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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____
7

8 THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	
9 Plaintiff,)	EXCLUDING EVIDENCE OF
)	DEFENDANT'S CHARACTER FOR
10 vs.)	THE USE OF DRUGS OR
11 ALCOHOL)	
)	
12 ,)	Date:
)	Time:
13 Defendant.)	Dept:
)	

14
15 The defense moves for a protective order that:

16 1. The prosecution not ask any questions of any witnesses
17 concerning defendant's drinking habits or prior narcotics usage.

18 2. Any questions asked by the prosecution concerning the
19 consumption of alcoholic beverages or ingestion of narcotic
20 substances be limited to the day[s] of the alleged act[s].

21 3. The prosecution instruct the prosecution witnesses not
22 to volunteer information concerning defendant's drinking habits
23 or use of narcotics.

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1 **LAW**

2 **CHARACTER EVIDENCE**

3 Character evidence is inadmissible to prove that the
4 defendant acted in conformity with that character. Evidence Code
5 §1101 provides:

6 "Except as provided in this section and in Sections
7 1102 and 1103, evidence of a person's character or a
8 trait of his or her character (whether in the form of
9 an opinion, evidence or reputation, or evidence of
10 specific instances of his or her conduct) is
11 inadmissible when offered to prove his or her conduct
12 on a specific occasion.

13 (b) Nothing in this section prohibits the admission of
14 evidence that a person committed a crime, civil wrong,
15 or other act when relevant to prove some fact (such as
16 motive, opportunity, intent, preparation, plan,
17 knowledge, identity, absence of mistake or accident, or
18 whether a defendant in a prosecution for an unlawful
19 sexual act or attempted unlawful sexual act did not
20 reasonably and in good faith believe that the victim
21 consented) other than his or her disposition to commit
22 such an act.

23 (c) Nothing in this section affects the admissibility
24 of evidence offered to support or attack the
25 credibility of a witness."
26

27 **II**

28 **GENERAL DRINKING HABITS ARE INADMISSIBLE TO
IMPEACH WITNESS--ONLY EVIDENCE OF DRINKING
ON THE DAY IN QUESTION ONLY IS ALLOWED.**

29 In the case of **People vs. Stanley** (1962) 206 CA2d 795, 799
30 the court ruled that evidence of drinking habits was inadmissible
31 to impeach a witness. The only admissible evidence would be
32 whether the witness was drinking on the day in question.
33

34 "The authorities establish that drunkenness on
35 occasions prior and subsequent to the one involved in
36 the case does not amount to competent impeachment
evidence."

37 "III Wigmore on Evidence (Third Ed.) section 933, pages
38 480-481: `Intoxication, if it is of such a degree as to
deserve the name, involves a numbing of the faculties

1 so as to affect the capacity to observe, to recollect,
2 or to communicate; and is therefore admissible to
3 impeach***But a general habit of intemperance tells us
4 nothing of the witnesses testimonial incapacity except
5 as it indicates actual intoxication at the time of the
6 event observed or the time of testifying; and hence,
7 since in its bearing upon moral character it does not
8 involve the veracity-trait (ante, Sec. 923), it will
9 usually not be admissible.' McCormick on Evidence,
10 Sec. 45, page 98: 'One form of abnormality is that of
11 being under the influence of drugs or drink. If the
witness was under such influence at the time of the
happenings which he reports in his testimony or is so
at the time he testifies, this of course is provable,
on cross or by extrinsic evidence, to impeach.
Habitual addiction stands differently. Under a
tradition arising perhaps when three-bottle men were
more frequently encountered, it is generally held that
the mere fact of chronic alcoholism is not provable on
credibility." **People vs. Stanley** (1962) 206 CA2d 795,
797.

12 Thus when intemperance is not in issue it is improper to
13 introduce evidence of habitual alcohol consumption of the witness
14 or defendant. **Springer vs. Reimers** (1970) 4 CA3d 325, 84
15 Cal.Rptr. 486.

16 V

17 **NARCOTIC USAGE INADMISSIBLE TO IMPEACH**
18 **WITNESS--USE ON DAY IN QUESTION ONLY IS ALLOWED**

19 Similarly, as to narcotics, their use remote in time from
20 the offense at issue for impeachment purposes is not allowed.
21 **People vs. Ashford** (1968) 265 Cal.App.2d 673, 679. This so is
22 because such remote in time use is not relevant to establish that
23 a witness's perception recollection, recollection or recall for
24 the event in question was thereby affected, and a witness cannot
25 be impeached by specific acts of misconduct other than a felony
26 conviction. (*Id.*, at p. 679; **People vs. Buono** (1961) 191
27 Cal.App.2d 203, 229-233.)

28 In **People vs. Pargo** (1966) 241 Cal.App.2d 594, the defendant

1 was accused of a robbery in November 1964. The prosecution
2 introduced evidence of a medical examination for narcotics usage
3 in February, 1964 and elicited testimony that the defendant was a
4 registered narcotics offender as of May, 1965. He thus bracketed
5 the period of the crime from which an inference could be drawn
6 that the defendant was using drugs at or near the time of the
7 crime thereby impeaching his ability to recollect and perceive
8 events of that time period. The defendant testified he
9 remembered being elsewhere on the night of the crime.

10 The conviction in **Pargo** was reversed because of the lack of
11 expert testimony of the effect upon testimonial capacity of, use
12 or addiction to narcotics at a time "so seemingly remote from any
13 relevant date" as the time of the doctor's examination.

14 Thus evidence of past habitual use of narcotics remote to
15 the events at trial is inadmissible "to impeach perception or
16 memory unless there is expert testimony on the probable effect of
17 such use on those faculties." (**People vs. Balderas** (1985) 41
18 Cal.3d 144, 191.)

19 Improperly admitted evidence of a defendant's past drug use
20 was found highly prejudicial and cause for reversal in **People vs.**
21 **Valentine** (1988) 207 Cal.App.3d 697, 705-706, even though a
22 limiting instruction was given.

23 CONCLUSION

24 The only relevance of alcohol or drug use is for impeachment
25 or motivation evidence, and then only on the date of the alleged
26 offense.

27 The defense will not introduce character evidence as to
28 defendant's drinking habits or prior narcotic usage and therefore

1 the prosecution cannot. The defense will not raise any issue of
2 defense, such as diminished capacity due to involuntary
3 intoxication, and therefore, alcohol use and drug use is not
4 relevant and not in issue.

5 Dated:

6 Respectfully submitted,
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9 Attorney for Defendant
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