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(ENDORSED)  
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Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY G. COLBENSON DEPUTY

Attorneys for Antolin Garcia-Torres

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

10 People of the State of California ) Case No.: 213515  
11 Plaintiff, )  
12 --vs.-- ) Motion for entry of judgment of  
13 Antolin Garcia-Torres ) acquittal [Pen. Code § 1118.1]  
14 Defendant. )  
15 /

16 Issues Presented

17 Counts 2-4

18 1. A trial court should enter judgment of acquittal when the prosecution fails to  
19 present substantial evidence in support of a charge or special circumstance.  
20 Circumstantial evidence is substantial when it permits reasonable inferences, i.e.,  
21 those not based on speculation, that support the charge. The evidence that Mr.  
22 Garcia-Torres committed one of the Safeway incidents consists of a general  
23 description and an undated fingerprint and the evidence he was involved in the  
24 other two involves just general descriptions. Was substantial evidence presented  
25 showing that Mr. Garcia-Torres was the attacker in any or all of the Safeway  
incidents?

1 2. An accused must intend to commit both kidnapping and carjacking to be guilty of  
2 attempting to violate Penal Code section 209.5. None of the victims of the  
3 Safeway incidents say the assailant tried to control their car or take them away.  
4 Was substantial evidence presented to permit a reasonable inference that the  
5 attacker intended to commit both kidnapping and carjacking?

6 Count 1

7  
8 3. The prosecution presented evidence attempting to show that Ms. LaMar is  
9 deceased. The evidence showed that she had alternative plans for the day she  
10 disappeared, that her clothing and phone were discarded, and that she had not  
11 communicated with friends and family. Is this substantial evidence that she is  
12 deceased?

13 4. Evidence was presented that Mr. Garcia-Torres's DNA was found on Ms.  
14 LaMar's clothing and that her DNA was found in his car. There was also  
15 evidence that fibers from his car may have been on her clothing and that similar  
16 glass beads and biological items were with her clothing and in his car. But no  
17 evidence was presented showing how the material was deposited where it was  
18 located. Without facts permitting an inference regarding how the material was  
19 deposited, was substantial evidence presented showing Mr. Garcia-Torres was  
20 involved in her disappearance?

21 5. One cannot kidnap a deceased person. There were no facts presented showing  
22 how Ms. LaMar disappeared. Without such facts, was there substantial evidence  
23 presented showing that she was alive when she was allegedly abducted and not  
24 killed and then taken away?  
25

1 Points and Authorities

2 Argument

3  
4 **I. The substantial evidence test should be used to decide whether or not to**  
5 **grant a motion for judgment of acquittal**

6 The trial court “shall enter judgment of acquittal if the evidence then before it is  
7 insufficient to sustain a conviction.” (Pen. Code § 1118.1). The defense may raise the  
8 issue through a motion for judgment of acquittal brought both at the close of the  
9 prosecution’s case and before the case is submitted to the jury. (*Id.*) The sufficiency of  
10 the evidence is tested at the point the motion is made. (*People v. Stevens* (2007) 41  
11 Cal.4<sup>th</sup> 182, 200) Therefore, the Court considering this motion should only consider the  
evidence presented in the prosecution’s case in chief.

12 The Court should use the substantial evidence test when evaluating a section  
13 1118.1 motion. (*ibid.*) The test is identical to the one appellate courts apply when  
14 reviewing the sufficiency of the evidence to support a conviction. (*People v. Petronella*  
15 (2013) 218 Cal.App.4<sup>th</sup> 945.) It asks “whether from the evidence, including all  
16 reasonable inferences to be drawn therefrom, there is any substantial evidence of the  
17 existence of each element of the offense charged. (*People v. Lynch* (2010) 50 Cal.4<sup>th</sup>  
18 693 (*abrogated on other grounds in People v. McKinnon* (2011) 52 Cal.4<sup>th</sup> 610.)  
Substantial evidence is evidence that is reasonable, credible, and of solid value.  
(*People v. Cole* (2004) 33 Cal.4<sup>th</sup> 1158, 1213.)

