County of Santa Clara

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Jeffrey F. Rosen
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October 28, 2016

The Honorable Vanessa A. Zecher
Superior Court of California
County of Santa Clara
191 N. First Street
San Jose, CA 95113

Re: People v. Garcia-Torres, 213515
Letter Brief Supplement to *Miranda* Opposition

Dear Judge Zecher,

It is the People's position that Defendant was not in custody prior to waiving his *Miranda* rights when he voluntarily spoke with officers at the San Martin substation on April 7, 2012. In addition to the authorities provided in the filed Opposition, the People respectfully request that this Court also review *People v. Kopatz* (2015) 61 Cal. 4th 62. In *Kopatz*, the defendant was not in custody for purposes of *Miranda* where: he acquiesced after the officer told him "they would like to talk to him" down at the bureau; he was driven in the "locked cage" of the patrol car, but neither searched or frisked; the interview was in an unlocked room and took less than an hour; the interview was investigatory and neither hostile or accusatory; the defendant was told he could leave after the interview; he answered the officers' questions, but did not confess to any involvement; and, after the interview, the defendant was not arrested and instead driven home. (*Id.* at pp. 80-82.)

Further, when officers gave Kopatz a break and left the interview room, he made the statement, "Oooh. Don't leave me in here for 30 fucking min—, minutes. I gotta go." (*Kopatz, supra,* 61 Cal. 4th. at p. 82.) However, "[e]ven if these words indicated that defendant subjectively believed he was not free to go, the test is whether a reasonable person would feel free to leave." (*Id.* at p. 82.) When officers did return to the interview room, they stated they had only a few more questions and then Kopatz could go home. (*Id.* at p. 82.) After asking a few more questions regarding one of the victims on the day of the murders, the interview was ended. (*Id.* at p. 82.)

The California Supreme Court held that there was no indication that defendant's "freedom to depart was restricted." (*Kopatz, supra*, 61 Cal. 4th at p. 82.) "In examining all of the

person in defendant's situation would have believed he was free to leave at any time and to terminate the interview." (*Id.* at p. 82.)

Similarly, the circumstances here show that Defendant was not in custody under the objective standard required for *Miranda*. Sergeant Leon told Defendant that they needed to talk to him at the San Martin office, but that Defendant was not under arrest and would return home afterwards.[1] Defendant said, "All right," and that he had planned to go fishing, but this was more important. Defendant rode with the two plain-clothed sergeants in an unmarked car; he was neither searched nor handcuffed. The conversation was casual and friendly and included topics such as fish, food, and Easter. Once at the station, the officers spoke to Defendant in an unlocked interview room. Defendant was offered something to eat and drink. The tone was casual and friendly. The interview, which was primarily biographical prior to the advisement of *Miranda* rights, was approximately 50 minutes in length including two breaks that spanned approximately 15 minutes. Defendant was then advised of, and waived, his *Miranda* rights. After Defendant provided his DNA sample, Defendant was driven home. Therefore, as the Supreme Court's analysis in *Kopatz* demonstrates, Defendant was not in custody under *Miranda*.

The Rescue Doctrine

However, even assuming *arguendo* that Defendant's interview was custodial, Defendant's pre-Mirandized statement should be admitted under the rescue doctrine. (See *People v. Davis* (2009) 46 Cal. 4th 539 (*Davis*); see also *People v. Coffman* (2004) 34 Cal. 4th 1.)

In *Davis*, the California Supreme Court affirmed the denial of the suppression the defendant's statements when officers contacted the defendant to persuade him to disclose the kidnapped victim's whereabouts four days after the defendant had asserted his *Miranda* rights. (*Davis, supra,* 46 Cal. 4th 539.) Davis had invoked his right to counsel on November 30, 1993. (*Id.* at pp. 588-89.) On December 4, officers contacted him while he was in jail to roll his hands for prints. (*Id.* at p. 589.) Although officers did not seek to illicit a confession, they spoke to the defendant in an attempt to discover victim Polly Klaas' whereabouts because they had reason to believe she was still alive. (*Id.* at p. 589.) Davis indicated that he wanted to speak with officers about fifteen minutes after the officers left. (*Id.* at p. 590.) Over the phone, Davis told the sergeant where the victim's body was located. (*Id.* at p. 590.)

