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This week's P&A video covers selected new laws in effect in 2021. The handout discusses additional new laws. Next week's P&A video/handout will be Part II on the subject.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

NACARRE TURNER,

Defendant,

) Case No. J20-00481
)
) PEOPLE'S OPPOSITION &
) RESPONSE TO DEFENDANT'S
) MOTION FOR DISCOVERY
) PURSUANT TO PENAL CODE
) SECTION 745(d)
)
)
) DATE: March 3, 2021
) TIME: 8:30am
) DEPT: 8

INTRODUCTION

On September 30, 2020, Governor Gavin Newsom signed Assembly Bill No. 2542 (AB 2542) into law, also known as the California Racial Justice Act (hereafter "the Act"). The Act prohibits the state from seeking or obtaining a criminal conviction or from imposing a sentence based upon race, ethnicity, or national origin. Pen. Code § 745(a). The Act also applies to adjudications and dispositions in juvenile delinquency court. Pen. Code § 745(f). The Act only applies prospectively to cases where judgment has not been entered prior to January 1, 2021. Pen. Code § 745(j).

Key components of the Act include the right to: 1. Discover evidence relevant to potential violations, upon a showing of good cause (Pen. Code § 745(d); 2. Move for a hearing in a court of competent jurisdiction, which can be granted upon a prima facie showing the Act was violated (Pen Code § 745(b); 3. Present evidence at an evidentiary hearing, which requires judicial findings if it is

1 shown by a preponderance of evidence that a violation occurred (Pen. Code § 745(c); and 4. A right to
2 remedies for adjudicated violations (Pen. Code § 745(e).

3 **STATEMENT OF CASE**

4 On September 8, 2020, the People filed a Juvenile Petition, charging the minor (Defendant
5 Turner) with murder pursuant to Penal Code section 187. The petition also contained allegations
6 pursuant to Penal Code sections 12022.53(d)/(e) and 186.22(b). At the time the petition was filed the
7 People also filed a Notice of Motion and Motion to Transfer to Adult Court.

8 The matter has been assigned to Department 8 (The Honorable John Kennedy) for all purposes.

9 The case has been calendared several times for “To Set” as the parties awaited the Probation
10 Report. The defense now files a discovery motion and the matter is now calendared before this Court to
11 review and consider the discovery request made by the defendant.

12 **SUMMARY OF FACTS – THE MURDER**

13 On September 2, 2020, at approximately 10:30pm, two vehicles (a black Lexus and a white
14 Buick) drove westbound on Hartnett Avenue in central Richmond. Both vehicles stopped in the middle
15 of the road near Carlson Boulevard. Shortly after, both vehicles make a U-turn and proceed eastbound
16 on Hartnett Avenue. The vehicles then stop and subsequently park on the side of the road.

17 After parking, two subjects exit the black Lexus and one individual (Defendant Turner) exits the
18 driver seat of the white Buick. The three subjects walk together along the curb and fence line of 4859
19 Hartnett Avenue. The three subjects approach a group of people gathered in the open area of the
20 Crescent Parks Apartment Complex. All three subjects then engage in gunfire, aiming at the group. In
21 total, 55 casings were recovered from three different caliber casings. Immediately after the shooting the
22 suspects ran back to their respective vehicles and fled the location.

23 Mr. Jaloni Blasher, 22 years of age, was shot multiple times and died on-scene when police and
24 medical aid arrived. Ms. Williams, who was seated in a nearby parked car with friends, was also struck
25 by a bullet that grazed her back.

26 At 8:12 am the following morning on September 3, 2020, officers executed a search of 4517
27 Jenkins Way, in Richmond. This was the residence of Defendant Turner’s girlfriend. When officers
28

1 arrived, the white Buick was parked outside. Officers surrounded the residence and observed Defendant
2 Turner tossing an AR-15 rifle out of a bedroom window. Upon entry, officers detained the defendant in
3 that same bedroom and found the rifle's magazine under the window. Defendant's girlfriend was also in
4 the residence.

5 Richmond Police officers were also surveilling the defendant's residence. The defendant's
6 mother was observed loading her vehicle at 12:10pm with boxes. Upon a traffic stop and search, officers
7 located ammunition in the boxes.

8 Subsequent investigation revealed the following information: (1) the AR-15 rifle that was seized
9 was analyzed and determined to be the same weapon that fired the .223 caliber rounds recovered at the
10 scene of the shooting; (2) a sweatshirt worn by a suspect as seen on surveillance video was found in the
11 defendant's possession in the bedroom of 4517 Jenkins Way, and (3) according to Cell Data Records,
12 the defendant's cellphone device was in the area at the time of the shooting.

13 Additionally, Richmond Police officers also obtained evidence that indicates the defendant is a
14 known gang member from Central Richmond. Based on the evidence, officers believe the shooting was
15 gang-motivated and a retaliatory shooting. On September 1, 2020, Eric Galeana, a Central Richmond gang
16 member and friend of Defendant Turner, was murdered. It is believed that Central Richmond determined
17 "Crescent Park" killed Eric Galeana. The following day, Defendant Turner and two accomplices drove
18 to rival gang territory (the Crescent Park Apartment Complex is a rival territory of Central Richmond)
19 and shot at the group of individuals.

