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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10 PEOPLE OF THE STATE
OF CALIFORNIA,

CASE NO.: 1490969

11 Plaintiff,

MOTION TO STRIKE DETECTIVE
HIVELY'S TESTIMONY AND
PEOPLE'S EXHIBIT NUMBER 2

12 vs.

13 GEORGIA DEFILIPPO,

14 Defendant.

Date: TBA
Time: 9:30 a.m.
Dept.: 26

16 I.
17 THE COURT SHOULD STRIKE THE PORTIONS
18 OF DETECTIVE HIVELY'S TESTIMONY RELATING TO THE TEXT MESSAGES
19 FOUND ON CHRISTINA DEFILIPO'S COMPUTER AND THE ACCOMPANYING
20 EXHIBIT (PEOPLE'S 2)

21 Over the objections of counsel (PXT P. 34, 37-42), the Court received testimony and
22 portions of the People's text message exhibit (People's Exhibit 2, Marked for Identification
23 October 13th, 2015, PX 35:7-8) subject to a motion to strike (PXT P. 47; 14-19). The majority of
24 the messages texted are irrelevant and represent spurious character evidence. Accordingly, the
25 court should strike the testimony and exhibit pursuant to Evidence Code §§352 and 1101.

26 1) The Text Messages Have No Probative Value and Are Irrelevant

27 Per California Evidence Code § 352, "[t]he court in its discretion may exclude evidence if
28 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."

1 Probative value is determined by the relevance, materiality and necessity of the evidence
2 introduced. In order to be deemed probative the court must find that the evidence "tends to
3 logically, naturally, and by reasonable inference prove the issue on which it is offered." People
4 v. Shader (1969) 71 Cal.2d 761, 774-775. See Simons, California Evidence Manual (2016),
5 §1:28, p.36. Here, the text messages have no logical, natural, or reasonable connection to the
6 crimes alleged.

7 The messages at issue here were cherry-picked from over 10,000 text messages found on
8 Christina Defilipo's laptop computer's hard drive back-up of her cell phone data. The messages
9 date back to 2008. They are snippets of conversations between Christina and her mother
10 Georgia and Christina and her "sister" Dayna (PX 44:25-28). They have no probative value in
11 this case wherein it is alleged that Georgia Defilipo committed murder and that Christina and
12 Georgia Defilipo, with the other codefendants, conspired to Obstruct Justice. There is no mention
13 of any such conduct, nor evidence of any element of these offenses contained in the text
14 messages offered into evidence by the prosecution through Detective Hively.

15 The messages are so remote in time relative to the alleged date of the murder that they are
16 irrelevant to the Murder charge. The messages go back to 2008. The last text message up loaded
17 to the computer was from February 24th, 2012, more than a month before the disappearance of
18 the decedent (March 29 or 30, 2012) . Many of the texts introduced by the prosecution through
19 Detective Hively's testimony at preliminary hearing are from an exchange of text messages from
20 February, 2011, almost 14 months before the disappearance of the decedent.

21 Question of relevancy or admissibility of evidence on ground of being too remote is
22 subject to trial judge's discretion. People v. Bjornsen (1947) 79 Cal. App. 2d 519, 180 P.2d 443.
23 The messages from 2011, like all of the text messages, simply by virtue of their remoteness in
24 time and staleness of the information contain therein, are not probative. The court should
25 therefore, exercise its discretion to strike the testimony and Exhibit concerning these texts.

26 The majority of the messages selected by the prosecution deal with the thefts occurring on
27 the Carson property and the family's efforts to thwart the thieves responsible. None discuss
28 anything close to murder or obstructing justice. For instance, on Sunday, February 6, 2011 the

1 burglary of container units and out buildings on the property and a gaping hole in the property's
2 fence were discovered. Frank Carson himself called law enforcement. (PXT P. 177). A worn
3 path of travel from the gaping hole in the fence led to the residence of Michael
4 Cooley and Eula Keyes (PXT P. 182).

5 The discovered loss was extensive (PXT P. 182) and obviously upsetting. Despite being
6 upset, Mr. Carson was quiet and let law enforcement conduct their investigation (PXT P. 187).
7 No arrests were made and no property recovered. The gaping hole in the fence, of course, caused
8 concern which was reflected in the text messages.

9 No plans are made in the texts to commit murder, lie in wait, or assault anyone. Neither
10 is there any reference to obstructing justice in any fashion.

11 The prosecution asks the court to allow these text messages as proof of the "defendant's
12 state of mind" (PX 38:1) The prosecution opines that these text messages "depict the escalation
13 of their frustration... [as well as a plan]... to not call law enforcement and to take matters into
14 their own hands" (Id. at 15-18). Presumably, the prosecution is arguing that the text messages
15 are material as to the obstruction of justice charge. Yet, the text messages do not even contain
16 the suggestion that the family was trying to exclude law enforcement in their attempt to deter
17 further theft.

18 Christina DeFilippo, living alone on the burglarized property, is asked in the text
19 messages to notify her family of the activity there. Nothing she or her family said or did was
20 illegal or unreasonable under the circumstances. To the contrary, as stated above and testified to
21 at preliminary hearing, the family contacted law enforcement on several occasions about the
22 thefts and invited them to investigate. The text messages have no relevance to the charge of
23 obstruction of justice.

