DAN DOW (Bar No. 237986)
DISTRICT ATTORNEY
Office of the District Attorney
County of San Luis Obispo
1035 Palm Street, Room 450
San Luis Obispo, CA 93408
Telephone: (805) 781-5800

Attorneys for the People of the State of California

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

PAUL RUBEN FLORES, and
RUBEN RICARDO FLORES,

Defendants.

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

NOTICE OF MOTION AND SUPPLEMENTAL MOTION UNDER EVIDENCE CODE SECTION 1108

[Evidence Code §§ 1108, 1101(b)]

Date: June 6, 2022
Time: 8:30 am
Location: Department 4

TO: THE CLERK OF THE ABOVE-ENTITLED COURT, THE DEFENDANTS, AND COUNSEL FOR THE DEFENDANTS

NOTICE IS HEREBY GIVEN that on June 6, 2022, at 8:30 a.m. in at the above-entitled court located at 240 Church Street in Salinas, California, the People of the State of California will move the Court for an order admitting supplemental relevant evidence of Paul Flores's other sexual offenses pursuant to Evidence Code sections 1108 and prior offenses or acts pursuant to 1101, subdivision (b).

This motion will be based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the attached Declaration, any evidence as

//

may be presented at the hearing, and the record and file herein.

Dated: June 6, 2022

Respectfully submitted,

DAN DOW
DISTRICT ATTORNEY

Christopher Peuvrelle
Deputy District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF FACTS

A. January Doe

Melinda Miller was living in Santa Maria and attending Hancock College in 1996, her boyfriend Steve attended Cal Poly on a scholarship in 1996. He lived at either Muir Hall or Sierra Madre (she said his mother could confirm which one). Melinda was living in Santa Maria but would often come up to visit Steve and they would frequent football games, attend parties, etc. She remembers a party in particular in 1996, prior to graduation, that her friend January attended and was drugged. Melinda recalls having discussions amongst her peers/friends about being drugged, girls being drugged, to you keep your drinks close, put a napkin over it when you leave, don't accept drinks from people. Melinda remembers January's incident being right at the time Kristin went missing because she said "Oh my God, that could have been January, that could have been me at the party..."

She recalls Steve attending many parties, one was at California and Foothill, in an apartment complex. Melinda met Steve there at the party. She recalls several people that were there were from rivaling high schools, Righetti and St. Joe's. She knew some of the people at the party and ended up talking to Amy Dollen, a mutual

friend and January at the beginning of the night, between 9pm and 10pm. Shortly after that, Melinda saw Paul come out of the bathroom and was like "I need some help." Melinda says, "I mean he was shear panic." Melinda recalls Paul saying, "is this girl's friends around?". Melinda peeked into the bathroom and saw her on the ground. She had no pants on and there was vomit everywhere and she had defecated on herself. Melinda said, "Oh my God, that's January!", "like, what the hell, I was just talking to her an hour ago!" Melinda goes on to say that she came into the bathroom and told him to get out of there, that this was her friend. Melinda said he got out and shut the door. Melinda recalls Steve being there and she asked him to stand by the door and not to let anyone in because she was helping January and wanted privacy for her friend. Melinda goes on to describe how sick January was, her face was a grey color, she had foam coming out of the edges of her mouth. She contemplated having Steve call 911 and regrets that she didn't have him call. Melinda remembers January having "shit" all over her, even on her feminine napkin. Melinda said that January was a small girl, and she was able to pick her up and put her into the bath tub. January started to come around a bit, Melinda was calling her name and hitting her on her side. Melinda said then Paul Flores walked back into the bathroom. Melinda asked him what he was doing and said get out of here, I'm getting her cleaned up. Paul Flores asked if January was ok. Paul Flores said he knew her and that he could help. Melinda remembers him stuttering and kept repeating himself. Melinda at that point recognized him as being the guy that came out of the bathroom initially, left and then came back in. Melinda said she had soiled toilet paper in the trash and Paul took the bag and left. He came back into the bathroom offering again to help. January was saying no, no, no, no over and over. Melinda was able to get January dressed and out of the bathroom, got her to her friends, instructing them to take her home. Melinda asked January if she knew that guy? January said what guy? Melinda said January did not know the guy in the bathroom. Melinda is positive

that the guy at the party that evening was Paul Flores. Melinda always thought it was weird that he came back into the bathroom and took the trash out.

Melinda believes January was on "death's door" that night. Melinda said that it was a forty-five-minute window from the time she spoke with January at the party to the time she saw her on the ground in the bathroom. Melinda also recalls January being sober when she initially spoke to her an hour prior to the incident. Melinda said January was not the type of person to just "hook up" with a guy at a party, especially one she didn't know. Melinda believes that January was sexually assaulted that night due to the placement of January's feminine napkin when she found her on the ground.

