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Attorney for BALJIT SINGH ATHWAL

FILED
APR 13 2016
CLERK OF SUPERIOR COURT
BY *Kellie Stern*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

THE PEOPLE OF THE
STATE OF CALIFORNIA,

v.

BALJIT SINGH ATHWAL,

defendant

Case # 1490969

MOTION TO RECUSE
SUPPLEMENTAL
DECLARATION OF
COUNSEL

SUPPLEMENTAL DECLARATION in SUPPORT OF MOTION TO RECUSE

I, Martha Carlton-Magaña, do hereby state and declare,

1. I am an attorney licensed to practice in the State of California and in such capacity represent defendant Baljit Athwal.

2. I have been a criminal defense attorney for Forty years, including 22 years as a Stanislaus County deputy public defender, nine years as an Alameda county Public Defender, and nine years in private practice in Stanislaus County. In such capacity I have represented hundreds of defendants charged with violent and serious felonies including a

1 number of high profile cases.

2
3 3. I am counsel of record for Terry Fullen in Stanislaus
4 County Case Number 1469585, and have been such since
5 January 12, 2015. Mr. Fullen is charged with felony
6 possession of a firearm, two felony counts of making
7 threats to commit a crime on the person, and two felony
8 counts of assault with a firearm. The alleged victim is
9 his stepson.

10 4. On March 23, 2016 Mr. Fullen was coerced into meeting with
11 District Investigator Steve Jacobson who identified himself
12 as Oakdale Police Officer Severs. District Investigator
13 Kirk Bunch also participated in the meeting. The two
14 investigators were aware that I represented Mr. Fullen, and
15 did not seek my permission to speak to Mr. Fullen. At the
16 meeting Mr. Fullen was informed [REDACTED] and
17 [REDACTED] which
18 [REDACTED]. The investigators asked a number of questions and
19 made a number of suggestions, all of which were aimed at
20 implicating me in some kind of witness tampering. Mr.
21 Fullen repeatedly told them that he had mentioned to me
22 that [REDACTED] during an attorney client
23 communication, and that I responded that I might want to
24 talk to Mr. Fullen about that at some later time. Mr.

25
26 Fullen informed the investigators that he had called me
27 after the initial contact by "Severs", and had been advised
28 not to speak to the officer, but rather to provide my name

1 and number. He then informed Bunch and Jacobson that he was
2 going to call me to inform me as to the subject of the
3 meeting. They requested that they be allowed to listen to
4 the conversation. At their request Mr. Fullen put the phone
5 on speaker and allowed them to listen to our conversation.
6 The meeting, including the phone call, was recorded and a
7 transcript of the meeting will be provided to the court.
8 The law enforcement report prepared by Mr. Jacobson is
9 attached as Exhibit A.
10

11 5. This meeting, and particularly the eavesdropping on the
12 attorney client phone conversation, was a blatant
13 interference with the attorney client relationship between
14 Mr. Fullen and myself, and a blatant invasion of the
15 attorney client privilege. It has irreparably harmed, and
16 irretrievably broken the attorney client relationship with
17 Mr. Fullen. I will have to declare a conflict in Mr
18 Fullen's case because of the misconduct of Investigators
19 Jacobson and Bunch.

20 6. I am counsel of record for Darrell Eugene Harris in
21 Stanislaus County Case Number 1474463, and have been such
22 since April, 2015. The information alleged Driving under
23 the influence with injury and three prior strikes. On
24 January 11, 2016. Mr. Harris plead no contest to a charge
25 of felony driving under the influence with injury and is
26 awaiting sentencing.
27

28 7. Witness Ronald Cooper had indicated at one point, through

1 his lawyers from the Public Defenders Office, that he did
2 not wish to continue testifying. Attorney Marlisa Ferriera
3 accused me, or attorney Steven OConner in open court of
4 having Mr. Harris, a cellmate of Mr. Cooper, dissuade Mr.
5 Cooper from testifying, then claimed she had never made the
6 accusation. Mr. Cooper had never made any claim that Mr.
7 Harris had tried to dissuade him from testifying. She had
8 spun her fantasy out of thin air, based only on the
9 information that both Mr. Conner and I had represented Mr.
10 Harris at different times. She falsely claimed that Mr.
11 Conner had been visiting Mr. Harris while I represented
12 him. The custodial records were introduced to rebut the
13 claim. As I informed the court at the time, in fact, Mr.
14 OConner had been fired by Mr. Harris prior to Mr. Harris'
15 retaining me to represent him.
16

17 8. On December 16, 2015 District Attorney Investigator Kirk
18 Bunch interviewed Mr. Harris at the county jail. Again, the
19 focus of the interview was whether I had asked Mr. Harris
20 to convey any message to Mr. Cooper. Again, Mr. Bunch knew
21 I was the attorney of record for Mr. Harris, and did not
22 seek my permission to interview Mr. Harris and, did not
23 inform me of the interview until well after the fact.
24