24 The prosecution also implies that the frustration expressed in the text messages
25 demonstrates a motive to commit the murder of Korey Kauffman. In the recent case of People v.
26 Maciel, (2013) 57 Cal. 4th 482, the California Supreme Court upheld the admission into
27 evidence of a murder defendant's statement that the murder victim was robbing drug dealers and
28 forcing the defendant "to kill him, or do something to him". Id. at 533. The court found that the

1 statement was relevant evidence of motive and supported the prosecution's theory that the victim
2 was an intended target in the murders. The type of statement in Maciel is clearly distinguishable
3 for any of the text messages at issue here. There is not a single reference to Korey Kauffman in
4 the texts. None of texts suggest or imply a plan or desire to set traps, lie in wait, or hurt anyone
5 in any way. The texts only discuss methods of protecting the property and themselves.

6 **2) The Text Messages are Confusing and Misleading**

7 All the text messages presented are taken out of context. There is reference to phone calls
8 made between Christina and Geoprgia Defilipo in the text messages. However, the content of
9 those phone conversations are unknown. Likewise, whatever personal, written, or electronic
10 communication was taking place contemporaneously with the text messages is also absent.
11 Furthermore, there was no information after the last back-up of the phone to the laptop on
12 February 24th, 2012 to provide any subsequent context to the messages. (PX 74:14-16) So, taken
13 completely out of any context, these text messages are confusing and misleading.

14 Moreover, all the text messages selected by the prosecution misleadingly splice snapshots
15 of text events from the past to a missing person event in the future in order to create the illusion
16 of criminal activity, thus causing te spectre of guilt to attach to innocent conduct.

17 **3) The Text Messages Amount to Prejudicial and Impermissible Character Evidence**

18 Many of the the text messages the prosecution seeks to admit pertain only to "family
19 dynamics" (PX 92), the People attempt to seek a holding order in a murder case by focusing on
20 unrelated, mother/daughter frustrations like "Mom just got . . .mad at me" (PX 46; 14), "She's
21 pissed off at me. . ." (PX 49; 20), and "Mom's nuts" (PX 46; 21). The old and unrelated
22 messages, taken out of all context, paint Georgia Defilipo as angry, where, in reality, she only
23 expressed normal concern for her adult daughter living alone.

24 This type of character evidence is impermissible evidence of a her character or a trait of
25 her character, which is somehow being offered to show her propensity to commit murder. See
26 California Evidence Code § 1101. Clearly, these text messages are prejudicial. Evidence that is
27 "predjudicial", which in the context of Evidence Code §352 means evidence that uniquely tends
28 to evoke an emotional bias against a party as an individual, has only slight probative value,


1 People v. Carey, (2007) 41 Cal. 4th 109, and has very little effect on the issues. People v.
2 Rucker, (2005) 126 Cal. App. 4th 1107. The selected text messages suggest that Georgia
3 DeFilippo was constantly upset and overly-demanding of her daughter and the texts evoke an
4 emotional bias against her based on old, out of context, and unrelated conversations. So
5 here, if the text messages have any probative value, it would be far outweighed by its danger of
6 prejudice.

7
8 **CONCLUSION**

9 The text messages are probative of nothing as it concerns the charges in the instant case.
10 The prosecution's choice of texts and the lack of context in which they were presented is
11 confusing and misleading. Ultimately, the text messages only serve to prejudice the defendant.
12 For the foregoing reasons the testimony of Detective Hively should be stricken.

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14 Dated: July 15, 2016

Respectfully submitted,

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17 _____
18 JESSE J. GARCIA
19 Attorney for Georgia DeFilippo
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1 **PROOF OF SERVICE**

2 I declare under penalty of perjury that:

3 I am a citizen of the United States and am employed in the County of Stanislaus. I am
4 over the age of eighteen years and not a party to the within action. My business address is as
5 follows: 811 15th Street, Modesto, CA 95354.

6 On the date set forth below, I caused the attached **MOTION TO STRIKE**
7 **DETECTIVE HIVELY'S TESTIMONY AND PEOPLE'S EXHIBIT NUMBER 2** to be
8 served on the parties to this action as follows:

8 BY MAIL-

9 I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully
10 prepaid, in the United States mail at Modesto, California, addressed to the parties as set
11 forth on the attached service list. C.C.P. §§1013 (a), 2015.5.

11 BY FEDERAL EXPRESS-

12 I retained Federal Express to personally serve a true copy thereof on _____ on the parties
13 as set forth on the attached service list. C.C.P. §§1013 (c), 2015.5.

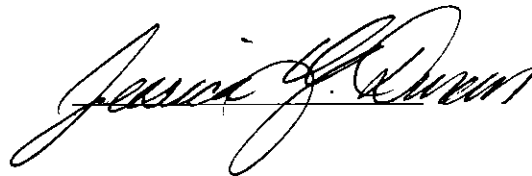
14 BY FACSIMILE TRANSMISSION-EMAIL

15 I am readily familiar with this law firm's business practices for collection and processing
16 of documents by way of facsimile and email. I telefaxed/scanned a true copy thereof at
17 said facsimile number (s)/email addresses as set forth on the attached service list. C.C.P.
18 §§1013 (e), 2015.5 and C.R.C. §2008.

18 BY PERSONAL SERVICE-

19 I personally served a true copy thereof on the parties as set forth on the attached service
20 list. C.C.P. §§1011, 2015.5.

21 Executed on July 15, 2010 at Modesto, California.

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Court Case No.: 1490969

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