Melinda goes on to say that she and January have connected on social media and they have often recalled that night. Melinda said that Steve, her boyfriend at the time, passed away 10 or so years ago.

Melinda goes on to describe how the house of the party that night was by train tracks because her brother and Steve had gotten into an altercation that evening and Steve had left and crossed over the tracks after the fight. She believes the location to be California and Foothill.

January Doe is unavailable, and the people are not asking that her testimony be admitted. Ms. Miller is available to testify as to her observations.

II

LAW AND ARGUMENT

While evidence of a person's character or a trait of his character is generally inadmissible to prove conduct on a specified occasion, the California Evidence Code[1] codifies several exceptions to this rule, including evidence of other sexual offenses when the person is charged with a sexual offense (Evid. Code, § 1108) and evidence of other offenses when offered to prove a fact in the prosecution other than the person's disposition to commit to commit such an act (Evid. Code, § 1101, subd. (b)).

[1] All further statutory references are to the California Evidence Code unless otherwise stated.

(Evid. Code, § 1101, subd. (a).) Both of those exceptions apply to the evidence of Paul Flores's other sexual offenses.

A. EVIDENCE OF PAUL FLORES'S COMMISSION OF OTHER SEXUAL OFFENSES IS ADMISSIBLE UNDER EVIDENCE CODE SECTION 1108

California Evidence Code section 1108, subdivision (a), states:

> In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

A sexual offense, as the term is used in section 1108, includes rape of an intoxicated, drugged, or unconscious person as defined in Penal Code section 261, subdivisions (a)(3) and (a)(4). (Evid. Code, § 1108, subd. (d)(1)(A).) Section 1108 provides for the admission of evidence of sexual offenses that occurred both prior before and after the charged crime(s). (*People v. Cordova* (2015) 62 Cal.4th 104, 133; *People v. Medina* (2003) 114 Cal.App.4th 897, 903.) The statute authorizes the admission of other sexual offenses when a defendant is accused of enumerated sexual offenses, and the admission of other sexual offenses under section 1108 does not require an accomplished sex act in the charged offense. (*People v. Spicer* (2015) 235 Cal.App.4th 1359, 1384.) "The evidence is presumed admissible and is to be excluded only if its prejudicial effect substantially outweighs its probative value in showing the defendant's disposition to commit the charged sex offense or other relevant matters." (*People v. Cordova* (2015) 62 Cal.4th 104, 132.)

1. Evidence of Uncharged Sexual Offenses is "Especially Compelling" When the Victim Was Killed and Cannot Testify

The legislative history for section 1108 indicates that the principal justification for its adoption was a practical one: "By their very nature, sex crimes are usually committed in seclusion without third party witnesses or substantial corroborating evidence." (*People v. Falsetta* (1999) 21 Cal.4th 903, 915.) In enacting section 1108, "the Legislature 'declared that the willingness to commit a sexual offense is not common to most individuals; thus, evidence of any prior sexual offenses is particularly

probative and necessary for determining the credibility of the witness.' [Citation.]" (*People v. Soto* (1998) 64 Cal.App.4th 966, 983.) "Section 1108 provides the trier of fact in a sex offense case the opportunity to learn of the defendant's possible disposition to commit sex crimes." (*Id.*)

In *People v. Story* (2009) 45 Cal.4th 1282 (*Story*), the California Supreme Court rejected the argument that section 1108 does not apply to homicides where the victim does not—and cannot—testify:

> The necessity for admitting this particularly probative evidence that exists when the alleged victim's credibility might be questioned can be no greater than the necessity that exists when the victim was *killed* and thus cannot even tell her story. ... Neither section 1108's language nor its purpose supports the conclusion the Legislature wanted to permit this evidence when the alleged sexual assault victim survives and can testify but not when the victim dies and cannot speak.

(*Id.* at p. 1293, italics in original.) Since *Story*, the Court has repeatedly held that "[t]he need for such evidence is especially compelling when the sexual assault victim was killed and cannot testify." (*People v. Avila* (2014) 59 Cal.4th 496, 515; *People v. Loy* (2011) 52 Cal.4th 46, 62; see also *People v. Baker* (2021) 10 Cal.5th 1044, 1100, internal citations omitted [same]; *People v. Daveggio & Michaud* (2018) 4 Cal.5th 790, 824 [same].) Indeed, the Court found that the principle applied "with additional force" in a case when the extensive decomposition of the victim's body inhibited the search for physical evidence of sexual assault and cause of death. (*People v. Baker*, *supra*, 10 Cal.5th at p. 1100.)

2. **Paul Flores's Other Sexual Offenses Show a Demonstrable Pattern of Targeting Women Who are Intoxicated or Drugged and Engaging or Attempting to Engage in Sexual Intercourse with Them When They Are Unable to Consent**

"In enacting Evidence Code section 1108, the Legislature found that "evidence of uncharged sexual offenses is so uniquely probative in sex crimes prosecutions it is presumed admissible without regard to the limitations of Evidence Code section 1101."

