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7 Attorney for DARLENE RACHELLE YBARRA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA BARBARA

10 SANTA MARIA CRIMINAL DIVISION

11 PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15  
16 DARLENE RACHELLE YBARRA,

17 Defendant.  
18  
19

) No.: 19CR02850

) NOTICE OF MOTION AND MOTION  
) TO COMPEL DISCOVERY PURSUANT  
) TO PENAL CODE § 1054.1

20 **TO: JOYCE E. DUDLEY, DISTRICT ATTORNEY FOR THE COUNTY OF SANTA**  
21 **BARBARA; HER DEPUTY DISTRICT ATTORNEY; AND TO THE CLERK OF**  
22 **THE ABOVE-ENTITLED COURT:**

23 **PLEASE TAKE NOTICE** that at the above-stated date and time, or as soon thereafter  
24 as the matter may be heard, DARLENE RACHELLE YBARRA, by counsel, will move and  
25 hereby does move for an order of this Court compelling discovery of the below-mentioned items  
26 of evidence pursuant to California Penal Code § 1054.1, *Brady v. Maryland* (1963) 373 U.S. 83,  
27 its progeny, and the State and Federal Constitutions.

28 ///

1 Ms. YBARRA respectfully requests the prosecution produce to the defense the following  
2 items of evidence:

- 3
- 4 1. A video recording of the Child Forensic Interview of three year-old Bella G., as described  
5 in Lompoc Police Department Case Number 1903-2475. Item # 19812-003.
  - 6 2. An audio recording of the Child Forensic Interview of three year-old Bella G., as  
7 described in Lompoc Police Department Case Number 1903-2475. Item # 19812-002.
  - 8 3. An audio recording of an interview with Jessica Gusman in connection with the  
9 molestation of her daughter, Bella G., as described in Lompoc Police Department Case  
10 Number 1903-2475. Item # 19812-001.

11  
12 DATED: October 31, 2019

Respectfully submitted,

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16 DILLON C. FORSYTH  
17 Attorney for DARLENE RACHELLE YBARRA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. CALIFORNIA PENAL CODE SECTION § 1054 *et seq.*, BRADY V. MARYLAND, AND THE STATE AND FEDERAL CONSTITUTIONS ALL SUPPORT BROAD DISCOVERY BETWEEN THE PARTIES IN CRIMINAL CASES.**

Relevant to this case, Penal Code Section § 1054.1 requires the following:

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

...

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged;

...

(e) Any exculpatory evidence.

While the video and audio at issue may not be in the possession of the prosecuting attorney, she is nonetheless aware – based on Lompoc Police Department Case Number 1903-2475, discussions between the parties, and discussions between the prosecuting attorney and the LPD – of its existence.

At present, the defense has only been provided with a Lompoc Police Department Report that summarizes an officer’s version of what is on the videotape. For obvious reasons, the defense questions any account of what is on the video since it has not seen it. Based only on that summary, it is clear that Bella G. says that, in response to what she likes to do with Eric, “she does not like it.” When the interviewer asks Bella G. what she does not like to do with Eric, Bella G. again says “I don’t like it” and reaches toward her vagina.

**A. The Requirements of California Penal Code § 1054(b) Have Been Satisfied.**

Penal Code Section § 1054(b) requires that, before seeking judicial redress, the parties first seek to resolve any issues regarding discovery on an informal basis. That has occurred in this

1 case. The informal request from the defense to the prosecution for the video and audio in  
2 question has thus far been denied.

3  
4 **II. THE VIDEO AND AUDIO AT ISSUE REQUIRES DISCLOSURE TO THE**  
5 **DEFENSE BASED ON PENAL CODE SECTION § 1054.1(c) & (e) AS WELL**  
6 **AS BRADY V. MARYLAND.**

7 The Child Forensic Interview of Bella G. occurred shortly after the offenses charged,  
8 approximately one week later. The molestation investigation of the decedent, in which Bella G. is  
9 the victim, originated with the homicide investigation of the decedent and is wholly related to  
10 that investigation. That the video and audio may be associated with a different case number is of  
11 no consequence. Both the homicide investigation and the molestation investigation have  
12 overlapping figures and contain information incriminating as to the decedent. In addition to the  
13 video interview of Bella G., her mother, Jessica Gusman, has made numerous statements to law  
14 enforcement officers of walking in on an act of molestation perpetrated against Bella G. by the  
15 decedent two days prior to his death. Ms. Gusman will be a witness at trial and thus her  
16 statements in connection with the molestation investigation must be disclosed.

