

SUMMIT DEFENSE
A Professional Law Corporation
JAMES T. REILLY, Attorney at Law
California State Bar No. 67254
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903

Phone: 510-412-8900
Cell: 415-913-0787
email: jim@summitdefense.com

Attorneys for Defendant RAY JOE GARCIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,	:	
	:	Case No. 4:21-cr-00429-YGR
Plaintiff,	:	
	:	DEFENDANT'S MOTION
vs.	:	IN LIMINE #1 RE:
	:	EXCLUSION OF EVIDENCE
RAY J. GARCIA,	:	
	:	
Defendant.	:	

DEFENDANT RAY J. GARCIA, by and through counsel, hereby submits
Defendant's Motion in Limine #1 re: Exclusion of Evidence.

Date: October 27, 2022

Respectfully submitted,



JAMES T. REILLY, Attorney at Law
California State Bar No. 67254
Counsel for Defendant RAY J. GARCIA

DEFENDANT'S MOTION IN LIMINE #1 RE: EXCLUSION OF EVIDENCE
4:21-CR-00429-YGR

**Defendant RAY J. GARCIA Motion in Limine #1
(Exclusion of Evidence)**

Defendant Ray J. Garcia, pursuant to Federal Rules of Evidence, Rule 403, hereby moves to exclude from evidence certain prospective prosecution exhibits and testimony related thereto, as set forth herein.¹

Mr. Garcia has no objection to and has entered into stipulations to admit proffered government exhibits which are not otherwise addressed by this motion.

I

Exhibits 7-12 - Photos of Cell (B03-271-272)

Exhibit 7 shows a close up view of the identifying sign of Cell B03-271-272. This sign is also shown in Exhibit 8, which also shows the door of the cell and an adjacent wall. Exhibit 7 is needlessly cumulative within the meaning of Federal Rules of Evidence (hereinafter cited as FRE), Rule 403.

Exhibits 9-12 are interior photos of Cell B03-271-272. Exhibit 9 shows most of the cell, while Exhibits 10-12 are closer views of portions of the cell, no parts of which are of evidentiary significance in this case. Admission of Exhibits 10-12 would be a

¹ The original version of this motion, provided to the government on October 14, 2022, addressed proposed Exhibits 1- 257. Proposed Exhibits 258-315 were subsequently added to the government's Exhibit List and discussed between counsel by email and/or telephone conference. Objections to these exhibits are addressed by the motion for the first time as set forth herein.

1 waste of time and they are needlessly cumulative within the meaning
2 of Rule 403.

3 Of this group of exhibits, Mr. Garcia has stipulated to the
4 admission of Exhibits 8 & 9.

6 **II**

7 **Exhibits 13-20 - Photos of Warden Complex Bathroom**

8
9 Exhibit 13 is a view of the hallway leading to the Warden
10 Complex Bathroom. Exhibit 14 shows the inside of the bathroom
11 through the doorway. These two exhibits are relevant to establish
12 the location and appearance of the bathroom.

13 Exhibits 15-20 are close-ups of interior portions of the
14 bathroom, including the interior (15) and side wall (19) of a toilet
15 stall (the side wall of which is also shown in Exhibit 14); a close
16 up of a small three tier bathroom shelf (16) which is also in Exhibit
17 15; a sink, cabinet, towel dispenser and hand dryer (18); a close up
18 of the bathroom floor (16); and an empty corner of the room (20).

19 Of these, only Exhibit 16 is relevant to an issue in this case.
20 Exhibits 15 and 17-20 are all irrelevant, a waste of time and/or
21 needlessly cumulative. Mr. Garcia has stipulated to the admission of
22 Exhibit 16.

23
24 **III**

25 **Exhibits 21-28 - Photos of Cell (B03-051-052)**

26
27 Exhibit 21 shows the entrance to the cell, 22 is a close up of
28 the cell number and 28 shows the door closed. Admission of Exhibits

22 & 28 would be a waste of time and they are needlessly cumulative within the meaning of Rule 403.

Exhibit 23 is an interior view which shows essentially the entire cell. Exhibits 24-27 are closer views of portions of the cell (including two views of the floor), no parts of which are of evidentiary significance in this case. Admission of Exhibits 24-27 would be a waste of time and they are needlessly cumulative.