(*People v. Yovanov* (1999) 69 Cal. App. 4th 392, 405.) " ' "As with other forms of relevant evidence that are not subject to any exclusionary principle, the presumption will be in favor of admission." ' [Citation.]" (*People v. Soto* (1998) 64 Cal.App.4th 966, 984.)

As with any other evidence, evidence of other, uncharged sexual offenses is subject to analysis under section 352, which provides a trial court with the 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 substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) Courts have established general criteria for a trial court to consider when analyzing whether the probative value of the relevant evidence is substantially outweighed by any unfair prejudice of its admission under Evidence Code section 352. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 916-916.)

> Among the factors to consider are the " 'nature, relevance, and possible remoteness [of the evidence], the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses.' " [Citation.]

(*People v. Erskine* (2019) 7 Cal.5th 279, 296.) The specific criteria to be considered by a trial court depend upon the unique facts and issues of each case. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1116 (*Nguyen*).) Courts of Appeal have restated these factors as five general questions:

> (1) whether the propensity evidence has probative value, e.g., whether the uncharged conduct is similar enough to the charged behavior to tend to show the defendant did in fact commit the charged offense; (2) whether the propensity evidence is stronger and more inflammatory than evidence of the defendant's charged acts; (3) whether the uncharged conduct is remote or stale; (4) whether the propensity evidence is likely to confuse or distract the jurors from their main inquiry, e.g., whether the jury might be tempted to punish the defendant for his

uncharged, unpunished conduct; and (5) whether admission of the propensity evidence will require an undue consumption of time.

(*Nguyen*, *supra*, 184 Cal.App.4th at p. 1117; see also *People v. Jandres* (2014) 226 Cal.App.4th 340, 355; *People v. Hernandez* (2011) 200 Cal.App.4th 953, 965 (*Hernandez*).) "A trial court balances this first factor, i.e., the propensity evidence's probative value, against the evidence's prejudicial and time-consuming effects, as measured by the second through fifth factors." (*Nguyen*, *supra*, 184 Cal.App.4th at p. 1117.)

The term "prejudice" has a very narrow meaning in the context of section 352:

> "[t]he prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, "prejudicial" is not synonymous with "damaging." ' " [Citation.]

(*People v. Jones* (2017) 3 Cal.5th 583, 610; see also *People v. Henriquez* (2017) 4 Cal.5th 1, 28 [section 352 uses the word in "etymological sense of 'prejudging' a person or cause on the basis of extraneous factors"].) None of the listed factors support exclusion under section 352.

a. The Other Sexual Offenses are Very Similar in Nature

First, Paul Flores's other sexual offenses are highly probative to the charge alleging that he murdered Kristin Smart while in the course of committing or attempting to commit a rape. While there is no requirement that the charged and uncharged offenses are so similar that evidence of the uncharged offenses would be admissible under section 1101,[2] "uncharged prior offenses that are very similar in nature to the

[2] Indeed, the *Hernandez* court noted that, "[i]f such strict similarities were required, 'section 1108 would serve no purpose. It is enough the charged and uncharged offenses are sex offenses as defined in section 1108.' [Citation.]" (*Hernandez*, *supra*, 200 Cal.App.4th at p. 966; see also *People v. Loy* (2011) 52 Cal.4th 46, 63.)

charged crime logically will have more probative value in proving propensity to commit the charged offense." (*Hernandez*, *supra*, 200 Cal.App.4th at p. 966.)

The evidence adduced at the preliminary hearing demonstrated that Paul Flores was sexually attracted to Kristin Smart, that he targeted Kristin Smart at the end of a gathering that involved the consumption of large amounts of alcohol, that he intentionally isolated Kristin Smart when she was so intoxicated that she could not walk without assistance, and that he murdered her. Evidence that he targeted women around his own age at the end of parties or near closing time at bars then isolated and raped them when they were intoxicated, drugged, and unconscious is highly probative evidence not only of the circumstances leading up to Kristin Smart's murder but also to Paul Flores's intent and motive.

Evidence of other sexual offenses is all the more relevant both because (1) Kristin Smart was killed and is unable to testify (see *Story*, *supra*, 45 Cal.4th at p. 1293), and (2) Kristin Smart's body was never recovered, thereby inhibiting the search for physical evidence of sexual assault and cause of death (see, e.g., *People v. Baker*, *supra*, 10 Cal.5th at p. 1100).

b. *The Other Sexual Offenses Are Neither Stronger Nor More Inflammatory*

The evidence of the other sexual offense perpetrated against January is not stronger nor inflammatory. It is certainly less inflammatory than a murder and not stronger than the murder.

c. *The Other Sexual Offenses Are Not Remote or Stale*

The other sexual offenses against January Doe is contemporaneous with the murder of Kristin Smart.