19 The substantial evidence test applies whether the case relies on circumstantial or  
20 direct evidence. When it rests on circumstantial evidence, the Court should consider  
21 reasonable inferences that may be drawn from the evidence. (*People v. Lynch, supra*,  
22 50 Cal.4<sup>th</sup> at p. 758). But evidence that merely raises a strong suspicion of guilt is  
23  
24  
25

1 insufficient to support a guilty verdict. (*People v. Tripp* (2007) 151 Cal.App.4<sup>th</sup> 951.)<sup>1</sup>  
2 “Evidence which merely raises a strong suspicion of the defendant’s guilt is not  
3 sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility,  
4 and this is not a sufficient basis for an inference of fact.” (*People v. Tripp*, *supra*, 151  
5 Cal.App.4<sup>th</sup> 951 (citing *People v. Redmond*, *supra*, 71 Cal.2d 745, 755.) Circumstantial  
6 evidence, therefore, is only substantial when it supports reasonable inferences  
7 suggesting guilt. “[W]here, giving effect to each circumstance in evidence all the legal  
8 effect toward guilt it can support, it would still appear that a rational conclusion of  
9 innocence was not excluded” the Court should dismiss. (*People v. Redrick* (1961) 55  
10 Cal.2d 282, 290-291.)

11 A finding of fact must be based on an inference drawn from evidence rather than  
12 mere speculation as to probabilities without evidence. (*People v. Cluff* (2001) 87  
13 Cal.App.4<sup>th</sup> 991, 1002.) An inference is unreasonable when it is based on suspicion  
14 alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work.  
15 (*People v. Tripp*, *supra*, 151 Cal.App.4<sup>th</sup> 951.) “Circumstantial evidence is like a chain  
16 which link by link binds the defendant to a tenable finding of guilt. The strength of the  
17 links is for the trier of fact, but if there has been a conviction notwithstanding a missing  
18 link it is the duty of the reviewing court to reverse the conviction.” (*Id. at p. 956* (citing  
19 *People v. Redrick*, *supra*, 55 Cal.2d 282, 290.)

20 **II. There is no substantial evidence proving the Safeway incidents charged in**  
21 **counts 2-4.**

22 **A. There is no substantial evidence that Mr. Garcia-Torres was the attacker**

23 The first of the three attacks occurred on March 19, 2009 at the Dunne Avenue  
24 Safeway. It is charged as count two of the indictment. The victim, Cynthia Lundy,  
25 testified that a man came to her locked car and pulled on the driver’s side door trying to  
get in. He fell back and then left. Ms. Lundy didn’t hear him say anything. She said he

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<sup>1</sup> *Tripp* involved an appeal following conviction but it is authority here because the tests are the same.

1 was 5'11" to 6', was maybe 180 pounds, and was perhaps Hispanic. She said he was in  
2 his 20's and conceded that she told the 911 operator he was in his late 20's. She did not  
3 identify Mr. Garcia-Torres in a photo line-up and, in fact, indicated another person was  
4 close. Likewise, she did not identify Mr. Garcia-Torres in court. Finally, no physical  
evidence was presented connecting Mr. Garcia-Torres to the attack.

5 The second attack occurred on March 19, 2009 at the Tennant Station Safeway  
6 shortly after the Dunne Avenue attack. The victim, Annette Walters, testified that  
7 someone entered the back seat of her car just as she returned to her car from shopping.  
8 There was a struggle and a stun gun was used. She didn't hear the person say  
9 anything; her purse was on the passenger seat. She later noticed that her earring had  
10 come off and her necklace had come off her neck. She found both items in her bra after  
11 the assailant left. She described the person as having brown hair, being Hispanic or  
12 African American, and being of average height and weight. She didn't see any tattoos  
13 and did not identify Mr. Garcia-Torres as the attacker when she saw him in court. A  
14 witness, Mr. Ting, told the police he believed the attacker was a white male. The police  
recovered the stun gun from Ms. Walters's car and later found Mr. Garcia-Torres's  
fingerprint on a 9 volt battery inside.