Mr. Garcia has stipulated to the admission of Exhibits 21 & 23.

IV

Exhibits 29-38 - Photos of Visitation Bathroom

Exhibit 32 shows the closed door to and identifies the location of this bathroom, while Exhibit 33 shows the inside in a wide view.

Exhibit 38 is a second photo of the closed door, while 29-31, 34-35 and 37 are inside views of the bathroom, showing the sink, urinal, and toilets. None of these photos are relevant to any issue or of evidentiary significance in this case. Admission of these Exhibits would be a waste of time and they are needlessly cumulative.

Exhibit 36 shows the door of a Staff Restroom and is also irrelevant and a waste of time.

Mr. Garcia has stipulated to the admission of Exhibits 32 & 33.

V

Exhibits 40-44 - Photos of Visitation Changing Stalls

Exhibits 40 and 42 show the passageway and changing stalls, are duplicative and one of the two is needlessly cumulative. Mr. Garcia has stipulated to the admission of Exhibit 40.

1 Exhibit 41 shows a partially open door to an otherwise
2 unidentifiable room and is irrelevant and a waste of time.

3 Exhibits 43-44 are closer views of the changing stalls and are
4 needlessly cumulative.

6 **VI**

7 **Exhibits 45-50 - Photos of Visitation**

8
9 Exhibit 50 clearly shows the Visitation area and Mr. Garcia has
10 stipulated to the admission of this exhibit.

11 Exhibits 45-47 are less useful photos of the Visitation area, a
12 waste of time and needlessly cumulative.

13 Exhibits 48 & 49 show doors of no evidentiary value and are
14 therefore irrelevant.

15
16 **VII**

17 **Exhibits 51-56 - Photos of Alleged Victim 1 (M.H.)**

18
19 Exhibits 51 & 56 are two copies of the same photo, albeit 51 is
20 a cropped view and 56 is somewhat distorted. One or the other is
21 needlessly cumulative.

22 Exhibits 52, 53 & 54 appear to be duplicates of the same photo,
23 once again with 52 & 54 being closer or cropped versions of 53. Two
24 of the three are therefore needlessly cumulative.

25 Mr. Garcia has stipulated to the admission of Exhibits 51, 53 &
26 55.

VIII

Exhibits 62-63 - Emails re Visitation Room Workers

Exhibits 62 & 63 are not relevant to any issue in this case. Alleged Victim 1 MH has made no claim that inappropriate conduct occurred on the dates addressed by these emails. Nor do they contain any other information of evidentiary value.

IX

Exhibit 64 - Emails re BOP Safety Manager John Bellhouse

Exhibit 64 is a partially redacted series of emails about sexual misconduct by BOP Safety Manager John Bellhouse. These emails are not relevant to any issue in this case.

X

Exhibits 65-114 - Photos of Alleged Victim 3 (R.R.)

These exhibits, which demonstrate remote (phone) contact only between Mr. Garcia and RR, are not relevant to the charge in Count 7 or any of the other allegations.

This collection of exhibits is somewhat randomly organized and can be reasonably organized into six groups:

1 - Exhibits 65, 69, 71, 73-74, 76-78, 85-89, 102-105 and 107-110. These photos all appear to have been taken at or about the same time. They all show RR on her back with her legs spread and have inset photos of Mr. Garcia. Two or three of these would be relevant,

1 based on the view in the inset photos, but any more than that would
2 be unduly prejudicial and needlessly cumulative.

3 Of this group of photos, Mr. Garcia has stipulated to the
4 admission of Exhibits 65 and 71.

5
6 2 -- Exhibits 66, 97-101 and 106. Once again, these photos all
7 appear to have been taken at the same time. They all show RR's
8 buttocks, with insets that show a male's body from the neck to the
9 groin. These photos are nearly all identical and therefore any more
10 than one of them would once again be unduly prejudicial and
11 needlessly cumulative.

12 Of this group of photos, Mr. Garcia has stipulated to the
13 admission of Exhibits 66.

14
15 3 -- Exhibits 67-68 and 72 show RR naked from the waist up, with
16 inset photos (67 is indistinct, 68 appears to show Mr. Garcia and 72
17 does show Mr. Garcia). This makes 72 admissible, while 67 & 68 are
18 unduly prejudicial and needlessly cumulative.