Moreover, "[t]he passage of time generally goes to the weight of the evidence, not its admissibility" and "significant similarities between the prior and the charged offenses may 'balance[ ] out the remoteness.' [Citation.]" (*Hernandez*, *supra*, 200 Cal.App.4th at p. 968; see *People v. Branch* (2001) 91 Cal.App.4th 274, 285 [30-year

gap between offenses not too remote when prior and charged offenses were "remarkably similar"]; *People v. Waples* (2000) 79 Cal.App.4th 1389, 1395 [uncharged offenses between 15 and 22 years before trial not too remote in part because similarities balanced out the remoteness]; *People v. Soto* (1998) 64 Cal.App.4th 966, 991-992 [23- to 27-year-old conduct not too remote when charged and uncharged offenses are similar]; *People v. Robertson* (2012) 208 Cal.App.4th 965, 989-994 [striking similarities of prior 35-year-old kidnapping and rape balance out remoteness].) Whether or not the defendant led a "blameless life" as it relates to the type of offenses in question in the time between the charged and uncharged offenses contributes to whether the uncharged offense is remote. (See *People v. Harris* (1998) 60 Cal.App.4th 727, 739.) Evidence of subsequent crimes may bear on a defendant's character at the time of the charged offense. (*People v. Cordova* (2015) 62 Cal.4th 104, 132-133 [sex crimes against children committed 13 and 18 years after charged rape-murder of child properly admitted].)

d. *The Other Sexual Offenses Will Not Confuse or Distract Jurors*

This court will properly instruct jurors with the appropriate Calcrims for EC 1108 and 1101(b). The law presumes that jurors follow instructions as provided. The jurors will not be confused as they will be properly instructed and the relevancy of these acts will be properly argued.

e. *The Other Sexual Offenses Will Not Require an Undue Consumption of Time*

The testimony of Ms. Miller should take no more than a couple of hours.

All of the factors support the admission of this evidence and the court should grant the People's motion.

//

//

//

B. EVIDENCE OF PAUL FLORES'S COMMISSION OF OTHER SEXUAL OFFENSES IS ADMISSIBLE UNDER EVIDENCE CODE SECTION 1101(B)

While Evidence Code section 1101, subdivision (a), prohibits admission of evidence of a person's character, including evidence of specific instances of uncharged misconduct, to prove the conduct of a person on a specified occasion, subdivision (b) clarifies that the rule does not prohibit admission when such evidence is relevant to establish a fact other than the person's character or disposition. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) Section 1101, subdivision (b), states:

> Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.

The categories provided in subdivision (b) are examples of facts that legitimately may be proved by evidence of other crimes or acts but the list is not exclusive. (*People v. Catlin* (2001) 26 Cal.4th 81, 146.) The California Supreme Court has liberally construed Evidence Code section 1101(b) to permit the admission of "uncharged acts" evidence when relevant to prove any disputed issue in a criminal prosecution. (*People v. Kipp* (1998) 18 Cal.4th 349, 369-373; *Ewoldt*, *supra*, 7 Cal.4th at pp. 393-400). "[S]uch evidence may properly be admitted whenever it tends logically, naturally, and by reasonable inference to establish any fact material for the People or to overcome any material matter sought to be proved by the defense." (*People v. Montalvo* (1971) 4 Cal.3d 328, 332.)

The admission of evidence that involves crimes other than those for which a defendant is being tried depends on three factors: (1) the materiality of the fact sought to be proved or disproved, (2) the tendency of the uncharged crime to prove or disprove the material fact, and (3) the existence of any rule or policy requiring the exclusion of relevant evidence. (*People v. Johnson* (2022) 12 Cal.5th 544, 610.)

"Seldom will evidence of a defendant's prior criminal conduct be ruled inadmissible when it is the primary basis for establishing a crucial element of the charged offense." (*People v. Garrett* (1994) 30 Cal.App.4th 962, 967.)

1. **The Other Crimes or Acts Evidence is Material**

The first step of the inquiry involves an appraisal of the factors or elements which the other crimes' evidence is being offered to prove. Materiality simply refers to whether the issue or fact to which the "uncharged acts" relate is contested and of legitimate importance in the proceedings. (*People v. Nible* (1988) 200 Cal.App.3d 838, 848.) In order to satisfy the materiality requirement, the fact may be either an ultimate fact in the proceeding, or an intermediate fact from which an ultimate fact might be inferred. (*Catlin*, *supra*, 26 Cal.4th at p. 146.) Ultimate facts include the identity of the perpetrator and elements of the charged crimes, including intent. (*People v. Thompson* (1980) 27 Cal.3d 303, p. 315, fn. 13.) Intermediate facts include motive, opportunity, plan, scheme, design, and modus operandi. (*Id.* at p. 315, fn. 14.)

