

**LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET**

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| X FELONY MISDEMEANOR | AGENCY NAME LAPD - INTERNAL AFFAIRS | DA CASE NO. 37250912 | DATE 04/20/2017 | | | | | | | | | | | | | | | | |
| | AGENCY FILE NO. (DR OR URN) CF# 16-002513 | DA OFFICE CODE J.S.I.D. #17-0060R | VICTIM ASSISTANCE REFERRAL <input type="checkbox"/> YES - NOTIFY VWAP <input checked="" type="checkbox"/> NO | | | | | | | | | | | | | | | | |
| SUSP NO. | SUSPECT | | CHARGES | | | | | | | | | | | | | | | | |
| 1 | NAME (LAST, FIRST MIDDLE)) MARTINEZ, ISRAEL | | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;">CODE</td> <td style="width:20%;">SECTION</td> <td style="width:20%;">OFFENSE DATE</td> <td style="width:10%;">REASON CODE</td> </tr> <tr> <td>PC</td> <td>261(A)(2)</td> <td>09/11/2016</td> <td>B</td> </tr> <tr> <td>PC</td> <td>286(C)(2)(A)</td> <td>09/11/2016</td> <td>B</td> </tr> <tr> <td>PC</td> <td>288A(C)(2)(A)</td> <td>09/11/2016</td> <td>B</td> </tr> </table> | CODE | SECTION | OFFENSE DATE | REASON CODE | PC | 261(A)(2) | 09/11/2016 | B | PC | 286(C)(2)(A) | 09/11/2016 | B | PC | 288A(C)(2)(A) | 09/11/2016 | B |
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| | PC | 286(C)(2)(A) | 09/11/2016 | B | | | | | | | | | | | | | | | |
| PC | 288A(C)(2)(A) | 09/11/2016 | B | | | | | | | | | | | | | | | | |
| DOB 11/01/1991 | SEX (M/F) M | BOOKING NO. | VIP X Yes -- No VIP - (05) Sexual Abuse - Acquaintance | | | | | | | | | | | | | | | | |
| Gang Member Name of Gang | | Victim Gang Member Name of Gang: | | | | | | | | | | | | | | | | | |
| Victim Name: | | Victim DOB: | | | | | | | | | | | | | | | | | |
| 2 | NAME (LAST, FIRST MIDDLE)) | | | | | | | | | | | | | | | | | | |
| | DOB | SEX (M/F) | BOOKING NO. VIP -- Yes -- No | | | | | | | | | | | | | | | | |
| | Gang Member Name of Gang | | Victim Gang Member Name of Gang: | | | | | | | | | | | | | | | | |
| | Victim Name: | | Victim DOB: | | | | | | | | | | | | | | | | |
| 3 | NAME (LAST, FIRST MIDDLE)) | | | | | | | | | | | | | | | | | | |
| | DOB | SEX (M/F) | BOOKING NO. VIP -- Yes -- No | | | | | | | | | | | | | | | | |
| | Gang Member Name of Gang | | Victim Gang Member Name of Gang: | | | | | | | | | | | | | | | | |
| | Victim Name: | | Victim DOB: | | | | | | | | | | | | | | | | |
| Comments SEE ATTACHED | | | | | | | | | | | | | | | | | | | |
| COMPLAINT DEPUTY (print) DAVID REINERT/ae | | COMPLAINT DEPUTY (SIGNATURE) | STATE BAR NO. 235051 | | | | | | | | | | | | | | | | |
| | | REVIEWING DEPUTY (SIGNATURE) | | | | | | | | | | | | | | | | | |

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): DET. SONNY PATSENHANN FILING OFFICER (SIGNATURE): mailed 4/25/17 SERIAL #: 33497

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|---|--|--|---|
| DEPARTMENT OF JUSTICE REASON CODES (FORM 8715) | D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice | H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation | L. Prosecutor Prefiling Deferral <u>DISTRICT ATTORNEY'S REASON CODES</u> M. Probation Violation filed in lieu of N. Referred to City Attorney for Misdemeanor Consideration |
| A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure | | | |

LAST NAME: MARTINEZ

FIRST NAME: ISRAEL

DA CASE NUMBER: 37250912

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the allegations that Los Angeles Police Department (LAPD) Officer Israel Martinez, Serial #41119, committed the crimes of forcible rape in violation of Penal Code section 261(a)(2), forcible sodomy in violation of Penal Code section 286(c)(2)(A) and forcible oral copulation in violation of Penal Code section 288a(c)(2)(A). For the reasons set forth below, this office declines to initiate criminal proceedings in this matter.

The following analysis is based upon the Complaint Investigation reports submitted by the LAPD Internal Affairs Group (IAG) through Detective Sonny Patsenhann and the initial crime report created by the Inglewood Police Department (IPD). Israel Martinez declined to give a voluntary statement for this investigation.

FACTUAL ANALYSIS

On September 9, 2016, Jane Doe and her friend, "FC", traveled from Phoenix, Arizona to Los Angeles for vacation.¹ They intended to go to the beach but ended up staying at the Motel 6 in Hollywood because they could not find the hotel they had previously booked. On Saturday, September 10, 2016, Doe and FC went to several bars in Hollywood. At approximately 1:00 a.m., on September 11, 2016, Doe was driving her rental car and stopped in a red zone so that FC could get a hotdog from a street vendor. After they stopped, Doe, who remained in the driver's seat of her car, was approached by Officer Israel Martinez.² Martinez, who identified himself as George, engaged Doe in conversation and exchanged phone numbers with her. A conversation via text message followed:³

Doe: You're one of the most gorgeous guy I've ever talk to you
Martinez: Thank you.. So are we going to chill later??
Doe: Of course!!! What time are you off?
Martinez: 3:30
Doe: Okay...I will just shower lol. – What do you want to do?
Martinez: Ok...Hook up.
Doe: Lol really...I'm a submissive girl. I like dominant males
[Attached "selfie" of Doe clothed but accentuating her breasts] Submissive.
Martinez: Nice baby! Can't wait to stop by later.
Doe: Well mr, I can assure you it will be a night you won't forget...Then you can hear me scream your name when I get off.
Martinez: [Attached photograph of an erect penis]

¹ Doe referred to FC as her "sister-in-law" because FC was dating Doe's brother.

² Martinez was identified only after a roll call training was conducted by the Hollywood Entertainment District Patrol supervisor who used Doe's complaint to warn his officers about the dangers of engaging with citizens whom they met on-duty. Martinez asked to speak with the sergeant after the training and identified himself as the involved officer.

³ Unless otherwise noted, the syntax and spelling in text messages throughout this memorandum appear as they were originally written.

Doe: I can't wait to wrap my lips around that big hard cock!!!

Martinez finished his shift and drove to the Hollywood Motel 6 to meet Doe. Martinez immediately asked to have sex with Doe in her hotel room and then again in her car, but Doe demurred and told him that she wanted to go out. They both entered Doe's rental car and Doe drove while Martinez gave her directions. Doe asked Martinez where he was taking her and Martinez's only reply was, "I want to show you something." After driving around for a period of time, Martinez told Doe to stop the car and they both got out.



Figure 1 - Dumpster Storage Area at 1810 Tamarind Avenue

Doe asked Martinez several more times where they were going and he told her repeatedly that he was going to show her something. Martinez put his hand on Doe's back and guided her into an enclosure at 1810 Tarmarind Avenue which is used to store dumpsters.⁴ Once they entered, Martinez kissed Doe and she responded, "I'm not...no, this is disgusting." In response, Martinez said, "get on your fucking knees" while he pulled her by her hair. Doe again told Martinez that she did not want to do anything in the place where he took her because it was "gross" and "disgusting." Martinez then pulled one of Doe's breasts out of her shirt, and told her to get on her knees. Martinez proceeded to put his penis in Doe's mouth, at one point causing her to vomit because he pushed it so far into her mouth. He then proceeded to tell her to get on her hands and knees and told her, "Do you know how many women get raped in L.A.? I know this area real well." Doe got a pizza box to put underneath her and did as she was told. Martinez then put a