19 Mr. Garcia has stipulated to the admission of Exhibit 72.

20
21 4 - Mr. Garcia has stipulated to the admission of Exhibit 70.

22
23 5 -- Exhibits 75, 79-84 and 111-114 are extreme close-ups of
24 RR's upper body, with inset photos. Exhibit 75 and either 83 or 84
25 would be admissible because they show Mr. Garcia's face in the
26 insets. Once again, the others are unduly prejudicial and needlessly
27 cumulative.

28 Mr. Garcia has stipulated to the admission of Exhibits 75 & 84.

6 -- Exhibits 90-96 all show vaginal close-ups with insets of a male. Exhibit 90 clearly shows Mr. Garcia's face in the inset, while the others are all virtually identical. Exhibit 90 plus one of the others would be admissible, with the others once again unduly prejudicial and needlessly cumulative.

Mr. Garcia has stipulated to the admission of Exhibits 90 & 91.

XI

Exhibits 117-118 - Emails from Total Wireless

Exhibits 117 & 118 invite participation by the recipient in Total Wireless surveys. There are not relevant to any issue in this case.

XII

Exhibits 122-123 & 287 - 2021 Harley Davidson Planner Belonging to MF (Alleged Victim 2)

Exhibits 122-123 & 287 are related to a 2021 Harley Davidson themed calendar/planner belonging to Alleged Victim 2 (M.F.). Exhibit 287 includes 62 photos of pages of the planner, duplicating Exhibit 123, which shows only the cover.

This document contains no reference to Mr. Garcia or the conduct alleged in Counts 5 & 6. These exhibits are therefore irrelevant.

XIII

Exhibits 127-132 & 288-307 - Photos of Mr. Garcia's Penis

1 Exhibits 127 & 128 appear to show a male penis photographed in a
2 bathroom stall. Even if identified as Mr. Garcia's penis, unless
3 there is evidence that he showed or sent one of these photos to an
4 inmate, they are not relevant.

5 Exhibits 130 & 131 appear to show a male penis photographed in
6 some other location. Even if identified as Mr. Garcia's penis,
7 unless there is evidence that he showed or sent one of these photos
8 to an inmate, they are not relevant.

9 Exhibits 129 & 132 appear to show Mr. Garcia taking nude selfies
10 in a bathroom. Once again, however, unless there is evidence that he
11 showed or sent one of these photos to an inmate, they are not
12 relevant.

13 Exhibits 288-294 & 296-307 appear to show a male penis
14 photographed in various locations. Even if identified as Mr.
15 Garcia's penis, unless there is evidence that he showed or sent one
16 of these photos to an inmate, they are not relevant.

17 Exhibit 295 appears to show a male torso being "selfied" in a
18 mirror. It does not show either a face or the male's penis. Even if
19 identified as a photo of Mr. Garcia's torso, this photo is not
20 relevant to any issue in this case.

21
22 **XIV**

23 **Exhibits 133-137 - Photos of Mr. Garcia's Car**
24

25 Exhibits 133-137 are photos of Mr. Garcia's car, which played no
26 role whatsoever in Mr. Garcia's contact with any of his accusers.
27 Therefore, these exhibits are irrelevant.
28

XV

Exhibits 138-142 & 145-148 - Photos of Candy in or Near the Car

Exhibits 138-142 and 145-148 show various small bags of candy in or near Mr. Garcia's car. Exhibit 145 is so dark that it is not even possible to tell what it shows. None of these exhibits are relevant to this case.

XVI

Exhibits 142-144 & 149-151 - Photos of Cell Phone in the Car

Exhibit 142 also shows Mr. Garcia's cell phone in his car, a circumstance which is so commonplace as to constitute evidence of absolutely nothing. Exhibits 143 and 144 appear to show the cell phone on the ground, with neither an explanation of how it got there or why that would make it more relevant than it was in the car.

Exhibits 149-151 are additional photos of the cell phone, the latter two in close up. However, there is no issue with respect to Mr. Garcia's possession of his personal cell phone in his car or otherwise and these photos are proof of nothing related to this case.