Paul Flores's not guilty plea put in issue all of the elements of the charged offenses, including his intent. (*People v. Daveggio and Michaud*, *supra*, 4 Cal.5th at p. 822.) Evidence tending to demonstrate the defendant's intent and mental state, the cause of death, the lack of consent on the part of the victim, the victim's state of intoxication, are relevant to demonstrate that a murder occurred as well as to demonstrate that the murder occurred in the commission or attempted commission of a rape.

2. **The Other Crimes or Acts Evidence is Relevant**

The second step of the analysis involves analyzing the probative value of the other acts evidence. The general test of relevance is whether the evidence tends "logically, naturally, and by reasonable inference to establish any fact material for the People, or to overcome any material matter sought to be proved" by the defendant. (*People v. Casillas* (2021) 65 Cal.App.5th 135, 150, internal citations omitted; see also

Evid. Code, § 210 [evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].)

"The relevance depends, in part, on whether the act is sufficiently similar to the current charges to support a rational inference of intent, common design, identity, or other material fact." (*People v. Leon* (2015) 61 Cal.4th 569, 598.) The least degree of similarity is required to prove intent, a higher degree is required to prove common design or plan, and the highest degree of similarity is required to prove identity. (*People v. Scully* (2021) 11 Cal.5th 542, 586.)

a. *Intent*

Evidence of uncharged misconduct is admissible to prove that Paul Flores committed the murder with the requisite intent: specifically, that he committed it with express malice and that he committed it while in the commission or attempted commission of a rape. His prior involvement in the uncharged sexual assaults shows that he intended to rape Kristin Smart and that he harbored the actual or unreasonable belief that he was exceeding any consent given to him by Kristin Smart in the charged murder and special circumstance.

In *People v. Ewoldt* (1994) 7 Cal.4th 380, the seminal case that addressed the parameters for the admission of evidence of other crimes or acts under Evidence Code section 1101, subdivision (b), the California Supreme Court noted that " '[t]he recurrence of a similar result' " tends with each instance to negate claims of an innocent mental state and to establish a criminal intent. (*Id.* at p. 402, citations omitted.) The prior conduct becomes relevant circumstantial evidence of the actor's most recent intent. (*People v. Robbins* (1988) 45 Cal.3d 867, 879.) "In order to be admissible to prove intent, the uncharged misconduct must be sufficiently similar to support the inference that the defendant ' "probably harbor[ed] the same intent in each instance." [Citations.]' [Citation.] " (*Ewoldt, supra*, 7 Cal.4th at p. 402; see also *People v. Robbins, supra*, 45 Cal.3d at p. 879 ["The inference to be drawn is not that the actor

is *disposed* to commit such acts; instead, the inference to be drawn is that, in light of the first event, the actor, at the time of the second event, must have had the intent attributed to him by the prosecution"].)

Here, the degree of similarity far surpasses the "least degree of similarity" required in *Ewoldt* as the uncharged attack on Ms. Miller is very similar in nature, time, and place to the murder. Paul Flores contacted Ms. Miller at a party, she ends up drugged and on "death's door" with a feminine hygiene product wedged up her vagina. Paul Flores had her alone and under his custody and control in the bathroom of that party. Therefore, this act further demonstrates his intent to commit sexual assaults on women who are too intoxicated or drugged to be able to consent.

a. *Manner and Common Plan or Scheme*

"[A] common scheme or plan focuses on the manner in which the prior misconduct and the current crimes were committed, i.e., whether the defendant committed similar distinctive acts of misconduct against similar victims under similar circumstances." (*People v. Scheer* (1998) 68 Cal.App.4th 1009, 1020; see also *People v. Walker* (2006) 139 Cal.App.4th 782, 803.) "To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." (*Ewoldt, supra*, 7 Cal.4th at p. 403; see also *People v. Rhodes* (2019) 8 Cal.5th 393, 414; *People v. Anderson* (2018) 5 Cal.5th 372, 389.) Rather, "it need only exist to support the inference that the defendant employed that plan in committing the charged offense." (*People v. Leon*, *supra*, 61 Cal.4th at p. 599.) "Evidence of a common design or plan ... is not used to prove the defendant's intent or identity but rather to prove that the defendant engaged in the conduct alleged to constitute the charged offense." (*Ewoldt*, *supra*, 7 Cal.4th at p. 394; see also *People v. Chhoun* (2021) 11 Cal.5th 1, 28.) The fact that an uncharged offense occurs after the charged

offense does not lessen its relevance to demonstrating a common design or plan. (*People v. Balcom* (1994) 7 Cal.4th 414, 425.)