15 The final attack occurred on March 26, 2009 at the Dunne Avenue Safeway. The  
16 victim, Eva Suarez, said that she parked and prepared to enter the store. The prior  
17 attacks worried her so she grabbed knife before leaving the car. Before getting out of  
18 the car, however, she noticed that a person had entered the back seat. The person  
19 grabbed the hand in which she held the knife and pulled it to her throat. There was a  
20 struggle; her purse was on the center console. She eventually told him she was  
21 pregnant and he stopped and fled. She testified that his sleeve went up a little when his  
22 hand went over hers and she saw a tattoo. She only saw ink—she did not know if it was  
23 a picture or words. She was shown a tattoo line-up and did not identify any tattoos. She  
24 said the attacker was heavysset and 5'7" to 6' tall and she did not identify Mr. Garcia-  
Torres in court. No physical evidence was presented connecting Mr. Garcia-Torres to  
the attack.

1 The only evidence arguably connection Mr. Garcia-Torres to the Lundy and  
2 Suarez attacks are very general descriptions of the attacker. The only evidence  
3 implicating him in the Walters attack is a similarly general description and an undated  
4 fingerprint on the battery. The prosecution expert testified that he believed the  
5 fingerprint matched Mr. Garcia-Torres's prints, but he could not explain when or in what  
6 context the print was deposited on the battery. Thus, the evidence suggesting Mr.  
7 Garcia-Torres is responsible for the crimes consists of an equivocal identification and an  
8 undated fingerprint. An equivocal identification and an undated fingerprint is insufficient  
9 as a matter of law. (See *People v. Trevino* (1985) 39 Cal.3d 667, 697 (*overruled on*  
10 *other grounds*)).

11 A similar set of facts led the Supreme Court to conclude a trial court should have  
12 granted an § 1118.1 motion in *People v. Trevino*. (*Id.*) The case involved two  
13 defendants charged with murder. The victim's body was found in the bedroom of his  
14 ransacked apartment and a steam iron was found next to the body. Jeremiah Trevino  
15 and Leonard Rivas, friends of the victim, were charged with murder and the robbery-  
16 murder special circumstance. A neighbor of the deceased testified during the trial that  
17 she saw Trevino exit the victim's apartment at about 3 p.m. on the afternoon he was  
18 killed. At about the same time she heard a groan and a voice sounding like the victim's  
19 saying 'oh no'. Immediately thereafter she saw a tall, slender, clean-shaven man  
20 emerge from the apartment. He carried himself in the same manner as defendant Rivas.  
21 Both men appeared intoxicated and attempted to start a car. Later that afternoon she  
22 noticed that both men were gone.

23 The witness further testified that she had been able to identify Trevino in a  
24 photographic lineup, but that she was unable to positively identify Rivas. Two days prior  
25 she had been shown another lineup that included Rivas and she identified another  
person. The picture of Rivas showed that he did not appear slender and was not clean-  
shaven. It had been taken the day after the victim died.

The only other evidence linking Rivas to the crime was one fingerprint found on a  
dresser drawer. The prosecution's expert conceded that he could not estimate the age

1 of the print and another prosecution witness confirmed that Trevino, Rivas, and  
2 members of Trevino's family visited the victim on occasion.

3 Ultimately the case made it to the California Supreme Court. It ruled that the trial  
4 court had misapplied the standards and should have granted the motion for judgment of  
5 acquittal and that further prosecution was barred. Specifically, the Court found that the  
6 evidence was "insufficient as a matter of law." (*Id.* at p. 697.) It added that the "highly  
7 speculative and equivocal identification testimony and the solitary fingerprint of some  
8 unknown vintage do not constitute evidence which is 'reasonable, credible and of solid  
9 value—such that a reasonable trier of fact could find the defendant guilty beyond a  
10 reasonable doubt.'" (*ibid.* (*citation omitted.*))

11 Like *Trevino*, the identification testimony in this case is speculative and equivocal.  
12 None of the witnesses identified Mr. Garcia-Torres as their assailant and none identified  
13 him in a photo line-up. And the fingerprint expert is unable to determine when or how  
14 the print was deposited on the battery. The evidence is lacking—it is insufficient as a  
15 matter of law.

