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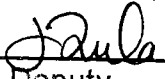
Janelle E. Caywood
Attorney at Law

SUPREME COURT
FILED

February 8, 2018

FEB 8 2018

The Honorable Tani Cantil-Sakauye, Chief Justice
and the Honorable Associate Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Jorge Navarrete Clerk

Deputy

Re: Facebook v. Superior Court (Hunter/Sullivan), Case No. S230051
Defendants' Letter Brief regarding Judicial Notice of Superior Court
Docket and Grand Jury Transcript

To the Honorable Chief Justice Cantil-Sakauye and Honorable Associate Justices;

The Court has informed the parties that it is considering taking judicial notice under Evidence Code section 452 subdivision (d) of the (1) underlying grand jury transcripts and (2) the public superior court docket in each case and requested briefing on "the propriety of taking judicial notice of each matter and . . . the tenor of the matter to be noticed." (Evid. Code, §§ 455, subd. (A); 459, subd.(c). Defendants, Lee Sullivan and Derrick Hunter, submit the following joint letter brief in response as ordered by the Court on January 26, 2018.

Superior Court Docket

Defendants Hunter and Sullivan consider it appropriate for this Court to take judicial notice of the public superior court docket in each case under Evidence Code section 459 because the dockets are important to the issues to be decided by the Court in that they show that on October 30, 2014, in Department 22 of the San Francisco Superior Court the case was set for jury trial on January 23, 2015. Providers' Motion to *Quash the Subpoenas Duces Tecum* was denied on January 22, 2015. After denying the motion, superior court judge, Hon. Bruce Chan, vacated the jury trial date set for the following day to allow providers the opportunity to seek appellate review of his decision, if they chose to do so. (See January 22, 2015, transcript of superior court proceedings in Exhibit U of Providers' *Appendix to Exhibits* filed in the Court of Appeal.) Thus, the dockets are highly relevant to the issues presented herein because they show that the distinction between subpoenaing confidential records pretrial and at trial under *People v. Hammon* (1997) 15 Cal.4th 1117, is meaningless in this case, and promotes form over substance, given that the superior court ordered production of the social media records one day before trial was scheduled to commence.

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The dockets, in conjunction with the grand jury transcript, are also appropriate for judicial notice because they are relevant to the issues to be decided by the Court. Specifically, the documents show that Mr. Sullivan was not arrested based on the grainy surveillance videos of the June 24, 2013, shooting, reviewed by the police on the same date as the shooting occurred (RT¹ 202-210, 247, 248,) but only after Reneesha Lee implicated Mr. Sullivan in her statements to law enforcement on August 10, 2013, and August 13, 2013. (RT 68-70, 193, 249, Grand Jury Exhibits 15,15A,16,16A.) Thus, Ms. Lee is the prosecution's key witness against Mr. Sullivan and he will be deprived of the right to fair trial if he is denied the ability to cross-examine her, or present evidence, regarding her social media posts.

To that end, the public docket will show that Derrick Hunter (San Francisco Superior Court Case No.13017666) and his juvenile co-defendant Q.H. (San Francisco Superior Court Case No. 13017767) were arraigned on a complaint on June 27, 2013 in Department 9 of the San Francisco Superior Court. After Ms. Lee implicated him, Mr. Sullivan was charged separately by complaint on or about August 23, 2013, and was arraigned on August 29, 2013, in Department 11 of San Francisco Superior Court. (San Francisco Superior Court Case No.13023588.) The complaints against Mr. Derrick Hunter and Mr. Sullivan were dismissed in favor of a joint indictment. New superior court case numbers were assigned. (San Francisco Superior Court Case Nos.13035658 (D. Hunter) and 13035657 (Sullivan).) Mr. Derrick Hunter and Mr. Sullivan were arraigned on the Indictment on December 24, 2013.

Grand Jury Transcript

Defendants consider it appropriate for the Court to take judicial notice of the grand jury transcript since it was cited in the briefings filed in the superior court, the Court of Appeal, and in this Court. The testimony by Leonard Broberg, the San Francisco Police Department's gang expert, is particularly relevant to the issues before the Court because he describes how critical social media records are to investigating and prosecuting gang cases in recent years because alleged gang members engage in "cyber-banging." His testimony underscores that criminal defendants must be given parallel access to social media records prior to trial to locate exculpatory evidence and effectively mount a defense at trial.

To the extent the Court is considering taking judicial notice of the grand jury transcript to evaluate the importance of Ms. Lee as a witness and the materiality of her subpoenaed

¹ "RT" Reporters Transcript of the grand jury proceeding with corresponding page number.