The California Supreme Court has ruled on numerous occasions to permit evidence of similar uncharged misconduct to show that defendant acted in accordance with the larger plan. In *People v. Peete* (1946) 28 Cal. 306, 309-313, both of the victims in the uncharged and charged crimes were shot in the back of the neck and buried near the defendant's home. The Court viewed the incidents in light of all the circumstances and found that the similarity in manner and place ruled out the option that it may be "merely coincidental." (*Id.*) Instead, the court ruled that the charged conduct was "directed by design." (*Id.*)

In *People v. Jackson* (2016) 1 Cal.5th 269, the two victims were elderly women who lived alone in the same neighborhood as the defendant, who were burglarized late at night after the women had been outside, who had only small amounts of property taken with no evidence of ransacking, and who were sexually assaulted. (*Id.* at p. 304.) One victim was viciously raped, one victim died. (*Id.*) The Court found that the crimes were cross-admissible because the defendant had a common plan of attacking elderly women late at night while they were alone in their homes in his neighborhood with the purpose of viciously assaulting them. (*Id.*)

In some instances, the commission of the prior offense is itself not the incentive for commission of the charged crime but the "[t]he presence of the same motive in both instances may be a contributing factor in finding a common plan or design." (*People v. Scheer, supra*, 68 Cal.App.4th at pp. 1020-1021.) In such cases, the offenses must "share common features." (*People v. McDermott* (2002) 28 Cal.4th 946, 999.)

The proffered evidence is relevant because it shows the manner in which the Paul Flores targets and isolates his victims, and the common plan or scheme he employs. Specifically, Paul Flores isolated January at a college party, just like the

party at Crandall Way. The location of her feminine hygiene product indicates that some type of forcible sex act occurred against her body. . Based on the similarity between each of the attacks, both the pattern as well as location and time of the attacks, it is clear this pattern is not merely coincidental, but it is in fact a direct, targeted plan to prey upon intoxicated or otherwise vulnerable women who are unable to consent.

3. **Evidence of Other Acts is Admissible to Establish the Corpus Delicti of Kristin Smart's Murder**

Evidence of other offenses is admissible to establish the corpus delicti of a crime, including but not limited to by way of demonstrating common plan or scheme (also known as modus operandi), intent, motive, and the absence of mistake or accident. (*People v. Huynh* (2012) 212 Cal.App.4th 285, 301 (*Huynh*) [modus operandi]; *People v. Spector* (2011) 194 Cal.App.4th 1335, 1375-1381 (*Spector*) [absence of mistake or accident]; *People v. Robbins* (1988) 45 Cal.3d 867 (*Robbins*), superseded by statute on other grounds as stated in *People v. Jennings* (1991) 53 Cal.3d 334, 387 fn.13 [intent]; *Matthews v. Superior Court* (1988) 201 Cal.App.3d 385 (*Matthews*) [common plan or scheme]; *People v. Webster* (1971) 14 Cal.App.3d 739 (*Webster*) [intent, motive, modus operandi].)

In *Matthews*, the Court of Appeal upheld the admission of evidence of two prior rapes to establish the corpus delicti of the charged rape as well as the special circumstance allegation that the victim was murdered while the defendant engaged in the commission or attempted commission of a rape.[3] The defendant in *Matthews* was charged with the murder and rape of a young woman whose bones and a rope were found at an abandoned campsite in Coldwater Canyon nearly two years after her disappearance. (*Id.* at p. 389.) A forensic anthropologist observed that the scapula had suffered a puncture wound and also indicated that he observed shovel marks. (*Id.*) A

[3] The Court of Appeal upheld the admission despite the fact that the defendant had been acquitted in one of the previous rapes, noting that " 'an acquittal does not prevent the admissibility of evidence concerning another wrongful act.' [Citation.]" (*Id.* at p. 390, fn.1.)

woman who lived near the campsite lent a shovel to a young man, and the defendant was in possession of a shovel and lantern when he was arrested on an unrelated matter in the area of Coldwater Canyon the day the victim disappeared. (*Id.* at pp. 389-390.) The defendant admitted he had sex with the victim earlier in the day but implied it was consensual. (*Id.* at p. 391.) The defendant further claimed he had placed the rope around the victim's neck after suggesting he tie her up for consensual sex, went into the tent to check if the lantern worked, and when he returned she was choking and ultimately stopped breathing and died. (*Id.*)

Without any physical evidence to support the rape charge or special circumstance, the prosecution presented the testimony of two women who stated they had been lured to the same area and raped. (*Id.*) One testified that she met the defendant at a bar and that, once at the same campsite where the victim's bones were found, the defendant handcuffed her and raped her. (*Id.*) The other woman testified that she met the defendant at a bar and that, when they arrived at a tent in Coldwater Canyon, the defendant knocked her to the ground, strangled her, bound her hands with a scarf, and raped her several times. (*Id.*) She stated that the defendant told her he had a fantasy of tying up a girl and raping her. (*Id.*)

The Court of Appeal held that the evidence of the two prior rapes was properly admitted under section 1101, subdivision (b), to show a common plan or scheme because of the extremely close similarity between the prior acts and the murder: the defendant lured young women to a campsite in Coldwater Canyon to tie them up and rape them. (*Id.* at p. 394.) The Court found that evidence of the prior rapes was "clearly relevant and material" because they tended to prove the intermediate facts[4] from which the ultimate fact of rape may be proved. (*Id.* at pp. 394-395.)