XVII

Exhibits 152 & 154 - Photos of Small Carry Bag

Exhibits 152 & 154 are photos of a small carry bag of Mr. Garcia's which show nothing of evidentiary value and are therefore irrelevant.

XVIII

Exhibit 153 - Photo of Mr. Garcia's BOP Cell Phone

Exhibit 153 is a photo of Mr. Garcia's BOP cell phone. Once again, there is no issue with respect to his possession of this cell phone in his vehicle and this photo is irrelevant.

XIX

Exhibits 155-163 - Photos of Mr. Garcia's Residence

Exhibits 155-156 & 161 are photos of Mr. Garcia's home office workspace. Exhibits 157-159 are photos of his bedroom, 160 of his bathroom and 162-163 of his laptop computer.

Inasmuch as none of the alleged offenses occurred in his home, the photos thereof are not relevant to this case.

There is no issue with respect to his possession of his personal laptop computer, so these photos are also irrelevant.

XX

Exhibit 203 - Sexual Assault Allegations

Exhibit 203 is an inmate sexual assault/abuse report by six inmates against unidentified staff members. These allegations were investigated by Mr. Garcia and he wrote these report on April 14, 2021. None of them, however, has nothing to do with the allegations against Mr. Garcia. None of these inmates are alleged victims of conduct by Mr. Garcia, nor are any of them even prospective witnesses in this case. These reports are irrelevant.

XXI

Exhibits 204-205 - Telephone Conversation Between T.A. and C.V.

This telephone conversation is, in the first instance, inadmissible hearsay. Depending on the trial testimony of Witness C.V., it may become admissible pursuant to Rule 801(d)(1).

XXII

Exhibits 207-224 - Inmate Photos

Mr. Garcia has stipulated to the admission of Exhibits 209, 211-212, 214, 217-221 and 223-224.

The photos in Exhibits 207, 208, 210, 213, 215, 216 and 222 are of inmates who are neither complaining witnesses nor prospective witnesses in this case and are therefore irrelevant.

XXIII

Exhibits 237-239 - Photos of F-Unit Shower Stall

Exhibit 239 is a clear photo of the entire stall and Mr. Garcia has stipulated to the admission of this exhibit. Exhibits 237 & 238 are duplicative of parts of the stall and are needlessly cumulative.

XXIV

Exhibits 248-257 - Photos of Cells of Victim 2 (M.F.)

1 Exhibits 248-252 show one cell in which Victim 2 (M.F.) was
2 housed, while Exhibits 253-257 show another cell in which she was
3 housed.

4 Mr. Garcia has stipulated to the admission of Exhibits 248-250,
5 253 & 255-256. The other photos in this group are needlessly
6 cumulative and of no evidentiary value.

7
8 **XXV**

9 **Exhibits 258-262 - Photos of Cell of Victim 1 (M.H.)**
10

11 Exhibits 258-262 show the cell in which Victim 1 (M.H.) was
12 housed. Mr. Garcia has stipulated to the admission of Exhibits 258-
13 260. The other photos in this group are needlessly cumulative and of
14 no evidentiary value.

15
16 **XXVI**

17 **Exhibits 263-267 - Photos of Cell of Prospective Witness M.M.**
18

19 Exhibits 263-267 show the cell in which prospective witness M.M.
20 was housed. Mr. Garcia has stipulated to the admission of Exhibits
21 263 & 265-266. The other photos in this group are needlessly
22 cumulative and of no evidentiary value.

23
24 **XXVII**

25 **Exhibits 268-272 - Photos of Cell of Victim 3 (R.R.)**
26

27 Exhibits 268-272 show the cell in which Victim 3 (R.R.) was
28 housed. Mr. Garcia has stipulated to the admission of Exhibits 268-

270. The other photos in this group are needlessly cumulative and of no evidentiary value.

XXVIII

CONCLUSION

For the reasons stated, Mr. Garcia respectfully submits that prospective government exhibits identified as irrelevant, unfairly prejudicial, a waste of time or needlessly cumulative, all within the meaning of FRE Rule 403, should be excluded from evidence in his trial. He respectfully requests that the court so order.

Date: October 27, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Reilly", is written over a horizontal line.

JAMES T. REILLY, Attorney at Law
Counsel for Defendant RAY J. GARCIA