16 **B. No substantial evidence proving the elements of attempted kidnapping  
17 during the commission of carjacking was presented**

18 Penal Code section 209.5 defines the offense of kidnapping during the  
19 commission of a carjacking. Proving an attempt to violate section 209.5 requires that the  
20 defendant have the specific intent to commit carjacking and commit a direct but  
21 ineffectual act in furtherance of both the planned kidnapping and the planned carjacking.  
22 (*People v. Medina* (2007) 41 Cal.4<sup>th</sup> 685, 697.) Thus, a person attempts to violate  
23 section 209.5 only when they both attempt a carjacking and a kidnapping.

24 The Supreme Court found in *Medina* that substantial evidence supported the  
25 defendant's conviction of attempting to violate section 209.5. The defendant had run to  
26 a van where several members of a family were seated while fleeing from the police. He  
27 urged, "we got to go, we got to go." He wrestled with a woman while he tried to start the  
28 engine and move the van. He ran off when he saw an officer approach.

29 The Court found that the evidence supported an inference that he committed  
30 direct but ineffectual acts to commit a kidnapping in the commission of a carjacking. (*Id.*

1 at p. 969.) The uncontroverted evidence showed that the defendant tried to drive the  
2 van, tried to start the ignition, tried to put the van in gear, and tried to move the steering  
3 wheel. (*ibid.*)

4 The facts in the present matter differ significantly. The assailant approached  
5 women carrying purses outside Safeway. In one instance he attempted to enter a  
6 woman's car just after she sat in the driver's seat. The other two women were attacked  
7 when the assailant got into the rear of the car. At no time did the attacker attempt to  
8 grab their car keys, start their car, put it in gear, or take control of the car in any way.  
Likewise, the women never said that the assailant attempted to move them or kidnap  
them.

9 The intent with which these acts were committed is vague at best. There are no  
10 facts permitting a reasonable inference that the assailant intended to carjack the  
11 vehicles or kidnap the women. The prosecution will suggest that the fact the assailant  
12 never took anything of value permits an inference of an intent to carjack and kidnap. If  
13 anything, the evidence suggests the assailant lacked the opportunity to take valuables  
14 because he was fought off. But even if one were to assume there wasn't an intent to  
15 steal, the fact that the assailant never attempted to obtain control of the car shows the  
lack of intent to carjack or kidnap.

16 **III. There is no substantial evidence showing that Mr. Garcia-Torres killed Ms.  
LaMar**

17 **A. The evidence is insufficient to show that Ms. LaMar is deceased**

18 The prosecution has attempted to prove that Ms. LaMar is deceased, an  
19 essential element of the murder charge. The evidence has included testimony that  
20 neither her friends nor her family have heard from her since March 16, 2012, that she  
21 had plans for school that day and never made it to campus, and that she had plans for  
22 the weekend. It was also shown that she stopped posting on social networks and that  
23 she had no means of support independent of her parents. Finally, evidence was  
24 presented that her cell phone was found in a field and that a bag containing her clothing  
25 and other personal items was found in another field. Both her cell phone and other  
items in her bag were important to her, yet were discarded.

1 Certain other types of evidence commonly present in homicide cases is absent.  
2 For example, despite extensive searching, law enforcement has been unable to find Ms.  
3 LaMar's body. In addition, there is no evidence of violence such as blood or other things  
4 that might suggest a crime scene. Ultimately, there is no direct evidence showing that  
5 Ms. LaMar is deceased. The People's evidence is purely circumstantial.

6 The evidence fails because there are missing links in the chain of circumstantial  
7 evidence. The only way one may infer her death from the evidence is through  
8 conjecture and speculation. All of the evidence, from the items investigators found to  
9 her absence of communication with friends and family, rests on the assumption that she  
10 would be in contact if she had the ability or that she wouldn't leave items like her cell  
11 phone if she had the choice. It leads to the reasonable inference that she is unable to  
12 do these things. But there is no evidence that supports the next step the prosecution  
13 wants to take—that, because she is unable to communicate, she is dead. This requires  
14 speculation. All of the evidence would also be true if she had been kidnapped and held  
15 against her will. None of it distinguishes between the different reasons she hasn't  
16 communicated.

