

1 BIRGIT FLADAGER  
2 District Attorney  
3 Stanislaus County  
4 832 12<sup>th</sup> Street, Suite 300  
5 P.O. Box 442  
6 Modesto, CA 95353  
7 Telephone: (209) 525-5550  
8 Facsimile: (209) 558-4027

9 Attorney for the Plaintiff

**FILED**  
**DEC 13 2016**

CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY C. Pope  
Cynthia DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

FRANK CLIFFORD CARSON,  
BALJIT ATWAL,  
DALJIT ATWAL,  
WALTER WESTLEY WELLS,  
**GEORGIA DEFILIPPO,**  
**CHRISTINA DEFILIPPO,**  
EDUARDO QUINTANAR AND  
SCOTT MCFARLANE,

Defendants.

CASE NO.: 1490969

OPPOSITION TO DEFENDANT  
GEORGIA DEFILIPPO'S  
SUPPLEMENTAL MOTION TO  
STRIKE DETECTIVE HIVELY'S  
TESTIMONY AND PEOPLE'S  
EXHIBIT NUMBER 2 (TEXT  
MESSAGES)

Date: December 19, 2016

Time: TBD

Dept. 26

The Honorable Barbara Zuñiga

20 Comes now the People of the State of California, by and through their attorney, BIRGIT  
21 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy  
22 District Attorney, and respectfully submits the following opposition to defendant Georgia  
23 DeFilippo's Supplemental Motion to Strike Detective Hively's Testimony and the People's Exhibit  
24 2 (Text Messages) and defendant Christina DeFilippo's Joinder to said motion.

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**INTRODUCTION**

On July 15, 2016, defendant Georgia DeFilippo filed a Motion to Strike Detective Hively's  
Testimony and People's Exhibit No. 2. The People responded with an Opposition on July 22, 2016

1 and the Court made a ruling on August 1, 2016, reserving the decision on certain messages. The  
2 Court made the following statements regarding her ruling on August 1, 2016:

3 The Court: Ms. Ferreira, as you know, there has to be evidence independent  
4 of the statements made during the course of a conspiracy to constitute a conspiracy.  
5 I'm having the same problem with these texts and these conversations that I had with  
6 other pieces, with some of the testimony that came in through Ms. Woody; that in  
7 order to rule on the admissibility of the statements, I would have to make a finding  
8 as to the credibility of the witnesses. And I wasn't prepared to do it at that time.

9 I'm in the position -- the same position now where I am not prepared to do a  
10 final ruling on this because I am not prepared at this point in the proceedings to rule  
11 on the credibility of witnesses, nor am I prepared at this time to make a finding that,  
12 outside of these statements themselves, you have shown a conspiracy, charged or  
13 uncharged, to essentially threaten somebody who was coming onto the Carson  
14 property and use self-help to stop them from stealing from -- you put it differently.

15 I am not prepared at this point in the proceedings to either make a finding on  
16 credibility of witnesses or to cull through all of the evidence and say that, yes, at this  
17 point in time there is sufficient evidence outside the statements to support your  
18 theory.

19 What I am going to do is I am going to rule on the statements assuming that  
20 you are correct with respect to the uncharged conspiracy or charged conspiracy to  
21 obstruct justice, but they're still not going to be admitted.

22 Does that make any sense?

23 No, it didn't. **They stand right now -- let me -- I'm not going to strike  
24 them right now subject to my final ruling in the case.** So let me start ruling on  
25 them, because some of them, I agree, are not relevant.

26 (PX RT 14462:2-14463:5.) (Emphasis added.)

27 The People submit this supplemental motion is untimely as the matter is already before the  
28 court and a decision as stated by the court will be reflected in the court's final ruling. Furthermore,  
the People incorporate all of their previous arguments made during Detective Hively's testimony  
on October 13, 2015, arguments made within their opposition filed on July 22, 2016 and arguments  
made on August 1, 2016. The People also submit to this Court defendant Georgia DeFilippo's  
misstatements of items regarding the Court's previous holding i.e. messages which were reserved  
and/or are in the record.