⁴ Doe was unable to direct detectives to the scene of the incident when she was in Los Angeles; however, she sent an email to the investigators on September 30, 2016 in which she stated that she found the location by searching the location history on her cellular phone and looking at Google maps.

condom on his penis, inserted it into Doe's vagina and anus multiple times before removing the condom and ejaculating on her chest. Doe described Martinez slapping her throughout the sex acts while saying things like, "Shut the fuck up," "You like gagging on daddy's dick," "You fucking dirty whore," and "You are a submissive."

After Martinez finished with the sex acts, they both got back in Doe's car and she drove him back to her hotel and dropped him off at his truck. She then went back to her hotel room and woke up FC. Doe said that she was laughing when she told FC, "You're not going to guess what just happened – I just had sex with a guy in a fucking dumpster." She sent him a text message which read: "Sleep good."

Doe told investigators that she spent the next few days drinking too much and using methamphetamine. She also told them that she met a man at a casino and arranged to buy a "throw away" gun with the intention of "feed[ing] into his game" by luring Martinez to her hotel to "set him up" and "hurt" him.

On the afternoon of September 13, 2016, Doe sent Martinez two more texts.⁵ The first read, "I want a redo. But I want you to rape me!" Shortly thereafter, she sent a text which read:

"Wyd? I extended my stay . I want to meet up again... Unless you are the kinda guy who is to kinky for me. I really liked how you forced your self down my throat lol the pizza box was a nice touch. But I want a repeat :-) this time I'm prepared ;-) I do[n't] know how many girls get raped in L.A. But this time let me ask you how many girls enjoyed it so much they will beg for it over and ove[r]."⁶

Although Martinez eventually responded, Doe did not follow through on an attempt to meet.

On September 13, 2016, at 8:30 p.m., two IPD officers were flagged down by Doe. Doe told them that she was raped by an LAPD officer. The IPD officers immediately notified their sergeant, who notified LAPD IAG investigators. LAPD investigators interviewed Doe and FC in the early morning hours of September 14, 2016.

When interviewed, Doe described the incident as related above. She said that she did not have the phone which contained the original text messages sent on the night of the incident and told the investigators that the battery had died and she needed to get a new phone. She then said that her phone was in the car but that she had lost the keys to get into the car. Doe eventually produced the phone she used to contact Martinez. The investigators asked about the clothing she was wearing during the incident and she told them that she had provided the shirt with Martinez's ejaculate on it and that she had laundered the rest of her clothing because it was so dirty from the assault. She told investigators about her plan to get a gun and explained that,

⁵ The text messages were recovered when investigators searched Martinez's phone. Although there are some inconsistencies with the time stamps, they are consistent with the messages viewed on Doe's phone. While the messages were sent by Doe on September 13, they were not received by Martinez until September 14.

⁶ Doe read this message to investigators during her interview and filled in the words "don't" and "over" which were originally written differently.

while she was angry and disgusted, she decided not to follow through on her effort to hurt Martinez so she got rid of the gun.⁷

Before taking her to the hospital for a sexual assault examination, investigators drove Doe to Hollywood in an attempt to locate the location of the incident.⁸ She was unable to find the location where the assault occurred.

Doe was taken to the Rape Treatment Center for a post-assault evaluation. The nurse documented bruising to Doe's chest, arms, right wrist, legs and back. She also noted that Doe's genitalia were tender to the touch. The nurse took multiple swabs of Doe's body for later DNA analysis and Doe provided the blouse she was wearing on the night of the assault. Doe's blouse was tested and DNA from Martinez was found on it. The swabs collected from Doe's body were also tested and found to contain DNA from a different, unknown, male contributor. Doe explained to the nurse that she had engaged in sexual intercourse with a different man on September 13, 2016, prior to contacting the police.