17 Because a reasonable inference must be based in fact, another fact is required  
18 before one can reasonably infer the reason she hasn't communicated. And no such fact  
19 was presented. The only way one infers her death through these facts is by speculating.  
20 As the court of appeal has held, where the proven facts give equal support to two  
21 inconsistent inferences, neither is established. (*People v. Tran* (1996) 47 Cal.App.4<sup>th</sup>  
22 759, 772 (citations omitted)). The Court should grant the motion for judgment of  
23 acquittal because an essential link in the chain of circumstantial evidence is missing.

24 Cases involving murder convictions where the victim's body is never found are  
25 unusual. When they do occur, they usually involve circumstantial evidence that  
suggests the accused knows the victim is dead. In short, there is more evidence than  
just information suggesting the victim is incapable of reaching out to friends and family  
or to have a presence on social media. The missing information in this case is anything  
that makes it more likely that Ms. LaMar is dead versus being held against her will.  
Believing that either occurred requires speculation because there are no facts

1 suggesting the reason she disappeared, as opposed to the fact that she has  
2 disappeared. One is left to speculate.

3 A murder conviction was upheld in *People v. Bolinski* in spite of the fact that the  
4 victim's body was never found. (*People v. Bolinski* (1968) 260 Cal.App.2d 705.) The  
5 victim, an adult man, had been a relief manager for Western Union. The evidence  
6 established that no one had seen or heard from him since the day he disappeared. The  
7 Court held that the victim's death could be reasonably inferred from the following facts:  
8 he had been missing for a year, friends and family had not heard from him, and the  
9 evidence was inconsistent with voluntary departure or self-concealment (including that  
10 he was just 12 days from qualifying for retirement). Importantly, neither the parties nor  
11 the court raised the possibility that the victim was being held against his will. Unlike Mr.  
12 Garcia-Torres, the defendant was never charged with kidnapping and, unlike Ms. LaMar,  
13 the victim was an unlikely subject of kidnapping.

14 It is much more likely that Ms. LaMar would be kidnapped and held against her  
15 will for an extended period of time than that the same would happen to an adult male  
16 just days away from qualifying for retirement. Examples of kidnappings of young girls  
17 who are held against their will for lengthy periods of time are well-known, including the  
18 Ariel Castro case in Cleveland (3 teen girls kidnapped and held for years) and the  
19 Jaycee Dugard case (kidnapped at age 11 years and found 17 years later.)

20 A murder conviction was also upheld in *People v. Scott*. (*People v. Scott* (1959)  
21 176 Cal.App.2d 458.) The Court of Appeal noted in that case that murder may be  
22 proved by circumstantial evidence in the absence of the victim's body "provided it is  
23 sufficient to preclude every reasonable theory of innocence of the accused." (*Id.*  
24 *emphasis added*) The victim in the case was the defendant's wife. The Court indicated  
25 that her death could be inferred from the following: she had no reason to run away, she  
would not have left without her eyeglasses or dentures, she would have taken money  
and clothing if she had run away, she had not accessed her bank accounts, the  
defendant had a motive for killing her, and his every act after her disappearance was  
consistent with her death. The present case is substantially different. Mr. Garcia-Torres  
was not related to Sierra LaMar, he did not act in any way that suggested her death,

1 and the victim in Scott was a middle-aged woman. Because of the *Scott* defendant's  
2 actions and the evidence he was responsible for her disappearance, one could infer her  
3 death. None of that type of evidence exists in this case.

4 *People v. Cullen* involved a case where the defendant was convicted of  
5 murdering his wife and father-in-law. (*People v. Cullen* (1951) 37 Cal.2d 614.) After they  
6 disappeared, the defendant told people they had drown. But traces of blood were found  
7 in the living room and on his clothing and he discouraged people from looking for them  
8 in the river. The Court found sufficient evidence even though the bodies were never  
9 found. The facts of *Cullen* are different from the facts of the present case. No blood or  
evidence of violence was found and Mr. Garcia-Torres never dissuaded people from  
searching anywhere.