20 Upon the defendant's arrest, the District Attorney Office charged him for his direct involvement
21 in the murder of Mr. Jaloni Blasher.

22 **POINTS AND AUTHORITY**

23 **I. THE DEFENSE FAILED TO SPECIFICALLY ALLEGE A VIOLATION OF PENAL** 24 **CODE SECTION 745.**

25 Pursuant to California Penal Code section 745, a Defendant may file a motion alleging a
26 violation of this section for explicit or implicit bias that occurs during their case. The burden rests on the
27 defense to sufficiently, and with particularity, allege a violation of this code.
28

1 The Defense may allege a violation of Penal Code section 745 has occurred, pursuant to subsection
2 (a), in one of the following ways:

- 3 1. The judge, an attorney in the case, a law enforcement officer in the case, an expert witness, or
4 juror exhibited bias or animus towards the defendant because of their race, ethnicity, or national
5 origin;
- 6 2. During the Defendant's trial, in court and during the proceedings, the judge, an attorney in the
7 case, a law enforcement officer involved in the case, an expert witness, or juror, used racially
8 discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise
9 exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or
10 national origin, whether or not purposeful. This paragraph does not apply if the person speaking
11 is describing language used by another that is relevant to the case or if the person speaking is
12 giving a racially neutral and unbiased physical description of the suspect;
- 13 3. The defendant was charged or convicted of a more serious offense than defendants of other
14 races, ethnicities, or national origins who commit similar offenses and are similarly situated, and
15 the evidence establishes that the prosecution more frequently sought or obtained convictions for
16 more serious offenses against people who share the defendant's race, ethnicity, or national origin
17 in the county where the convictions were sought or obtained;
- 18 4. (A) A longer or more severe sentence was imposed on the defendant than was imposed on other
19 similarly situated individuals convicted of the same offense, and longer or more severe sentences
20 were more frequently imposed for that offense on people that share the defendant's race,
21 ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in
22 the county where the sentence was imposed.
23 (B) A longer or more severe sentence was imposed on the defendant than was imposed on other
24 similarly situated individuals convicted of the same offense, and longer or more severe sentences
25 were more frequently imposed for the same offense on defendants in cases with victims of one
26 race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national
27 origins, in the county where the sentence was imposed.

19 The current case is in a pre-contest/trial posture. Therefore, the only section where the Defense
20 can make a plausible argument would be pursuant to Section 745(a)(3). However, the Defense's Motion
21 fails to allege whether a specific perceived disparity occurred in this case. In fact, the defense uses
22 speculative language: "The charging issue which **might** be subject to the Racial Justice Act..." as well
23 as, "The information which I need to evaluate the **possible** racial prejudice..." [emphasis added]. At no
24 point does the defense's motion articulate whether the District Attorney's Office charged the defendant
25 with a more serious offense than defendants of other races who committed similar offenses. Here, the
26 defense is merely requesting statistical information in an attempt to find a disparate treatment bias,
27 which is not the standard set forth by the California Penal Code section 745 requirements.

1 **II. THE DEFENSE MUST ESTABLISH “GOOD CAUSE” FOR THE REQUESTED**
2 **MATERIAL.**

3 The express language of Penal Code section 745(d) allows a person to file a motion requesting
4 disclosure of relevant evidence, upon a showing of good cause:

5 A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a
6 potential violation of subdivision (a) in the possession or control of the state. A motion filed
7 under this section shall describe the type of records or information the defendant seeks. Upon a
8 showing of good cause, the court shall order the records to be released. Upon a showing of good
9 cause, and if the records are not privileged, the court may permit the prosecution to redact
10 information prior to disclosure.

11 Pen. Code § 745(d), emphasis added.

12 Discovery shall be granted where there is “good cause” to believe evidence “relevant to a
13 potential violation described by the defendant is in the “possession or control of the state.” Good cause
14 for discovery does not automatically exist in every case. *Hill v. Superior Court* (1974) 10 Cal.3d 812,
15 819; *Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 804. Without adequate factual allegations, the court
16 is prevented from exercising its discretion in making an independent assessment of good cause. *Wood v.*
17 *Superior Court* (1985) 166 Cal.App.3d 1138, 1150. Based on settled law and the Act’s own requirement
18 that requested discovery must be relevant and fully described, the defense must make a factual showing
19 in at least three areas to establish good cause.

20 Here, the defense has not established good cause and instead speculates about a hopeful violation
21 or bias. The defense cannot accuse the prosecution of bias and then request statistics in the hope the
22 accusation holds water. If that were the case, if all that is required is a request for statistics, then upon
23 any request for such discovery the court would always grant the motion. But that is not the legal
24 standard. Simply stated, if the defendant needs statistics to prove a potential violation, then good cause
25 would ever be needed and the legal standard of the statute would never be followed.

26 The defendant must allege a violation based upon good cause. At this juncture, the defendant has
27 not established good cause to believe there is implicit or explicit bias regarding the prosecution’s request
28 to transfer the defendant’s matter to adult court.

