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9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF
10
11

12 THE PEOPLE OF THE STATE OF)
13 CALIFORNIA,)

14)
15 Plaintiff,)

16)
17 Vs.)

18)
19)
20 Defendant.)

Case No.

) MOTION TO EXCLUDE

) EVIDENCE OF UNCHARGED

) SEX CRIMES PURSUANT

) TO EVIDENCE CODE

) § 1101

)

) Date:

) Time:

) Dept:
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24
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1 TO: All parties and to their attorneys of record, and to the
2 Honorable Judge of the Superior Court.

3 Defendant requests that any evidence concerning his commission of
4 prior sex offense(s) be excluded pursuant to Evidence Code § 1101 and based
5 on the following points and authorities.
6

7 I

8 THE PRIOR OFFENSE(S) AT ISSUE

9
10 ****Put a brief description of the prior offense or offenses the
11 People intend to introduce into evidence****

12 II

13 EVIDENCE CODE SECTION 1101

14 Evidence Code section 1101(a) prohibits the admission of evidence
15 of a person's character, including instances of uncharged misconduct, to prove
16 that person's conduct on a particular occasion. Evidence Code section 1101(b)
17 allows such evidence to be admitted if relevant to prove some relevant fact
18 other than a disposition to commit the act, specifically motive, opportunity,
19 intent, preparation, plan, knowledge, identity or absence of a mistake or
20 accident.
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23 "The rule excluding evidence of criminal propensity is nearly
24 three centuries old in the common law. (Wigmore, Evidence (3d Ed. 1940) Sec.
25 194, pp. 646-647.)" (People v. Alcala (1984) 36 Cal.3d 604, 630-631.) The

1 grave danger inherent in uncharged bad acts evidence is that the jury will
2 give excessive weight to it and convict the defendant regardless of the
3 strength of the evidence of guilt on the charged act. (People v. Thompson
4 (1980) 27 Cal.3d 303, 317.) Because of its inherently prejudicial nature,
5 evidence of other crimes must be excluded if not relevant to an issue
6 expressly in dispute or if it is more prejudicial than probative under all the
7 circumstances. (People v. Nottingham (1985) 172 Cal.App.3d 484, 496.)

8
9 The admissibility of other crimes evidence is strictly limited by
10 Evidence Code section 352 which mandates the exclusion of evidence the
11 probative value of which is substantially outweighed by its prejudicial impact.
12 (People v. Ewoldt (1994) 7 Cal.4th 404.) In order to meet the relevancy
13 requirement of Evidence Code section 1101(b) and pass the balancing test of
14 Evidence Code section 352, the probative value of such evidence must be
15 substantial on the theory under which it is tendered. (People v. Balcom (1994)
16 7 Cal.4th 414, 422; People v. Thompson, supra, 27 Cal.3d at p. 318.) To be
17 admitted, the other acts evidence must (1) tend logically, naturally and by
18 reasonable inference to prove the issue on which it is offered; (2) be offered
19 on a material issue that will ultimately prove to be disputed; and (3) not be
20 merely cumulative with respect to other evidence used to prove the same issue.
21 (People v. Bigelow (1984) 37 Cal.3d 731, 747.)

III

1 THE UNCHARGED ACT (S) EVIDENCE IS
2 INADMISSIBLE TO PROVE INTENT.
3

4 Defendant does not contest the intent element of the charged
5 crime(s). He denies the act(s), therefore inferentially admitting that if he
6 did it he had the requisite intent.
7

8 "If an accused has not actually placed [an ultimate
9 fact] in issue,' evidence of uncharged offenses may
10 not be admitted to prove it. [Citations.] The fact
11 that an accused has pleaded not guilty is not
12 sufficient to place the elements of the crimes charged
13 against him `in issue.' [Citation.]" (People v.
14 Thompson, supra, 27 Cal.3d at p. 315.)
15