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social media posts, defendants respectfully request that the Court also consider grand jury exhibits 38 and 39, the surveillance videos shown to the grand jury, which will show no credible identifications can be made of the shooters due to poor film quality. At the grand jury hearing, two police officers proffered patently unbelievable testimony that they could identify Mr. Sullivan from the surveillance videos which was not subject to cross-examination by the defense because the prosecution elected to proceed by grand jury, not a preliminary hearing. (RT 221-210.) These identifications should be given little or no weight given that Mr. Sullivan was not arrested and charged based on the surveillance videos which law enforcement obtained the day of the shooting. Mr. Sullivan was only arrested and charged on or about August 23, 2013, once Ms. Lee implicated Mr. Sullivan who otherwise was not placed at the scene by another of the percipient witnesses. The prosecution cannot prove their case against Mr. Sullivan beyond a reasonable doubt based on the surveillance videos alone. Thus, the case against Mr. Sullivan hinges on the credibility of Ms. Lee and as such, her social media posts constitute material evidence necessary to the defense.

To the extent the Court is considering taking judicial notice of the grand jury transcript to evaluate the importance of Ms. Lee as a witness and the materiality of her subpoenaed social media posts, defendants respectfully request that the Court also consider Ms. Lee's recorded statements played for the grand jury (together with corresponding transcripts) which were not transcribed by the court reporter. (RT 55-56, 64-70, 193; Exhibits 10, 11A, 12, 12A, 12B, 13, 14, 14A, 15, 15A, 16, 16A.) The recordings show that Ms. Lee gave multiple disparate accounts about what transpired when she was interrogated by the police in the months following the June 24, 2013, shooting. She initially told police that a person she identified as "Man Man" and three male companions approached her shortly after shots were fired to get them away from the scene. However, on August 10, 2013, and August 13, 2013, when the police threatened to charge her with murder if she did not implicate Mr. Sullivan, Ms. Lee said Mr. Sullivan was with Q.H. and Derrick Hunter when they borrowed her car and dropped her off at her home a few minutes before the shooting. Thus, Mr. Sullivan's arrest was based on Ms. Lee's implicating statements, not the surveillance videos.

With regard to defendant, Derrick Hunter, judicial notice of the grand jury transcripts is appropriate because it highlights that Ms. Lee is critical witness against him and he will be deprived of his right to a fair trial unless he can present evidence regarding her social media posts to impeach her at trial. The prosecution contends that Mr. Hunter was the driver of Ms. Lee's vehicle when the shooting occurred. However, in his defense, Mr. Hunter will contend that Ms. Lee was the driver as evidenced by the fact that Ms. Lee was detained



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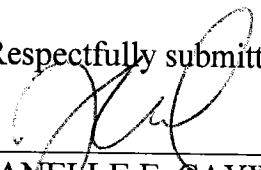
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driving the vehicle used in the shooting minutes after it occurred. (RT 236, 237.) Moreover, two percipient witnesses told law enforcement that a woman was driving the vehicle when the shooting occurred. (RT 274-275.) In fact, one witness said “that Laresha Barefield’s sister was driving.” Ms. Lee testified that Laresha Barefield is her sister. (*Ibid.*) Thus, Ms. Lee is a critical prosecution witness against Mr. Hunter and he will be deprived of his constitutional right to a fair trial unless providers be ordered to produce Ms. Lee’s social media records so he can impeach her at trial on cross-examination.

Ms. Lee social media posts are critical to defense because they corroborate Mr. Sullivan’s defense that she implicated him in the murder because she was in a jealous rage that he was involved with another woman and showed she threatened others with gun violence and other violent acts. For both Mr. Hunter and Mr. Sullivan, impeaching Ms. Lee with these posts will have a significant impact on jury considering she lied to the police in her multiple statements and given that she might also be a co-conspirator in the alleged murder.

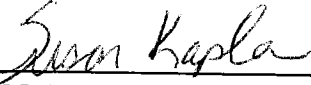
Consistent with the considerations raised herein, defendants consider judicial notice of the dockets and grand jury transcripts to be appropriate because they are of substantial consequence to the determination of the action. The undersigned can provide the Court with the grand jury exhibits described herein upon request.

Respectfully submitted,



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PROOF OF SERVICE BY U.S. MAIL

Re: Facebook v. Superior Court

No. S230051

I, JANELLE E. CAYWOOD, declare that I am over 18 years of age and not a party to the within cause; my business address is 3223 Webster Street, San Francisco, California 94123. On February 8, 2018, I served a **LETTER BRIEF** on each of the following by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid and deposited in United States mail addressed as follows:

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Proof of Service by Mail (Letter Brief)

Facebook v. Superior Court (Hunter/Sullivan)

Case No. S230051

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I declare under penalty that the foregoing is true and correct. Executed this 8th day
of February, 2018, at San Francisco, California.



JANELLE E. CAYWOOD