

1 Innocence Legal Team
1600 S. Main Street, Suite 195
2 Walnut Creek, CA 94596
Telephone: 925 948-9000
3 Attorney for Defendant
4
5

6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7
8 THE PEOPLE OF THE STATE OF) Case No.
CALIFORNIA,)
9) AMMISSIBILITY OF CHARACTER
Plaintiff,) EVIDENCE FOR TRUTH AND VERACITY
10) OF COMPLAINING WITNESS ROBERT G.
vs.)
11) Trial Date: 13 Dec 1999
,) Time: 8:30 AM
12) Dept. 24
Defendant.)
13 _____)
14

15 **I.**

16 **INTRODUCTION**

17
18 It was revealed by the District Attorney at the Preliminary
19 Examination that the complaining witness in this matter, _____. was
20 being housed at a Juvenile Detention Facility in Oregon for forgery of
21 a check in Oregon and attempted robbery, purportedly a misdemeanor
22 under Oregon law . The complaining witness affirmed the issue upon
23 questioning by the Court. (See Preliminary Transcript, pg. 28, ln. 26
- pg. 30, ln. 23.)

24 Also at the Preliminary Examination the complaining witness
25 ROBERT G. testified that he took the defendant's car without the

1 defendant's permission and that the police were called by the
2 defendant and the complaining witness questioned about the matter by
3 the police.

4 (Preliminary Transcript, pg. 34, ln. 23 - pg. 35, ln. 12.)

5 It is the intention of the defendant to introduce evidence
6 relating to these bad acts by the complaining witness for the purpose
7 of allowing the jury to determine the complaining witness's character
8 for honesty and veracity.

9 **II.**

10
11 **PROPOSITION 8 AND ITS EFFECT ON THE ADMISSIBILITY**

12
13 **OF CHARACTER EVIDENCE.**

14
15 Evidence Code section 780(e) provides that a court may consider
16 in
17 determining a witness's credibility his/her "character for honesty or
18 veracity or their opposites."

19 Two sets of statutes govern the admissibility of character
20 evidence: Evidence Code sections 786-790 preclude the introduction of
21 certain types of evidence to attack or support a witness's truth or
22 veracity while Evidence Code sections 1101-1103 preclude the
23 introduction of various types of evidence to prove conduct. (**People**
24 **vs. Harris** (1989) 47 Cal.3d 1047, 1081.)

1 In June of 1982 the electorate passed Proposition 8, the "Truth
2 in Evidence" Proposition which added section 28(d) to the California
3 Constitution. This section provides in pertinent part:

4 "Except as provided by statute hereafter enacted by a two-
5 thirds vote of the membership in each house of the
6 Legislature, relevant evidence shall not be excluded in any
7 criminal proceeding...Nothing in this section shall affect
8 any existing statutory rule of evidence relating to
9 privilege or hearsay, or Evidence Code Sections 352, 782 or
10 1103."

11
12 **Harris** holds that Proposition 8 effectively repealed Evidence
13 Code sections 786-790 in criminal cases. (47 Cal.3d at p. 1081.)
14 (Also see **People vs. Taylor** (1986) 180 Cal.App.3d 622, 632
15 [Proposition 8 had repealed Evidence Code section 790]; **People vs.**
16 **Adams** (1988) 198 Cal.App.3d 10 [Evidence Code section 787 is no longer
17 valid in criminal cases in the post-Proposition 8 world].) (If
18 applicable to your case, add the following. The admissibility of the
19 good character of a witness no longer depends upon the prior
20 introduction of evidence of bad character. (**Taylor, supra.**))

21 **III.**

22 **EVIDENCE CODE SECTIONS 1101 AND 1103**

23 **SURVIVE PROPOSITION 8.**

24
25 By the express terms of Proposition 8 quoted above, "section
28(d) supersedes all California restrictions on the admission of

1 relevant evidence except those preserved or permitted by the express
2 words of section 28(d) itself." (**People vs. Wheeler** (1992) 4 Cal.4th
3 284 291.) Those sections which Proposition 8 specifies as remaining
4 in force in a criminal proceeding include Evidence Code sections 352,
5 782, 1103 and any statute subsequently enacted by a two-thirds vote of
6 the legislature.

7 Thus, Evidence Code section 1103, which deals with the allowance
8 and exclusion of certain character evidence of a crime victim, is
9 expressly preserved as an exception to Proposition 8. Evidence Code
10 section 1101 also continues as a viable exception to Proposition 8
11 because it was reenacted by the requisite majority of the Legislature
12 in 1986. (**People vs. Ewoldt** (1994) 7 Cal.4th 380, 390-393.)