FC was interviewed and told investigators that she did not remember anything from the night of the incident before describing Martinez in some detail. Investigators reminded her that she was not in trouble and that they were only trying to find out what happened, but she continued to tell them that she just did not remember, and explained that she was drinking, that she was not paying attention, that she was tired, and that she was just saying what someone else told her to say.

When pressed, FC did tell investigators that Doe woke her up shortly after the incident and told FC that a man took her to an alleyway and forced her to have anal sex but that she did not know anything else. Later in the interview, FC said that she did not think that Doe had been forced but instead thought that Doe and Martinez were just being "kinky." FC did say that Doe had not laundered any of Doe's clothing since they had come to Los Angeles. Doe had told FC that she had purchased a gun, but FC did not believe that was true.

Several days later, on September 17, 2016, Doe sent the following text message to Martinez:

See I have the financial means to come out to cali and stay and I left because you deserve a special place in hell and me spending my money just to hear you say ouch stop smack you in your face, ask to leave, please can't we just go somewhere else, this is disgusting, hear you tell me no then make you... Well I would have given every last penny I have an almost still would just so you could look me in the eyes and tell me no. You have no right to be a cop!!! You have no right to have a dick. I was interested in you and told you we should hang out and I would pay for a hotel several times and I woulden someone

⁷ Although investigators were never able to confirm a gun purchase by Doe, she told them that she bought one from "a black guy and a Mexican guy" for \$1000. She did produce a receipt from Bank of America documenting a withdrawal of \$1000 in cash from her account which she said she used for the gun. She said she gave the gun back to the sellers after she decided not to follow through with hurting Martinez.

⁸ While Doe was cooperative with the investigators, she was at times combative; she loudly declared that she needed her "Jack" while they were in the investigators' car and later told investigators that she could not breathe, necessitating the response of a rescue ambulance. When the medics arrived, she told them that she would seek her own medical attention.

says no, its not right. I will pray for you but in the mean time Karma should be finding you soon. I hate jails in the states because you

That message was followed immediately thereafter by:

Im back in arizona and I can't tell you how badly I wanted to have you come see me just so I could hear you tell me no a[n]d to stop just so I could keep go over and over . When someone [tells] you No and Stop. Please this is disgusting it's a f***** dumpster alley. Do you believe in your mind that that means there [in to it]. I want someone tries to walk away you think it's okay to keep them. I was under the influence and I wish I had gotten a damn ticket instead of your number. You took my f***** dignity. I gave up in the end and as I drove back I couldnt help but to think with goes on in your head to make you think that no means keep going. Or I don't want to be here several times and no I want to go. Stop. I decided when I was driving you back that I wan naïve. I couldn't stay sober for the next couple days because I just didn't want to process any of it to be honest and I should have because thinking of how nasty and disgusting that was pisses me off

On September 26, 2016 FC called Sergeant Peter Gillies and told him that Doe was not being completely truthful with him.⁹ Specifically, FC said that the bruises on Doe's body were the result of a fight between Doe and another woman which occurred just before Doe and FC came to Los Angeles. FC also volunteered that Doe was a drug addict and habitual liar. On October 5, 2016, FC called Detective Patsenhann and repeated the statements about the bruising on Doe's body. She added that Doe told her before their trip to Los Angeles that she was a "submissive slave" and when Doe told FC about the assault by Martinez, Doe described him as a "dominant."

On February 2, 2017, Patsenhann called and spoke with Doe to set up a telephonic interview between her and the Deputy District Attorney assigned to evaluate charges against Martinez. She agreed to be available the next day; however, multiple calls to her the next day went unanswered and unreturned. Patsenhann spoke to Doe later and, while she gave no reason for not answering her phone earlier, agreed to be available by phone on February 9, 2017. On that date, Doe did not answer any of the calls placed to her phone. She has never returned messages left for her.