25 9. This interview of Mr. Harris was an egregious interference
26 with the attorney-client relationship between Mr. Harris
27 and myself, and a blatant invasion of the attorney client
28 privilege. It may have irreparably harmed, and

1 irretrievably broken the attorney client relationship with
2 Mr. Harris. It has brought into question the validity of
3 Mr. Harris plea agreement, and made it unlikely I can that
4 I can represent him through sentencing. A transcript of
5 the interview of Mr. Harris by Mr. Bunch will be provided
6 to the court. The law enforcement report prepared by Bunch
7 ~~is~~ ^{will be} attached as Exhibit B *when IT IS PROVIDED TO COUNSEL*

9 10. The District Attorney Investigators investigations of
10 my attorney client relationships with Mr. Fullen and Mr.
11 Harris were malevolent and ham-fisted attempt to bully and
12 intimidate me by inferring I have engaged in improper or
13 criminal conduct. It is a transparent effort to force me to
14 abandon my defense of Baljit Athwal. It is an attempt to
15 destroy the attorney client relation ship with Mr. Athwal,
16 and to deny him a vigorous and complete defense,

17 11. At the very inception of my representation of Mr.
18 Athwal in October 17, 2015 I was asked to come to the
19 District Attorney's Office on a Sunday afternoon to pick up
20 discovery. Ms. Ferreira, Mr. Bunch and Mr. Evers came down
21 to the lobby to meet with me. I thought it was odd at the
22 time, but naively thought I could have a professional
23 discussion with Ms. Ferreira about the weakness of her case
24 against my client. I told them that, based on the affidavit
25 in support of the arrest warrant, and other information I
26 heard, Mr. Cooley was the likely killer. I never told her
27 that I had first hand information of who, if anyone, had
28

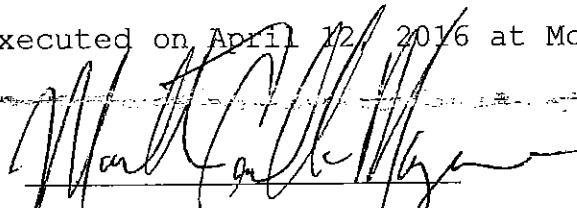
1 killed Korey Kauffman. I was shocked, several months later,
2 to find a law enforcement report by Mr. Evers in the
3 discovery, describing, with prescient inaccuracy, this
4 meeting, including the claim that I said I had first hand
5 knowledge, (Mr. Evers' reports have since proven to be
6 remarkably inaccurate when compared to the witness
7 recordings). I have represented defendants in many death
8 penalty cases, and many high profile cases in Stanislaus
9 County over the last thirty one years. I have never seen a
10 law enforcement report of a professional conversation
11 between prosecutor and defense attorney. I now realize this
12 report was an early effort to either intimidate me, or
13 scare me off representing Baljit Athwal, or discourage me
14 from providing a vigorous and thorough defense of Mr.
15 Athwal. The report prepared by Mr. Evers is attached as
16 exhibit C. This discussion was not, apparently, recorded.

17
18 12. These three incidents; each designed to bully and
19 intimidate counsel into withdrawing from the case, or
20 provide an inadequate defense; two of which encroach upon,
21 and, intentionally, interfere with the attorney client
22 relationship; and each more blatant, more outrageous misuse
23 and abuse of governmental power and authority than the
24 last; are clear proof that this District Attorney's office
25 is absolutely unwilling to, or incapable of, objectively
26 and fairly prosecuting this case. As time goes on, and it
27 becomes clear to all, including this court, that the
28

1 evidence to convict Baljit Athwal and the other defendants
2 does simply not exist, this team of prosecutor and District
3 Attorney investigators, all of whom know that their careers
4 are now in grave jeopardy, will engage in more and more...
5 egregious misconduct. These three incidents, the
6 declarations, and other evidence already filed in support
7 the of the Motion to Recuse the District Attorney, and
8 previous incidents already in the record and referred to in
9 Mr. Forkner's motion to Dismiss for Prosecutorial
10 Misconduct, some standing alone, and all taken together,
11 require recusal of the Stanislaus County District Attorneys
12 Office. It the office is allowed to continue this
13 prosecution, the intimidation of defense witnesses, and
14 counsel, the hiding of exculpatory evidence, and other
15 ongoing misconduct will only grow in intensity. While we
16 still believe Mr. Athwal will be vindicated in the end, if
17 this District Attorney is allowed to continue with this
18 prosecution, the damage to Mr. Athwal, his wife and
19 children, and the justice system itself is immeasurable.
20
21

22 I declare under penalty of perjury the above to be true and
23 correct to the best of my knowledge and recollection.
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25 Executed on April 12, 2016 at Modesto, California.

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MARTHA CARLTON-MAGANA

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Declaration of Counsel.