Peterson, Paul Flores and Kristin Smart and found there were no common classes. Scott and Laci Peterson did not live on the Cal Poly campus at the time Kristin Smart was murdered. FBI records were checked and there were no contacts between Peterson and Smart. Det. Crawford spoke to Modesto Investigators, and they knew of no connection between Peterson and Smart.

Detective Crawford showed Scott and Laci Peterson's pictures to the following people. Cheryl Anderson, Tim Davis, Jennifer Phipps and Crystal Calvin, none of these people knew Scott or Laci Peterson and all said they were not at the Crandall Way party. Scott Peterson was older than Kristin Smart and was not part of the same crowd with Smart and her friends. Detective Crawford wrote a report excluding Scott Peterson as a suspect. There is absolutely no evidence or connection between Kristin Smart and Scott Peterson.

Shahn Whitted:

Whitted was interviewed by Detective Henry Stewart on July 11, 1996. Whitted said he knew and occasionally dated Kristin Smart. Whitted said Smart was interested in a friend of his, Tabio Darkangelo. Whitted would occasionally bump into Kristin Smart at parties and would occasionally give her rides. Whitted said the last time he saw Smart was a couple days before she was murdered, and said they never had sex.

Whitted openly admitted to burning Smart's shoes and leaving a note on her porch in the Winter of 1996. He said they made up shortly after this. Whitted said he burned the shoes because Smart was talking bad about him to a mutual friend. It does not make sense Whitted would admit to having the conflict with Smart months prior if he had something to do with her murder. Smart and Whitted had repaired their relationship before Smart was murdered. None of her friends ever reported any other issues with Smart and Whitted. There is no evidence connecting to the murder months later.

Phillip Worman

A very extensive investigation was done by the FBI on Phillip Worman. August 7, 2002, the FBI interviewed Lara Ayala who said Phillip Worman lived with her parents in Hilo Hawaii from 1996-1997. Worman was arrested for a rape in 1995 by SLOPD and the case was rejected by the District Attorney's Office. Fliers announcing Worman was a rapist were posted publicly around San Luis Obispo in 1995, which most likely caused him to leave San Luis Obispo in 1995.

The FBI asked Detective Stewart to attempt to see if Worman was in San Luis Obispo,

CA at the time Kristin Smart was murdered. Detective Stewart did extensive research on Worman and could fine nothing to show Worman was in San Luis Obispo beyond his rape case in May of 1995. Worman had contacts by the Palm Springs Police in October 1995 and June 1996. There is absolutely no information to show Phillip Worman was in San Luis Obispo on Memorial Day Weekend of 1996 and thus no evidence to show he had anything to do with the murder of Kristin Smart.

MEMORANDUM OF POINTS AND AUTHORITIES

" 'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.' " (*People v. Mickel* (2016) 2 Cal.5th 181, 218; see also *United States v. Scheffer* (1998) 523 U.S. 303, 308 [defendant's right to present relevant evidence is subject to reasonable restrictions].) Courts retain a "traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly procedure and the avoidance of prejudice." (*People v. Hall* (1986) 41 Cal.3d 826, 834.) The standard for admitting evidence of third-party culpability is the same as for other exculpatory evidence: (1) it must be relevant under Evidence Code section 350, and (2) its probative value cannot be substantially outweighed by the risk or undue delay, prejudice, or confusion under Evidence Code section 352. (*People v. Ghobrial* (2018) 5 Cal.5th 250, 282-84; *People v. Hamilton* (2009) 45 Cal.4th 863, 914; *People v. Hall* (1986) 41 Cal.3d 826.)

1. Relevance

The California Supreme Court in *People v. Hall* (1986) 41 Cal.3d 826 (*Hall*) established the basic requirements for the admission of third-party culpability evidence. For evidence suggesting third party culpability to be relevant, it need not show substantial proof of a probability that the third person committed the act but only be capable of raising a reasonable doubt of the defendant's guilt. (*Id.* at p. 833.) However, "evidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Id.*) Without such a link, the

evidence is irrelevant and cannot be admitted. (*Id.*; see also *People v. Hamilton*, *supra*, 45 Cal.4th at p. 913 [trial court has broad discretion to determine the relevance of evidence but "lacks discretion to admit irrelevant evidence"]). Furthermore, third party culpability evidence that does not identify a possible suspect is properly excluded. (*People v. Brady* (2010) 50 Cal.4th 547, 559.)