The defendant's admissions over the phone, made four days after he invoked counsel, were admissible under the rescue doctrine. (*Davis, supra,* 46 Cal. 4th at pp. 595-96.) "Under some narrow circumstances, sometimes called the "public safety" or "rescue" exceptions, compliance with *Miranda* is excused where the purpose of police questioning is to protect life or avoid serious injury and the statement is otherwise voluntary." (*People v. Panah* (2005) 35 Cal. 4th 395, 471.) "[A]pplicability of the rescue doctrine must be grounded on objective facts known to law enforcement." (*Davis, supra,* 46 Cal. 4th at p. 593.) The Court explained:

> [U]nder circumstances of extreme emergency where the possibility of saving the life of a missing victim exists, noncoercive questions may be asked of a material

[1] The following is based upon the testimony of Sergeant Leon in this matter on October 24, 2016, as well as the recording of Defendant's April 7, 2012, statement that was admitted into evidence.

> witness in custody even though answers to the questions may incriminate the witness. Any other policy would reflect indifference to human life.

(*Id.* at pp.593–94.) The California Supreme Court "has described the rescue doctrine as "analogous" to, not subsumed within, the public safety exception." (*Id.* at p. 593; see *N.Y. v. Quarles* (1984) 467 U.S. 649, 657: "We conclude that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination.") Thus, the *Davis* Court noted that "California decisions have continued to apply the rescue doctrine independently of the public safety exception articulated by the high court." (*Davis, supra,* 46 Cal. 4th at p. 593.)

Here, it was objectively reasonable for Sgt. Leon to believe that Sierra LaMar would still be alive and Defendant would have information that could lead to her rescue. April 7, 2012, was twenty-two days after Sierra'a abduction. Searchers were still looking for Sierra LaMar. In *Davis*, Polly Klaas had been missing for 64 days prior to the defendant's custodial admission. (*Davis, supra,* 46 Cal. 4th at pp. 594-95.). Sergeant Leon testified that in interviewing Defendant on April 7, if there was no innocent explanation for Defendant's DNA on Sierra's jeans, the Sergeant hoped to either illicit information regarding Sierra LaMar's whereabouts or spur Defendant to inadvertently lead officers to her. Accordingly, should the Court find that Defendant's pre-*Mirandized* statement was custodial, it is admissible under the rescue doctrine.

Conclusion

The People respectfully request that this Court deny Defendant's motion to suppress the portion of his statement on April 7, 2012, that occurred prior to the advisement of his *Miranda* rights as Defendant was not in custody. However, should this Court find that the interview was custodial, the People ask that the defendant's statement be admitted under the rescue doctrine.

Respectfully submitted,

JEFFREY F. ROSEN,
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By: _____
Dana Veazey
Deputy District Attorney

(ENDORSED)
FILED
OCT 31 2016
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY G. COLDENSON DEPUTY

Case Name: *People v. Garcia- Torres*
Case Number: 213515

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is: Office of the District Attorney, 70 W. Hedding Street, West Wing, San Jose, California 95110.

On **October 28 2016**, I served the following document(s) upon the interested parties herein by the method(s) indicated below:

Letter Brief Supplement to Miranda Opposition

X BY ELECTRONIC MAIL TRANSMISSION: by e-mailing a true copy thereof to the recipient at the e-mail address indicated:
Brian.Matthews@ado.sccgov.org and Alfonso.Lopez@ado.sccgov.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **October 28, 2016**, at San Jose, California.

Dana Veazey

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