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1 **LAW AND ARGUMENT**

2 **I.**

3 **THE COURT HAS RULED**

4 The courts disfavor repetitive motions. In *Griffin v. Municipal Court* (1977) 20 Cal.3d 300,  
5 305, fn. 9, the California Supreme Court reiterated the holding in *Hagen v. Superior Court* (1962)  
6 57 Cal.2d 767, 770-771, “[I]n the orderly administration of justice, and in support of a sound  
7 judicial policy, a court, in the absence of unusual or changed circumstances ... is justified, in its  
8 discretion, in refusing to consider repetitive applications of the same petition.” In *People v. Price*  
9 (1991) 1 Cal.4th 324, 395, the California Supreme Court upheld the trial court’s admonishment to  
10 counsel about sanctions wherein the court warned counsel that “certain practices, including making  
11 motions that duplicated motions already denied, were unacceptable.” The People submit defendant  
12 has filed her motion regarding the striking of this testimony, the court has heard the arguments and  
13 the Court has ruled. As stated on August 1, 2016, the Court’s reservation on the text messages  
14 would exist through the Court’s final ruling.

15 **II.**

16 **DEFENDANT’S STATEMENTS REGARDING THE RESERVED AND/OR**  
17 **ADMITTED TEXT MESSAGES ARE INACCURATE**

18 The People note the following items are not identified and/or are misidentified within  
19 defendant Georgia DeFilippo’s list of text messages. Furthermore, the Court’s ruling as to 2525-  
20 2523 is incorrectly stated:  
21

- 22 - People’s Exhibit No. 2, page 3, lines 2525-2523:  
23 Court’s Ruling: “2525 through 2523, motion to strike is reserved. ¶ If I wind up  
24 letting this testimony stand after – *at the time I do my holding order*, if any, the  
25 reason it will be coming in is that arguably supports the theory that the prosecution  
26 had put forth with respect to obstruction of justice. ¶ **2523 would be relevant to Mr.**  
27 **Carson’s state of mind.** And, again, depending on where I come out, how much  
28 weight I place on that will be within my discretion.” (PX RT 14470:14-22.)  
[Defendant suggests that 2525-2523 is relevant as to state of mind whereas the court  
specifically makes that holding as to only line 2523 (Defense motion p. 2, line 22-  
24.)]

///

1 - People's Exhibit No. 2, page 6. Lines 2498-2497

2 Defendant's motion fails to include the Court's reservation on page 6 of People's  
3 Exhibit No. 2, "Page six, 2498 and 2497, reserve." (Defense motion, p. 2, line 27;  
4 PX RT 14472:6.)

4 - People's Exhibit No. 2, page 8, portions of 1036

5 Defendant's motion also fails to include the Court's holding to reserve on page 8 of  
6 People's Exhibit No. 2, "Going to page eight, 1036, I'm reserving on the following  
7 portion:

8 "Hi, mom. Anyway, of course you can come set your BB thing here. Preferably  
9 it's you who comes in the house though." (Defense Motion, p. 3, line 1; PX RT  
10 14473:1-5.)

8 - People's Exhibit No. 2, page 9, portion of 996

9 Defendant's motion also fails to include the entire portion of 996 pursuant to the  
10 court's ruling. The entire statement should read, "Wow. You told me to call the  
11 house, I did. I also called his cell and texted yours. It doesn't matter, whatever  
12 method I choose, you will find some way to be pissed off about it. I'm sorry I didn't  
13 call Dayna and have her drive to your house and pound on the door until you woke  
14 up. It beeped twice, when Frank, a human, was out there the other night it beeped  
15 like crazy." (Defense motion p. 6, line 10, PX RT 14474: 7-13.)

### 15 III.

## 16 CONSPIRACY TO OBSTRUCT JUSTICE

### 17 A.

#### 18 Defendant Georgia DeFilippo Played an Active Role in the Conspiracy to 19 Obstruct Justice

20 The Second District Court of Appeal in *People v. Muniz* (1993) 16 Cal.App.4th 1083, 1087-  
21 88 held, "Although it is true that the corpus delicti-here, an agreement to commit an assault with a  
22 firearm and an overt act in furtherance of that agreement (§§ 182, subd. (a)(1), 245, subd. (a)(2))-  
23 must be proved independently of the defendant's extrajudicial statements (*People v. Robbins* (1988)  
24 45 Cal.3d 867, 885-886), *it is equally true that the required "independent proof" may be by*  
25 *circumstantial evidence and that it need not be beyond a reasonable doubt.* A slight or prima facie  
26 showing, permitting the reasonable inference that a crime was committed, is sufficient and once  
27 this threshold is met, the defendant's admissions may be considered on all issues. (*People v. Alcala*  
28

1 (1984) 36 Cal.3d 604, 624; *People v. Robbins, supra*, 45 Cal.3d at pp. 885-886; *People v. Manson*  
2 (1977) 71 Cal.App.3d 1, 41.)” (Emphasis added.)