17 As such, the Child Forensic Interview of Bella G. is a piece of “relevant real evidence  
18 seized or obtained as a part of the investigation of the offenses charged” which requires  
19 disclosure pursuant to Penal Code Section § 1054.1(c).

20 **A. BRADY V. MARYLAND AND PENAL CODE SECTION 1054.1(E) REQUIRE**  
21 **THE DISCLOSURE TO THE DEFENSE OF EXCULPATORY EVIDENCE.**

22 The United States Supreme Court has held that “the suppression by the prosecution of  
23 evidence favorable to an accused upon request violates due process where the evidence is  
24 material either to guilt or to punishment.” *Brady v. Maryland* at 87. By its plain language, Penal  
25 Code Section § 1054.1(e) similarly requires disclosure to the defense of all exculpatory evidence.

26 In this case, the prosecution has charged Ms. YBARRA with first degree murder. That  
27 charge is predicated, inter alia, on her mental state at the time of the alleged offense. The same is  
28 true as to lesser included offenses of murder. And to that charge of first degree murder there are a

1 number of affirmative defenses potentially available to Ms. YBARRA.

2 CALCRIM 505 Justifiable Homicide: Self-Defense or Defense of Another is relevant to  
3 this discussion and represents at least two available affirmative defenses in this case. What  
4 becomes quite obvious (and quickly at that) is the instruction is replete throughout as to the  
5 reasonableness of the accused's belief (whether as to oneself or another), with the word  
6 appearing continuously. For example, the instruction states the following:

7 The defendant acted in lawful (self-defense/ [or] defense of another if:

- 8 1. The defendant reasonably believed that (he/she/ [or] someone  
9 else/...was in imminent danger of being killed or suffering great bodily  
10 injury [or was in imminent danger of being  
11 raped/maimed/robbed/\_\_\_\_\_ (insert other forcible and  
12 atrocious crime).

13 It goes on:

14 The defendant must have believed there was imminent danger of death or  
15 great bodily injury to (himself/herself/ [or] someone else). Defendant's  
16 belief must have been reasonable and (he/she) must have acted only  
17 because of that belief.

18 After acknowledging that the accused's belief the he/she or someone else was threatened may be  
19 reasonable even if the information relied on was not true, the instruction states:

20 "If you find that [decedent/victim] threatened or harmed the defendant [or  
21 others] in the past, you may consider that information in deciding whether  
22 the defendant's conduct and beliefs were reasonable.

23 If you find that the defendant knew that [decedent/victim] had threatened  
24 or harmed others in the past, you may consider that information in  
25 deciding whether the defendant's conduct and beliefs were reasonable."

26 It must be noted that the lesser included offenses of first degree murder, namely  
27 manslaughter a) heat of passion and b) imperfect self-defense or defense of another bear  
28 instructions with substantially similar language. These instructions will be sought by the defense  
at trial. Each of the above arguments is the same with respect to the lesser included offense of  
manslaughter.

1 In this case, it will be contested between the parties as to who knew what and when  
2 regarding the molestation of Bella G. In that the above instructions make it clear that reasonable  
3 of her beliefs and actions (as alleged) will be an issue for the jury, actual, real evidence of the  
4 defendant's molestation of Bella G. could not be more relevant to Ms. YBARRA's defense.  
5 Indeed, the instruction specifically allows the jury to consider evidence of the decedent having  
6 harmed others (Bella G., here), of which this is the best evidence available.

7 In that the parties will contest what Ms. YBARRA knew regarding Bella G.'s molestation  
8 at the hands of the decedent, and when, and from whom, to deny the defense this video would  
9 allow the prosecution to create the false and disingenuous appearance before the jury that the  
10 allegations of molestation are hazy, uncertain, potentially false, etc. Yet, the video quite clearly  
11 depicts a 3 year old child with no apparent reason to lie stating that she was being molested by  
12 the decedent. It is relevant and exculpatory to Ms. YBARRA's defense for the reasons stated.

13  
14 **CONCLUSION**

15 For the above reasons, the defense respectfully moves this court for an order requiring the  
16 prosecution to disclose the video and audio in question because it is relevant to Ms. YBARRA's  
17 defense and because the law requires such disclosure.

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20 DATED: October 31, 2019

Respectfully submitted,

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24 DILLON C. FORSYTH  
25 Attorney for DARLENE RACHELLE YBARRA  
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