In *People v. Spector* (2011) 194 Cal.App.4th 1335, the victim died of a gunshot wound whose manner was consistent with suicide, and the Court of Appeals upheld

the admission of prior incidents when the defendant committed armed assaults against women in very particular circumstances as both motive and absence of accident or suicide. (*Id.* at p. 1388.) Specifically, the Court noted the similarities of the incidents in which the defendant, fueled by alcohol and facing a lack or loss of control of a woman who was alone with him and in whom he had a romantic or sexual interest, underwent a mood swing, exhibited extreme anger, and threatened the woman with a gun when he refused to do his bidding. (*Id.*)

In *People v. Robbins* (1988) 45 Cal.3d 867, the defendant was convicted of the murder and kidnapping of a six-year-old boy with special circumstances for murder committed during a kidnapping and a lewd and lascivious act on a minor. The victim's skeleton was discovered three months after his murder with evidence of a broken neck, and the only apparent direct evidence of molestation was the defendant's admission. (*Id.* at pp. 872-874.) During the guilt phase, the prosecution presented evidence that six months before the murder, the defendant lured a seven-year-old boy into his truck, sodomized him, and, after the boy screamed, strangled him. (*Id.* at pp. 872-873.) The Court of Appeal upheld the admission of the prior incident under section 1101, subdivision (b), to prove intent to commit a lewd and lascivious act on a minor:

> The reasoning underlying use of an actor's prior acts as circumstantial evidence of that actor's later intent is well explained by Wigmore. It is based on "the doctrine of chances—the instinctive recognition of that logical process which eliminates the element of innocent intent by multiplying instances of the same result until it is perceived that this element cannot explain them all. Without formulating any accurate test, and without attempting by numerous instances to secure absolute certainty of inference, the mind applies this rough and instinctive process of reasoning, namely, that an unusual and abnormal element might perhaps be present in one instance, but that the oftener similar instances occur with similar results, the less likely is the abnormal element likely to be the true explanation of them. [¶] ... In short, similar results do not usually occur through abnormal causes; and the recurrence of a similar result (here in the shape of an unlawful act) tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good

[4] Intermediate facts include motive, opportunity, plan, scheme, design, and modus operandi; essentially, the categories of evidence listed in section 1101, subdivision (b). (*Id.* at p. 395, fn. 3.)

> faith or other innocent mental state, and tends to establish (provisionally, at least, though not certainly) the presence of the normal, i.e., criminal, intent accompanying such an act; and the force of each additional instance will vary in each kind of offense according to the probability that the act could be repeated, within a limited time and under given circumstances, with an innocent intent." [Citations.]

(*Id.* at pp. 879-880.) The Court found the two crimes were substantially similar, and was not troubled by the differences in the vehicles used or the methods of strangulation. (*Id.* at p. 880.)

In *People v. Webster* (1971) 14 Cal.App.3d 739, the Court of Appeals upheld the admission of evidence of two prior rapes by the defendant that demonstrated a strong similarity to the charged offense of rape and murder in the commission of rape: the defendant found his victims in bars, consumed alcohol with his victims drove away with his victims, raped his victims, strangled them, and exposed the breasts of his victims. (*Id.* at p. 745.) The autopsy was inconclusive on the question of whether the sexual intercourse was voluntary or not, and the prior offenses were admissible because they demonstrated the defendant's intent to commit rape and his motive of sexual gratification. (*Id.* at p. 746.)

The corpus delicti of murder – that the death was caused by criminal means – can be proved by circumstantial evidence. (*People v. Scott* (1960) 176 Cal.App.2d 458, 489.) If it is unreasonable to believe that the victim committed suicide or died from natural causes, that would be a circumstance that tends logically to prove death was caused by criminal means. It is axiomatic to say that victims are not able to dispose of their own bodies, the perpetrator must do it. Kristin Smart's body has never been found. Four Human Remains Detection dogs showed strong alerts on the mattress and bedframe of Paul Flores in June of 1996. There was also interest in a wastebasket in his dorm room and on his desk just next to the windowsill. The fact that the dogs alerted on his mattress allows a reasonable inference that Kristin Smart was dead while on the mattress of Paul Flores. Evidence was found under the deck of Ruben Flores that indicates she was once buried at that location. Human Remains

Detection dogs showed a subtle change in behavior at that spot. The Ground Penetrating Radar showed an anomaly of a size that could fit a human body. There was staining consistent with human decomposition and digging indicators that show that spot had been dug up, filled, then dug up again, and filled back up again. Presumed human blood was found four to five feet beneath the surface of the soil, and fibers in colors consistent with the clothing last worn by Ms. Smart was found in the soil.