3 Prior to the night of Korey Kauffman’s murder, Baljit Atwal mentioned baiting with  
4 aluminum pipes by the fence on Carson’s property. (PX RT 15009.) Baljit Atwal gave Detective  
5 Navarro a list of names that defendant Carson had given him which named the people involved in  
6 the thefts from his property. (PX RT 6694.) Defendant Carson had Baljit Atwal surveilling his  
7 property on the night of Korey Kauffman’s murder. (PX RT 14885; 14888-14889. [Only select  
8 people had keys to the property. (June 28, 2012 Wiretap between Georgia DeFilippo and Christina  
9 DeFilippo.)] Prior to Korey Kauffman’s death, Charlie O’Dell observed three men of either Arab  
10 or Hindi descent placing barbed wire near the hole in the fence of the Carson property. (PX  
11 RT19258-19260.) Other evidence of defendant Carson “booby-trapping” his property included  
12 evidence found by Special Agent Sanchez of the Department of Justice who testified on July 15,  
13 2012 that laying on the ground near the back fence between Carson’s property and Michael  
14 Cooley’s rented property lay a piece of plywood with nails sticking up with the sharp edge up from  
15 the plywood. (PX RT 200.)

16 Korey Kauffman was beaten, kicked and shot by Daljit and Baljit Atwal on defendant  
17 Carson’s property. (PX RT 14897-14899.) Defendant Carson attempted to have Patrick Hampton  
18 “fuck up” Michael Cooley so Michael Cooley would stop stealing from defendant Carson. (PX RT  
19 3824-3825.) Defendant Carson also approached Ronald Cooper to assist him in this endeavor. (PX  
20 RT 305.)

21 From the brief facts above, the evidence of a conspiracy is overwhelming, not slight, as  
22 required in *Muniz*. In addition to Georgia DeFilippo’s texting with her daughter Christina  
23 DeFilippo, Georgia DeFilippo was, by Linda Burns’ account, present on at least **two** occasions  
24 wherein defendant Carson proceeded to inspect and go through Linda Burns’ vehicle without her  
25 permission. While on one occasion, Georgia DeFilippo did contact law enforcement, on that very  
26 same occasion, she also stood by as defendant Carson entered another person’s property,  
27 rummaging through their belongings, a definite violation of the Penal Code. When contacted,  
28

1 Officer McMihelk<sup>1</sup> found an agitated defendant Carson and learned the thefts were within the  
2 jurisdiction of the Stanislaus County Sheriff's Department. This is evidence of corroboration and  
3 conspiracy.

4  
5 **B.**

6 **Defendant Georgia DeFilippo's Role Supported the Wheel of Conspiracy**

7 To prove a conspiracy, it is not necessary to show a meeting of the co-conspirators or an  
8 express or formal agreement. The formation and existence of a conspiracy may be proved by  
9 circumstantial evidence. (CALJIC 6.12). As the California Supreme Court noted:

10 A conspiracy can generally be established only by circumstantial evidence. It is not  
11 often that the direct fact of a common unlawful design can be proved other than by  
the establishment of independent facts bearing on such design. (Citations.)

12 (*People v. Robinson*) (1954) 43 Cal.2d 132, 136; See also *People v. Lipinski* (1976) 65 Cal.App.3d  
13 566; 575 [conviction for conspiracy to sell L.S.D. affirmed], *In re Nathaniel C.* (1992) 228  
14 Cal.App.3d 990, 999.)

15 The activities of the co-conspirators can lead to the conclusion that they are members of the  
16 conspiracy. In *United States v. Ray* (9th Cir., 1990) 930 Fed. 2d 1368, the court upheld a conviction  
17 for conspiracy to manufacture methamphetamine where the evidence showed the defendant's  
18 activities included the purchase of chemicals and equipment used to manufacture  
19 methamphetamine and those items, with a formula, were found at his house. The Court noted:

20 "Although mere proximity to the scene of illicit activity is insufficient to establish involvement in  
21 a conspiracy, a defendant's presence may support that interference when viewed in the light of other  
22 evidence." (*United States v. Ray, supra*, at p. 1371.)

23 Defendant's arguments regarding defendant Georgia DeFilippo's reduced participation<sup>2</sup> in

24 \_\_\_\_\_  
25 <sup>1</sup> Officer McMihelk, not as defense states "McMichael" is a sworn peace officer with Turlock Police Department.  
26 (PX RT 154.) The facts involving Deputy Vento, a sworn peace officer assigned to the Stanislaus County Sheriff's  
Department, not as defendant states "Bento" are not reiterated here. (PX RT 177-178, 180.)