Even evidence which tends to connect a third party to a crime should be barred by the trial court when other evidence excludes that person as the perpetrator. In *People v. Johnson* (1988) 200 Cal.App.3d 1553, the defense offered evidence of a person detained in the vicinity of a burglary who was of the height described, had cash in the amount and denominations missing, and was walking away from the burglarized house. The trial court barred the evidence because that person's fingerprints did not match latent prints left at the point of entry. Upholding that ruling, the Court of Appeals held that "even the strongest circumstantial evidence case of third-party culpability does not raise a reasonable doubt about a defendant's guilt when fingerprints found at the scene of the crime could not have been those of the third party." (*Id.* at p. 1564.) The defense third party culpability evidence raised a possibility, but the prosecution's evidence made it an impossibility, and therefore the evidence could not logically raise a reasonable doubt about guilt. (*Id.* at p. 1565.)[1]

2. Undue Consumption of Time, Confusion, Undue Prejudice, and Misleading the Jury

Even if evidence of third-party culpability evidence is relevant, the court also exercises discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create

---

[1] The California Supreme Court has since noted that,

> [t]o the extent *Johnson* ... relied upon the strength of the prosecution's evidence against the defendant to exclude third-party culpability evidence, its reasoning is suspect in light of *Holmes v. South Carolina* (2006) 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503, which found a federal constitutional violation resulting from a rule of evidence that precluded the defendant from introducing third-party culpability evidence when there is strong evidence of the defendant's guilt.

(*People v. Page* (2008) 44 Cal.4th 1, 34, fn. 16.) However, the Court distinguished the strength of evidence of a defendant's guilt from the requirement that third party culpability evidence sufficiently connect the third party to the crime (e.g., fingerprints which exculpate the third party), which *Holmes v. South Carolina* noted was a "widely accepted" rule. (*Id.*)

substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

3. Otherwise Inadmissible Evidence

Otherwise inadmissible evidence does not become admissible under this rule merely because it might establish a third party's culpability. Rejecting evidence of a third party's alleged admission, the Court of Appeals ruled in *People v. Huggins* (1986) 182 Cal.App.3d 828, 833: "... *Hall* did not undertake to repeal the Evidence Code. Incompetent hearsay is as inadmissible as it always was." Thus, for example, mere evidence of a third party's propensity for violence is insufficient to justify admission under Evidence Code section 1101 as proof of that person's identity as the perpetrator of a murder. "Such evidence does not amount to direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*People v. Davis* (1995)10 Cal.4th 463, 501; see also *People v. McWhorter* (2009) 47 Cal.4th 318, 372-373.) Similarly, prior similar crimes that are not sufficiently distinctive for admission to prove identity under Evidence Code section 1101, are not admissible to establish third party culpability. (*People v. Elliott* (2012) 53 Cal.4th 535, 580-581.)

The limitations on defense evidence of third-party culpability apply equally to direct examination of defense witnesses and cross-examination of prosecution witnesses. In *People v. Shilling* (1987) 188 Cal.App.3d 1021, the trial court foreclosed cross-examination of a prosecution witness based upon a defense theory of the witness's culpability which was unsupported by any evidence. The Court of Appeal held that "[t]he constitutional right to confront and cross-examine adverse witnesses does not include the right to ask wholly speculative questions ungrounded in factual predicate even when posed in the quest to discredit a witness." (*Id.* at p. 1033.)

4. Relevant Examples of Third-Party Culpability Excluded by Appellate Courts

In *People v. Hamilton* (2009) 45 Cal.4th 863, the trial court precluded the testimony of a clinical and forensic psychologist who would have identified a third party (the victim's husband) as a possible suspect because he had a juvenile record, a Navy record reflecting

alcohol abuse, a documented event of domestic violence involving his second wife, and had made a statement to his mother that he had a recurring dream that the victim was being tortured with a knife to her throat. (*Id.* at pp. 939-940.) The California Supreme Court held that the proffered evidence did nothing to connect the third party to the crime in any manner and did not establish good reason for the police to suspect the third party when the defendant stole the victim's van near the place and time she was last seen alive, when the defendant's route passed by where the victim's body was discovered, and when the defendant denied seeing the victim alive or dead but accurately described her clothing the night she was killed. (*Id.* at p. 940.)