10 Finally, *People v. Clark* involved the disappearance of a middle-aged married  
11 man. (*People v. Clark* (1951) 37 Cal.2d 614.) His neighbor went to the victim's house  
12 one day and told his wife that her husband had left because detectives were after him  
13 for some financial dealings. He said the victim had gone to South America and would  
14 call for her and then told her he had loaned the victim money and she should repay him.  
15 He also convinced her that her husband wanted her to allow the defendant and his wife  
16 to move in with them. They did and shortly thereafter there was a suspicious fire at their  
17 home, the smell of which was described as being like burning bones. There was  
18 substantial evidence in *Clark* that suggested the victim suffered a violent death and that  
the defendant had taken advantage of the victim's wife. No such evidence exists in this  
case.

19 **B. There is insufficient evidence Mr. Garcia-Torres was involved in Ms.  
20 LaMar's disappearance**

21 The prosecution's evidence implicating Mr. Garcia-Torres in Ms. LaMar's  
22 disappearance consists of DNA and fiber results, Mr. Garcia-Torres's statement to law  
23 enforcement, and video documenting some of his travels on the day she disappeared.  
24 The Safeway incidents do not assist in proving identity as the Court only admitted them  
to show motive and intent under Evidence Code section 1101, subd. (b).

1 As the prosecution DNA experts explained, they can attempt to identify  
2 contributors to DNA samples but they cannot determine how or when the DNA was  
3 deposited. Especially when the evidence comes from touch DNA, there are a multitude  
4 of reasons it could be present. This is especially true when the evidentiary profiles  
5 consist of mixtures of multiple contributors, many of whom are unidentified. As the  
6 government experts conceded, there is no means of determining the timing or order of  
the deposition of the individual profiles onto the objects.

7 Once again, the evidence of Mr. Garcia-Torres's involvement, including the DNA  
8 results, is circumstantial. Any inferences drawn therefrom must be reasonable, meaning,  
9 they must have a basis in fact and not be speculative. From the evidence presented in  
10 this case, one cannot reasonably infer the mechanism through which the DNA, be it  
11 from the hair, the gloves, the interior door, or Ms. LaMar's clothing was deposited. As  
the prosecution experts explained, DNA may be transferred easily and, depending on  
the conditions, may remain present for an undetermined period of time.

12 The fiber evidence presents a similar challenge. Trevor Gillis, the criminalist who  
13 compared the fibers, conceded that he was unable to say how the fibers may have  
14 transferred. So even if one were to assume the fibers on Ms. LaMar's sweatshirt came  
15 from Mr. Garcia-Torres's Jetta, their presence do not provide evidence that he was  
16 involved in her disappearance. Their mere presence does not provide facts from which  
17 a reasonable inference may be inferred about how she disappeared or whether Mr.  
Garcia-Torres was involved.

18 Simply demonstrating that a person's DNA is found in a particular location or that  
19 fibers may have been transferred does not permit an inference regarding the  
20 mechanism through which the items were deposited. Thus, additional facts are required  
21 before a reasonable inference can be drawn that would allow a fact finder to determine  
22 that they were present because of involvement in the charged crime. No such facts are  
present.

23 Video from Mr. Garcia-Torres's RV park shows him leaving at approximately 7  
24 a.m. the morning Ms. LaMar disappeared. And he told the police he drove down Palm  
25 that morning. Thus he would have driven past Ms. LaMar's bus stop. He never says he

1 saw her or came into contact with her. Indeed, the fact he said he went by the bus stop  
2 is an indication that he didn't kidnap her—why else would he concede that fact?

3 **IV. There is no substantial evidence to support first-degree murder and the**  
4 **special circumstance**

5 **A. The evidence does not permit a reasonable inference that Ms. LaMar**  
6 **was killed during a kidnapping or attempted kidnapping**

7 The prosecution theory for first-degree murder is felony-murder (kidnapping).  
8 Proving kidnapping felony-murder requires that the defendant committed or attempted  
9 to commit kidnapping, that he intended to commit kidnapping, and that he caused the  
10 death of another person while committing the kidnapping. (Pen. Code § 189; CALCRIM  
11 540A.)