27 <sup>2</sup> The People do not argue as to Christina DeFilippo as defendant Christina DeFilippo's joinder does not reflect her  
28 argument as to defendant Christina DeFilippo and the People cannot presume what defense counsel's argument would  
be.

1 the Conspiracy to Obstruct Justice reflects an overview of cases previously briefed by the People.  
2 As the People have laid out within their recently filed *Amended* Response to Defendant's Brief re:  
3 Conspiracy and Defendant's Letter Brief to the Court re Co-Conspirators and Obstruction filed on  
4 November 28, 2016, each spoke in the wheel may play a separate part in the conspiracy. Here,  
5 defendant Georgia DeFilippo assisted defendant Carson when he perused through property not his  
6 own, at 1364 Lander Avenue. Just because defendant G. DeFilippo did not herself look through  
7 the vehicle herself does not render her innocent of intimidating neighbors of 838 Ninth Street while  
8 defendant Carson made statements that he was a "private investigator" and taking the law into their  
9 own hands. Similarly, defendant Georgia DeFilippo's conversations via text with her daughter  
10 Christina DeFilippo encouraged and promoted her daughter to act as a "lookout" to observe and  
11 report every hour what if any thefts were taking place. Rather than simply have her daughter call  
12 local law enforcement, Georgia DeFilippo ordered her daughter to call them and continue to call  
13 them until one of them picked up the phone. Later on wiretap, Georgia DeFilippo is reassuring her  
14 daughter of their innocence in this case as she says, "You know, you don't have the keys to that  
15 (barn)." (Wiretap, 24769.)

16 Also, not forgotten is defendant Georgia DeFilippo's direction of Patrick Hampton, an  
17 individual defendant Carson represented as an attorney and whom defendant Carson also attempted  
18 to use to threaten/stop Michael Cooley, to contact defendant Carson at the courthouse. (PX RT  
19 3858.) When defendant Carson addressed the issue of the search of 838 Ninth Street, he realized he  
20 should not talk on the phone, "And, and, anyway, and so um, but they haven't done anything and  
21 *I'll tell you more when I'm not on the phone.* But, ah because I assume that they're either tracking  
22 my phone or they are listening. But, I wanted to prepare you before you drove up to drive, drop off  
23 Chrissy." (People's Exh. 150, Wiretap, July 16, 2012, 24927, PX RT 9853 (played 5/18/16).)  
24 (Emphasis added.) Defendant Georgia DeFilippo's direct involvement in defendant Carson's law  
25 practice and/or conversations with her daughter and defendant reflect her active and direct  
26 participation in the conspiracy.

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**C.**

**The Charge of Conspiracy to Obstruct Justice Does Not Solely Apply to  
Public Officials**

Defendant Georgia DeFilippo argues she is not a public official and thus, may not be guilty of conspiracy to obstruct justice. Cal Penal Code section 182(a)(5) provides in relevant part: If two or more persons conspire to commit any act injurious to the public health, the public morals, or to pervert or obstruct justice, or the due administration of laws. They are punishable as follows: When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony.” As noted, the plain language of the statute only requires defendant be a person who conspired makes defendant’s argument meritless. Further supporting this fact are convictions upheld of non-public officials on the conspiracy to obstruct justice charges. (*People v. Santens* (1961) 198 Cal.App.2d 592; *U.S. v. Hobson* (9th Cir. 1975) 519 F.2d 765.)

**D.**

**The Cell Phone Evidence Is Consistent and Corroborative of the Evidence in  
This Case**

The morning following Korey Kauffman’s murder, the device associated with Georgia DeFilippo had three data connections in the coverage area of Crows Landing Road in Crows Landing and her device appeared to travel in a southwesterly direction to the coverage area of I-5 west of Crows Landing. (PX RT 11517-11518; PX RT 11925-11927.) Georgia DeFilippo’s device had a data connection in the coverage area of Highway 152 near the San Luis Reservoir and later her device had two data connections in the Salinas coverage area which included South Salinas, Highway 101 and the Airport. (PX RT 11927-11930.) Approximately three hours later, Georgia DeFilippo’s device traveled back in a northeasterly direction, having two data connections in the coverage area of Highway 152 east of the Highway 156 junction and two more data connections in the coverage area of Highway 152. (PX RT 11930-11932.) Georgia DeFilippo’s device had a data connection as she arrived in the coverage area of Modesto (Highway 99 and Briggsmore Avenue),



1 approximately seven hours after she had left the area. (PX RT 11932.) Having reviewed Georgia  
2 DeFilippo's call detail records for the period of January 11, 2011 through February 26, 2015, Jim  
3 Cook found that Georgia DeFilippo's device had not previously connected to the coverage area of  
4 Salinas. (PX RT 11934.)