13 **IV.**

14 **THE LAW APPLICABLE IN CRIMINAL CASES TO**
15 **CHARACTER EVIDENCE IS FOUND IN**
16 **EVIDENCE CODE SECTION 1101 ET. SEQ.**

17
18 **A.**

19 **THE LAW**

20
21 "§1101. Evidence of character to prove conduct
22 (a) Except as provided in this section and in Sections
23 1102, 1103, 1108, and 1109, evidence of a person's
24 character or trait of his or her character (whether in the
25 form of an opinion, evidence of reputation, or evidence of
specific instances of his or her conduct) is inadmissible

1 when offered to prove his or her conduct on a specified
2 occasion.

3 (b) Nothing in this section prohibits the admission of
4 evidence that a person committed a crime, civil wrong, or
5 other act when relevant to prove some fact (such as motive,
6 opportunity, intent, preparation, plan, knowledge,
7 identity, absence of mistake or accident, or whether a
8 defendant in a prosecution for an unlawful sexual act or
9 attempted unlawful sexual act did not reasonably and in
10 good faith believe that the victim consented) other than
11 his or her disposition to commit such an act.

12 (c) Nothing in this section affects the admissibility of
13 evidence offered to support or attack the credibility of a
14 witness."

15
16 "1103(a)In a criminal action, evidence of the character
17 or a trait of character (in the form of opinion, evidence
18 of reputation, or evidence of specific instances of
19 conduct) of the victim of the crime for which the
20 defendant is being prosecuted is not made inadmissible
21 by Section 1101 if the evidence is: (1) Offered by the
22 defendant to prove conduct of the victim in conformity
23 with the character or trait of character. (2) Offered
24 by the prosecution to rebut evidence adduced by the
25 defendant under paragraph (1)."

1 B.

2
3 DISCUSSION

4
5 Character is not admissible in the form of opinion, reputation or
6 specific acts, and is not admissible generally to prove or disprove a
7 witness's conduct on a specific occasion. (**Evidence Code section**
8 **1101**) Contained within that section are specific and limited
9 exceptions to this basic rule. One such exception is **Evidence Code**
10 **section 1103**, which allows a defendant in a criminal action to offer
11 evidence in the form of opinion, reputation or specific acts of
12 conduct of the victim to prove conformity with the character trait.
13 It further allows the prosecution to offer rebuttal evidence as to
14 that character trait. If a defendant offers such evidence, the
15 prosecutor is then authorized to offer rebuttal evidence respecting
16 that character trait. (**People vs. Walkey** (1986) 177 Cal.App.3d 268.)

17 **What is a Character Trait?**

18 A person's character or character trait is an emotional, mental
19 or personality fact constituting a disposition or propensity to engage
20 in a certain type of conduct. Jefferson, Benchbook 3rd Edition Vol. 2
21 Section 33.1. An example would be a person's character trait for
22 truth or veracity.

23 **How may a character trait be shown?**

24 Section 1103 delineates the methods for a defendant to show a
25 character trait. The first is by opinion evidence, the second is by
evidence of the victim's reputation, the third is by specific

1 instances of conduct. (**People vs. Franklin (1994) 25 Cal.App.4th 328,**
2 **355** [victim's prior false accusation of molest admissible per Evidence
3 Code section 1103(a)(1), but harmless error, also see **Franklin vs.**
4 **Henry (1997) 122 F.3d 1270** [error in excluding victim's prior false
5 accusation of molest in previously cited **Franklin** case required
6 reversal]; **People vs. Burrell-Hart (1987) 192 Cal.App.3d 593** [prior
7 false claim of rape admissible as a specific instance of conduct
8 tending to disprove truthfulness of complainant's testimony].)
9 Witnesses may testify about their opinion of a person's truthfulness
10 or lack thereof, or the reputation the person has in the community for
11 truthfulness. (**People vs. McAlpin (1991) 53 Cal.3d 1289, 1304; People**
12 **vs. White (1971) 18 Cal.App.3d 44, 48.**)

13 **Who may introduce evidence of a victim's character trait?**

14 The Defendant may introduce evidence of a victim's character
15 trait. The prosecution may only offer evidence in the form of
16 opinion, reputation, or specific acts to rebut the evidence adduced by
17 the Defendant.

18 **V**

19 **DEFENDANT TO INTRODUCE SPECIFIC ACTS**

20 The complaining witness, by his own previous admission at the
21 preliminary examination, has indicated he engaged in forgery and
22 misdemeanor robbery. He has also admitted that he took the defendant's
23 car without the defendant's permission.
24

25 Forgery and robbery are clearly two crimes of moral turpitude and
a prior felony conviction involving a crime of moral turpitude may be

1 used to impeach a witness in a criminal proceeding, subject to a
2 **Evidence Code section 352** balancing test. **People v. Castro** (1985) 38
3 Cal.3d 301, 306 211 Cal.Rptr. 719, 696 P.2d 111.