LEGAL ANALYSIS

To be guilty of forcible rape, forcible sodomy, or forcible oral copulation, the prosecution must prove that a defendant engaged in a sex act with a woman who did not consent to the act and that he overcame her consent by way of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to the woman or someone else. CALCRIM Nos. 1000, 1030, 1015. The defendant is not guilty of these crimes if he actually and honestly believed that the woman consented to the sex acts. *Id.* The prosecution has the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman consented. *Id.* The woman must consent throughout the sex acts and may withdraw her consent at any time; however, she must communicate her lack of consent in such a way that a reasonable person

⁹ On September 20, 2016 police responded to Doe's home in Arizona regarding a physical fight between Doe and FC. FC was ultimately arrested for assault and battery. FC reported that she was calling from her mother's home in Nevada.

would have understood that consent was being withdrawn. *Id.*; *See Also People v. Ireland* (2010) 188 Cal.App.4th 328, 338 (if the defendant initiates the use of nonconsensual force during the act, the withdrawal of consent may be inferred).

In a criminal case, the testimony of a single witness is sufficient to prove any fact beyond a reasonable doubt. CALCRIM No. 301. However, a jury is given wide latitude to assess a witness' credibility; inconsistent prior statements, acts involving moral turpitude, and other conduct which could reflect on the witness' believability are admissible to attack her credibility. CALCRIM No. 226.

In this case, it is clear that Martinez and Doe engaged in multiple sex acts on September 11, 2016. Martinez's semen was found on Doe's blouse and Martinez told his supervisor that he was involved in the incident when it was described during a roll call training. The issue presented by these facts is whether it can be proven beyond a reasonable doubt that Martinez engaged in those sex acts with Doe without her consent and, if she was not actually consenting, whether he actually and honestly believed that she was.

Doe engaged in sexually explicit text messages with Martinez prior to meeting him after his shift and included in those messages a reference to being "a submissive girl" who likes "dominant males." Martinez made it clear that his intention was to engage in sex acts with Doe and Doe responded in kind. When Martinez took Doe to a dumpster storage area, Doe exited the car and walked toward the area enclosed by a fence with him volitionally. While Doe describes sex acts to which she did not consent, she also describes the statements made by Martinez, such as referring to himself as "daddy" and telling her that she was a "submissive," which is evidence that he believed that they were acting out dominant and submissive roles.

In addition to the evidence of the defendant's statements, Doe's statements after the assault would be used against her at trial. Doe told investigators that she laundered the dirty clothing from the night of the assault before speaking with them; however, FC denies that either of them did laundry. Her assertion that Martinez caused bruising during the assault is also called into question by FC's statement to investigators that Doe was involved in a fight several days prior which resulted in those injuries. A jury would also see text messages sent by Doe the day after the alleged rape where she says, "I want a redo. But I want you to rape me!"

Finally, the evidentiary value of the findings during Doe's post assault medical examination is limited by her consensual contact with a different man between the time of the assault and her report to law enforcement.

Based on the totality of the evidence presented, there is insufficient evidence to prove beyond a reasonable doubt that Martinez did not actually and reasonably believe that Doe consented to the sex acts. While the location of the assault would normally be strong evidence of Doe's lack of consent, the surrounding circumstances do not provide sufficient corroboration to prove criminal charges beyond a reasonable doubt.

In addition to the analysis of the evidence presented, Doe's lack of response to follow up by the investigators suggests that Doe will not cooperate with the prosecution of Martinez. Doe resides

outside of California, and she cannot be compelled to come to California against her will.¹⁰ Her decision not to cooperate with this office provides an independent reason to decline to file charges in this matter.

CONCLUSION

Because there is insufficient evidence to prove beyond a reasonable doubt that Martinez did not believe that Doe was consenting when he engaged in sex acts with her, we decline to file criminal charges. We are closing our file and will take no further action in this matter.

¹⁰ Code of Civil Procedure section 1219 precludes placing the victim of a sexual assault in custody for their failure to testify.