12 The prosecution has also alleged the kidnapping-murder special circumstance.  
13 The elements of the special circumstance vary depending on whether there is evidence  
14 to believe the defendant acted alone or with another. (CALCRIM 731.)

15 The elements include that the defendant committed or attempted to commit  
16 kidnapping, that he intended to commit kidnapping, and that the victim was killed during  
17 the course of the kidnapping. (*ibid.*) If there is evidence suggesting the defendant was  
18 not the actual killer, the prosecution must also show that he aided and abetted another  
19 person, did an act that was a substantial factor in causing the death of another person,  
20 and that he intended the victim to be killed. (*ibid.*)

21 Proving kidnapping requires substantial evidence that the victim was moved a  
22 substantial distance against her will. The victim must be alive to be kidnapped. (*People*  
23 *v. Loza* (2012) 207 Cal.App.4<sup>th</sup> 332, 358.) There is no direct evidence Ms. LaMar was  
24 kidnapped. Once again, the prosecution must rely on circumstantial evidence and  
25 reasonable inferences it permits.

26 The evidence leaves several questions unanswered. For example, if Ms. LaMar  
27 did get into the Jetta, did she do so voluntarily? If not, was she alive when she was  
28 moved or was she killed and taken away for her body to be hidden? The ultimate  
29 question comes down to what specifically happened to her the morning of March 16,  
30 2012. One may speculate and attempt to balance probabilities, but such reasoning is

1 specifically prohibited. What facts permit an inference that Ms. LaMar was alive when  
2 she left the scene? There are none. There are no facts that would permit a jury to draw  
3 the inference that Ms. LaMar was alive, kidnapped, and killed versus killed and then her  
4 body taken away. Without facts permitting a reasonable inference, the Court should  
5 dismiss the special circumstance.

6 Conclusion

7 The prosecution's case, both related to Ms. LaMar's disappearance and to the  
8 Safeway attacks, rests on circumstantial evidence. If any link in the chain of evidence is  
9 missing, the Court should dismiss.

10 The murder charge is infirm because of the lack of substantial evidence that Ms.  
11 LaMar is deceased and not being held against her will. Secondly, the DNA and fiber  
12 evidence merely shows the evidence was found in particular locations—it does not  
13 permit inferences as to how or when they were deposited there. Without that, it cannot  
14 be reasonably inferred that Mr. Garcia-Torres was involved in her disappearance.  
15 Finally, the absence of facts surrounding her actual disappearance makes it impossible  
16 to reasonably infer that she was kidnapped.

17 The Safeway incidents are infirm because they are supported only by an  
18 equivocal identification and an undated fingerprint. The evidence is insufficient as a  
19 matter of law.

20 Because the evidence supporting the murder charge, the special circumstances,  
21 and the Safeway incidents is insufficient, the defense asks the Court to dismiss the  
22 indictment pursuant to Penal Code section 1118.1.

23 Date: 4/18/2017

24 Respectfully submitted,

25 

Brian Matthews  
Deputy Alternate Defender

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10 People of the State of California ) Case No.: 213515  
11 Plaintiff, )  
12 ) Proof of Service  
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14 Antolin Garcia-Torres ) acquittal [Pen. Code § 1118.1]  
15 Defendant. )  
16 )

17 I am a citizen of the United States and employed in Santa Clara County. I am  
18 over the age of eighteen years and not a party to this action. My business address is  
19 701 Miller Street, San Jose, CA 95110.

20 On 4/18/2017, I served the within Motion for entry of judgment of  
21 acquittal on the Plaintiff in this action by serving a true and correct copy by hand to  
22 Deputy District Attorneys David Boyd and Dana Veazey.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed  
24 on this 18<sup>th</sup> day of April 2017.

B. Matthews  
Brian Matthews  
Deputy Alternate Defender