4 In **People v. Parrish** (1985) 170 Cal.App.3d 336, 349, the Fifth
5 District Court of Appeals held that forgery is a crime of moral
6 turpitude:

7 Clearly, forgery involves elements that go to honesty and
8 truthfulness. In our view, all priors which necessarily involve
9 dishonesty under the pre-Castro standards ipso facto involve
10 moral turpitude under Castro. (*People v. Castro*, supra., 38
11 Cal.3d at pp. 315-316.) We construe Castro by necessary
12 implication to so hold.

13
14 In *People v. Rodriguez*, (1985) 177 Cal.App.3d 174, 177-178, the
15 Fifth District Court of Appeals held that robbery was a crime of moral
16 turpitude:

17
18 "Moral turpitude" means a general "readiness to do evil." (*Id.*,
19 at p. 314.) The determination of whether a given felony involves
20 "moral turpitude" is not a matter of extrinsic proof. Rather, "a
21 witness' prior conviction should only be admissible for
22 impeachment if the least adjudicated elements of the conviction
23 necessarily involve moral turpitude." (*Id.*, at p. 317.)

24
25 Once it is determined the prior felony involves moral turpitude,
the trial court must affirmatively show on the record that it did

1 in fact weigh prejudice against probative value. (People v.
2 Green (1980) 27 Cal.3d 1, 25 [164 Cal.Rptr. 1, 609 P.2d 468].) If
3 the trial court fails to exercise its discretion, error occurs.
4 Appellate courts will then reverse only if the record discloses
5 that it is reasonably probable that a result more favorable to
6 appellant would have occurred absent the error. (People v.
7 Castro, supra., 38 Cal.3d at p. 319, citing §Cal. Const., art.
8 VI, 13; People v. Watson, supra., 46 Cal.2d at p. 836.)

9
10 The threshold question is whether the prior felonies in this case
11 necessarily involve moral turpitude. Since robbery and burglary
12 each necessarily involve a specific intention to commit a theft,
13 or in the case of burglary, a theft or a felony within a
14 protected structure, each involves elements of dishonesty and a
15 readiness to do evil. Several post-Castro opinions have so held.
16 (People v. Boyd (1985) 167 Cal.App.3d 36, 44 [212 Cal.Rptr. 873]
17 [burglary]; People v. Hunt (1985) 169 Cal.App.3d 668, 675 [215
18 Cal.Rptr. 429] [burglary]; People v. Brown (1985) 169 Cal.App.3d
19 800, 805 [215 Cal.Rptr. 494] [robbery]; People v. Stewart (1985)
20 171 Cal.App.3d 59, 66 [215 Cal.Rptr. 716] [robbery].)

21
22 Misdemeanor **People v. Wheeler** (1992) 4 Cal.4th 284,, 841
23 P.2d 938, 14 Cal.Rptr. 2d 418, at pg. 295 We therefore conclude
24 that if past criminal conduct amounting to a misdemeanor has
25 some logical bearing upon the veracity of a witness in a

1 criminal proceeding, that conduct is admissible, subject to
2 trial court discretion, as "relevant" evidence under section
3 28(d).

4 The voters have expressly removed most statutory restrictions on
5 the admission of relevant credibility evidence in criminal cases,
6 including the rule that felony convictions are the only form of
7 conduct evidence admissible for impeachment. Hence, they have decreed
8 at the least that in proper cases, nonfelony conduct involving moral
9 turpitude should be admissible to impeach a criminal witness.

10
11 Hearsay pg. 300 FN14. Our holding is a narrow one, confined to
12 the specific issue whether under current law a misdemeanor conviction
13 is admissible as direct evidence of criminal conduct. Nothing in the
14 hearsay rule precludes proof of impeaching misdemeanor misconduct by
15 other, more direct means, including a witness's admission on direct or
16 cross-examination that he or she committed such conduct.

17
18
19 Several post-Castro cases have also held that the felony of automobile
20 theft necessarily involves moral turpitude. [FN9] Since attempted
21 automobile theft requires a specific intent to steal and a direct but
22 ineffectual act done toward its commission (§ 664; Witkin, Cal. Crimes
23 (1963) §§ 93, 94, pp. 90-91), it follows that the "least adjudicated
24 elements" of the crime of attempted automobile theft also necessarily
25 involves moral turpitude.

1 Juvenile

2

3

4

5 **CONCLUSION**

6 Based on the foregoing, Defendant requests (insert what ruling
7 you want from the trial court, which will be fact specific to your
8 case.)

9 Dated:

Respectfully submitted,

10

11

12

13

Attorney for Defendant

14

15

16

17

18

19

20

21

22

23

24

25