In *People v. Ghobrial* (2018) 5 Cal.5th 250, the trial court excluded evidence that the victim sought to spend time with adults at local businesses late at night and that a third party spent the night with the victim, driving around and sleeping in the third party's vehicle a month prior to the victim's death. (*Id.* at pp. 282-284.) The California Supreme Court held the trial court did not abuse its discretion with either ruling. First, the Court found that evidence of the victim's behavior was not logically related to the circumstances of the victim's death or the defendant's motive for spending time with the victim and had no tendency to prove or disprove the defendant molested the victim. (*Id.* at pp. 282-283.) And second, the Court noted that, without a stronger link between the third party who spent the night with the victim a month prior to the victim's death and the crime, the evidence provided only a possible suspicion of another party's guilt. (*Id.* at pp. 282-284.)

In *People v. Yeoman* (2003) 31 Cal.4th 93, the defense proffered that two men had been charged for attempting to burglarize one of the victim's automobiles a week before his death, and one of the men had called a prosecution witness looking for the victim and complaining that if the victim didn't withdraw the charges, he and his counterpart were going to jail for twelve years. (*Id.* at p. 140.) The California Supreme Court held that the trial court properly excluded this evidence because it showed motive only and no direct or circumstantial evidence linked the third party to the actual perpetration of the crime. (*Id.* at pp. 140-141.)

In *People v. Robinson* (2005) 37 Cal.4th 592, the California Supreme Court found that no evidence of the alleged sighting of a third party's vehicle at the crime scene was offered by the defense. (*Id.* at pp. 642-643.) The defense attempted to ask a witness if the witness knew a third party's vehicle was seen at the crime scene, and the trial court ruled that, unless and until there was other evidence to support the question, the court would exclude the question. (*Id.*) The defense never presented evidence of the witness's observations, and the Court held that the claim that the witness's alleged sighting was excluded by the court necessarily failed. (*Id.* at p. 643.)

In *People v. Lewis* (2001) 26 Cal.4th 334, the California Supreme Court upheld the trial court's ruling excluding evidence of third-party culpability. The defense proffered evidence that the third party struck five people in three incidents between 1983 and 1985 and claimed this was evidence that the third party had a motive and predisposition to rob and kill the victim. (*Id.* at p. 372.) The Court found there was no evidence or suggestion that the third party was frustrated with or disliked the victim, the prior acts were remote in time and pattern to the present crime, and were too speculative to be relevant, and presented issues of undue prejudice, undue consumption of time, and possible confusion of the issues. (*Id.* at p. 373.)

In *People v. Brady* (2010) 50 Cal.4th 547, the Los Angeles County Sheriff's Department established a hotline to receive tips from the public regarding the murder of the police officer victim and received more than 2,000 clues. (*Id.* at p. 557.) The defendant sought to introduce five at trial: the clue implicating the defendant, a confession and subsequent recantation made to a 911 operator, the death of an Asian male killed shortly after the victim's murder when two police officers attempted to apprehend him and were themselves killed in the attempt, reports that an associate of Jennifer La Fond resembled the person depicted in a composite drawing, and an unsigned letter claiming responsibility for the murder. The California Supreme Court found the trial court did not abuse its discretion in excluding the four clues unrelated to the defendant because they suggested no link between the third parties and the actual perpetration of the murder. (*Id.* at p. 558.) (See also *People v. Kaurish* (1990)

52 Cal.3d 648, 684-686 [mere evidence of third party's anger toward victim insufficient basis to establish third party culpability evidence]; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1017-1018 [third party's possible motive alone insufficient to raise reasonable doubt of defendant's guilt]; *People v. Alcala* (1992) 4 Cal.4th 742, 792-793 [third party's presence in area of crime scene two days after victim's disappearance and parole status for previous gang-related (dissimilar) murder].)

For all of the possible third parties defense might mention, there simply is no direct or circumstantial evidence linking them to the actual perpetration of the crime.

CONCLUSION

A court's reasonable application of the rules of evidence to exclude irrelevant and potentially misleading information does not deprive a defendant of his constitutional rights. (*People v. Turner*, *supra*, 10 Cal.5th at p. 818.)

Evidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime. This court should exclude any suggestion that any of these individuals played a part in the murder of Kristin Smart as they were excluded long ago because there is no evidence linking them to the actual perpetration of the crime.

Date: June 6, 2022

Respectfully submitted,

Dan Dow
District Attorney

By: _____
Christopher G. Peuvrelle
Deputy District Attorney