Paul Flores' offense against January Doe is strikingly similar to the conduct at the Crandall Way party and his other uncharged sex acts. Consequently, it tends to show that the defendant had a common plan or design to pick-up, lure, or take highly intoxicated or drugged women from bars or parties where alcohol is served back to his residence to rape them. Even though he was unable to get January Doe back to his residence, he nevertheless cornered her in a bathroom away from prying eyes. This evidence is highly probative of the circumstances surrounding the victim's death as well as the intent of the victim's killer. This evidence is critical proof in explaining to a future jury how Kristin Smart met her demise. Time and time again courts have ruled that this type of evidence is admissible to prove the corpus delicti of the crime and it should be admitted in this case.

4. The Probative Value of Evidence of Other Crimes and Acts is Not Substantially Outweighed by Undue Prejudice

In the context of Evidence Code section 352, prejudicial is not synonymous with damaging. (*Parker, supra*, __ Cal.5th __, 2022 WL at p. *18.) Section 352 allows for exclusion of relevant evidence "only if its probative value is 'substantially outweighed' by the 'probability' its admission will create a 'substantial' danger of 'undue' prejudice. " (*People v. Branch* (2001) 91 Cal.App.4th 274, 286.) All relevant evidence that points to a defendant's guilt is prejudicial to the defense. The stronger the evidence, the more prejudicial it is. The prejudice referred to in section 352, however, applies to evidence that uniquely tends to evoke an emotional bias against the defendant as an individual,

and at the same time has very little effect on the issues to be decided by the jury. (See *infra*, section II, subd. (a)(2).)

In making a judgment, pursuant to section 352, about admissibility of evidence of uncharged offenses, where introduction is sought under section 1101, subdivision (b), "the probative value of the evidence must be balanced against four factors: (1) the inflammatory nature of the uncharged conduct; (2) the possibility of confusion of issues; (3) remoteness in time of the uncharged offenses; and, (4) the amount of time involved in introducing and refuting the evidence of the uncharged offenses." (*People v. Branch, supra*, at p. 282; see also *Ewoldt, supra*, 7 Cal.4th at pp. 404-406.) This is similar to the section 352 analysis already addressed in the previous section on the admissibility of other sexual offenses pursuant to section 1108. "It follows that if evidence satisfies the requirements of section 1108, including that it is not inadmissible under section 352, then the admission of that evidence does not violate section 1101. (*People v. Daveggio and Michaud, supra*, 4 Cal.5th at p. 823.)

The defendant's prior offenses are strikingly similar, and consequently tend to show that the defendant acts according to a common plan for taking incapacitated women to his residence to commit sex crimes. This evidence is highly probative of the defendant's propensity to commit such crimes, identity of the perpetrator, motive, intent to kill, premeditation and deliberation, and the commission of a sexual offense. The probative value of uncharged misconduct is enhanced if it is completely independent of the charged offense. Multiple independent instances of similar misconduct, as in this case, increase the probative value of such evidence even further. Each of the defendant's other sexual offenses is independent of the others. For these reasons and for the reasons stated in section II, subd. (a)(2), the probative value of the evidence of Paul Flores's other acts is not substantially outweighed by the risk of undue prejudice.

//

III

THE PEOPLE ARE PREPARED TO CONDUCT AN EVIDENTIARY HEARING AS TO THE ADMISSIBILITY OF THE ABOVE ACTS PURSUANT TO EVIDENCE CODE 1108 AND 1101(b) SHOULD THE COURT REQUEST

The People have witnesses on call and are prepared to conduct an evidentiary hearing should the court request. This court could consider the live testimony to truly evaluate the circumstances of these crimes and give a full evaluation under EC 1108 and 1101(b). These victims bravely came forward and deserve to have their voices heard by this court.

IV

CONCLUSION

The statements and actions of Paul Flores witnessed by Melinda Miller during her attempt to stabilize January Doe while at a party near Cal Poly further support the Defendant's pattern of targeting intoxicated or otherwise incapacitated women with the intent of engaging in sexual acts, despite their inability to consent.

Paul Flores portrayed himself as an unwitting bystander, offering no knowledge of how or why January Doe's pants were removed even though he was seen exiting the bathroom where she was found. The People respectfully request this court allow the introduction of the testimony of Ms. Miller.

DATED: June 6, 2022

RESPECTFULLY SUBMITTED,

DAN DOW
District Attorney

CHRISTOPHER PEUVRELLE
Deputy District Attorney