16 More recent Supreme Court authority reaches the same result via a
17 different path. In People v. Balcom, supra, a majority of the court rejected
18 the prosecution's contention that a subsequent rape could have been properly
19 admitted at trial in the current case to show the defendant possessed the
20 necessary intent when raping the victim. The Balcom court explained:
21

22 "Defendant's plea of not guilty put in
23 issue all of the elements of the offenses,
24 including his intent [citation], and
25 evidence that defendant committed
uncharged similar offenses would have some

1 relevance regarding defendant's intent in
2 the present case. But, because the
3 victim's testimony that defendant placed a
4 gun to her head, if believed, constitutes
5 compelling evidence of defendant's intent,
6 evidence of defendant's uncharged similar
7 offenses would be merely cumulative on
8 this issue. [Citation.]" (7 Cal.4th at p.
9 422-423.)

10
11 The same is true here. Assuming Defendant's guilty plea puts his intent in
12 issue, the description of the charged acts by (insert victim's name), which
13 include (name offenses, like sodomy, oral copulation, touching of breasts and
14 vagina, etc.) more than amply demonstrate the intent required for a violation
15 of Penal Code § (insert sections with which defendant is charged). (If for
16 example, it's a 288 offense add the following sentence.) That charge requires
17 the touching of a child with lewd or lascivious intent, which may be inferred
18 from the circumstances under which the act is committed. (People v. Gilbert
19 (1992) 5 Cal.App.4th 1372, 1380.) There was simply no mistaking the intent
20 with which the acts described by (insert victim's name) were committed. As
21 such, as in Balcom, further evidence of Defendant's intent in the form of the
22 uncharged bad acts evidence would be strictly cumulative, its prejudicial
23 effect thereby outweighing its limited probative value.
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IV

THE UNCHARGED ACT(S) EVIDENCE IS
INADMISSIBLE TO PROVE COMMON PLAN OR SCHEME.

In People v. Ewoldt, supra, 7 Cal.4th at pp. 401-402, the California Supreme Court explained, “. . . evidence of a defendant’s uncharged misconduct is relevant where the uncharged misconduct and the charged offense are sufficiently similar to support the inference that they are manifestations of a common design or plan.” To permit the admission of uncharged acts for the purpose of showing common plan, the evidence of such acts “must demonstrate not merely a similarity in the results, but such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations.” [Citations omitted.]” (Id., at p. 402.)

In the case at bar, there is insufficient similarity between the charged conduct and the uncharged conduct to authorize admission of the latter into evidence. (Concoct an appropriate argument depending upon the specific facts in your case. Here is an example: The charged conduct involved a ten year old prepubescent girl, who averred that Appellant engaged in mutual oral copulation with her, anal intercourse, touched her vagina and breasts and had

1 her touch his penis, all against her will. Appellant did not have vaginal
2 intercourse with her. Neither Rosemary nor Appellant customarily took their
3 clothes off, except that Appellant occasionally removed his pants. On the
4 other hand, Rachel, the subject of some of the uncharged acts, was fifteen and
5 willingly engaged in actual vaginal intercourse with Appellant while both were
6 naked in the back of Appellant's truck. (RT 39.) Appellant contends there is
7 a big difference between alleged forcible sex acts with a ten year old and sex
8 with a physically mature, willing fifteen year old. Further, Rachel, unlike
9 Rosemary, was not at that time living under Appellant's roof. She was then in
10 foster care and visited Appellant and her mother's home on the weekends. (RT
11 65.) (Cf. People v. Ewoldt, supra, 7 Cal.4th at p. 403, uncharged acts shared
12 sufficient common features with charged acts so as to be relevant to establish
13 that defendant committed them pursuant to a common plan where both victims
14 were his stepdaughters residing in his home, were of similar age, were both
15 unwilling and were molested in nearly the identical fashion.)
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19 In sum, the charged and uncharged acts do not share sufficient
20 common features with the charged acts to support an inference that they were
21 part of a common plan or scheme and that Defenant committed them pursuant to
22 that plan.
23

24 IV

25 THE UNCHARGED OFFENSE EVIDENCE