5 Georgia DeFilippo's device was not the only device experiencing different than normal  
6 activating that day. On March 30, 2012 from 4:12 p.m. until 6:50 p.m. on March 31, 2012, defendant  
7 Carson's cell phone did not experience any call activity, including inbound and outbound calls. (PX  
8 RT 11530.) Defendant Carson is a creature of habit, as is displayed by his cellular phone activity –  
9 defendant Carson, typically calls three numbers on Saturdays. (PX RT 11518-11520.) On the  
10 evening following Korey Kauffman's murder, an unusual thing occurred, only one call was made  
11 from defendant Carson's cell phone and that call was made to his residence. (PX RT 11520-11524.)  
12 Christina DeFilippo's cell phone proceeded to travel out of the area the morning of March 31, 2012,  
13 also inconsistent with her "usual" arrival time at Red Hawk casino. (PX RT 11963-11971.)

14 The evidence taken altogether reflects a family fighting against ongoing thefts by using their  
15 own means of vigilante justice and their knowledge of the legal process. Defendant Georgia  
16 DeFilippo's text messages are not as counsel would suggest the only evidence of a conspiracy, but  
17 they are supportive of the ongoing conspiracy.

#### 18 19 E.

#### 20 Law Enforcement Responded to Reports of a Suspicious Vehicle

21 Defendant argues that defendant Carson watching his property is normal for any property  
22 owner. However, law enforcement responded to reports of suspicious activity in the area and found  
23 defendant Carson sitting in a vacant lot observing Michael Cooley's property, not his property. (PX  
24 RT 135, 149.) Defendant's activity was at least concerning for a nearby business owner felt it odd  
25 someone was watching the properties across Lander Avenue. (PX RT 134.) This activity, is  
26 however, consistent with defendant Carson seeking justice on his own and reflective of the incident  
27 of Robert Jaquish, where defendant Carson and another man who was armed, apprehended a  
28 suspected thief and contacted someone not law enforcement and stated, "I got him in the back.

1 Hurry up.” (PX RT 567-570.) It should be noted that defendant Carson never called law  
2 enforcement on this occasion.

3  
4 **CONCLUSION**

5 As found by the Court on August 1, 2016 and as now evident from the extensive evidence  
6 presented in this case, these text messages between Georgia DeFilippo and Christina DeFilippo are  
7 direct evidence of defendant Carson’s intent and conduct in support of the Conspiracy to Obstruct  
8 Justice, which included all defendants before this Court. These message are also indicative of Frank  
9 Carson’s state of mind and consciousness of guilt on the Murder charge in Count I. For the  
10 foregoing reasons the People respectfully request the Court deny defendant Georgia DeFilippo’s  
11 supplemental motion to strike Detective Hively’s Testimony and the related text messages in  
12 People’s Exhibit Number 2.

13 Dated this 13<sup>th</sup> day of December 2016, at Modesto, California.

14  
15 Respectfully submitted,

16 BIRGIT FLADAGER  
17 District Attorney

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19 Marlisa A. Ferreira  
20 Chief Deputy District Attorney

21 MAF:vav  
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**PROOF OF SERVICE**

1  
2 STATE OF CALIFORNIA )  
3 COUNTY OF STANISLAUS )


4 I, the undersigned, declare as follows:

5 That I am over the age of 18 years and am not a party to this action and I am employed by  
6 the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

7 That I served a copy of the **Opposition to Defendant Georgia DeFilippo's Supplemental**  
8 **Motion to Strike Detective Hively's Testimony and People's Exhibit Number 2 (Text**  
9 **Messages)**, on December 13, 2016 pursuant to Cal. Civ. Proc. Code § 1010.6(a)(6) by electronically  
10 sending a copy thereof to the offices of Jesse Garcia at JesseJGarcia@aol.com and  
11 gscrimlaw@yahoo.com, Robert Lee Forkner at RLFCrimLaw@aol.com, and Stephanie Mitchell  
12 at stephanie.mitchell@stanct.org.  
13

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed this 13<sup>th</sup> day of December 2016, at Modesto, California.

16  
17   
18 Declarant

19 Case No. 1490969  
20 People v. Carson et al.  
21 Dept. 26

22 *Courtesy Copies to defense counsel Martiney,*  
23 *Carlton Hagana, Rien & Hjertonsen.*  
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