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OCT 13 2015

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OCT

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13 Attorney for Defendant
14 FRANK C. CARSON

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF STANISLAUS

17 PEOPLE OF THE STATE OF CALIFORNIA,)

18 Plaintiff,

19 vs.

20 FRANK C. CARSON,
21 Defendant.

CASE NO. 1490969

Defendant's Opening Brief Re: Issues
Relevant At Preliminary Hearing

DATE: October 13, 2015

TIME: 10:00 a.m.

DEPT.: 26

22 This memorandum's purpose is to help acquaint the court with relevant background and
23 legal framework on issues that will come up in this case.

24 OVERVIEW

25 The underlying premise of the People's case is that defendant and his family's efforts to
26 protect their persons and property from harm and theft constitute a conspiracy to violate the law.
27 Allegedly it is a conspiracy of many unrelated persons whose purpose was to threaten and kill
28 whom ever caught in a supposed web of entrapment. As part of the purported plan attractive
personal property was on defendant's real property to "entice" an innocent to climb over a 7
foot barbed wire topped-fence in the dark of night, doing so from the residence yard of his

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1 career criminal mentor, to meet his doom. This is much like blaming a woman's rape on her
2 being just too attractive for one to resist brutally assaulting her.

3
4 I

5 It Is Not A Crime To Protect One's Family And Property From Assault or Plunder

6
7 As early as 1872 California codified in our Penal Code that lawful resistance was proper
8 and lawful.

9 P.C.692: Lawful resistance to the commission of a public offense may be
made:

- 10 1. By the party about to be injured;
11 2. By other parties.

12 P.C.693: Resistance sufficient to prevent the offense may be made by
13 the party about to be injured:

- 14 1. To prevent an offense against his person, or his family, or
some member thereof.
15 2. To prevent an illegal attempt by force to take or injure
property in his lawful possession.

16
17 P.C. 694: Any other person, in aid or defense of the person about to be injured, may
18 make resistance sufficient to prevent the offense.

19
20 II

21 The Court Must Respect Privileged Marital Communications.

22
23 The purpose of the privilege (Evid. C. 980) is to enhance the marital relationship by
24 enabling spouses to communicate freely with each other without fearing disclosures of their
25 confidences to outsiders. Absent a waiver, or specified exception, there is a presumption of
26 confidentiality, which shifts the burden of proof on the issue to the opponent of the privilege.
(Evid. Code 917).

27 The People simply asserting a supposed crime or conspiracy between spouses does not
28 defeat the presumption of confidentiality.

1 The opponent's burden of proving the exception for marital communications in aid of
2 crime or fraud (Evid. C. 981) is not entitled to have the contents of communication disclosed for
3 the purpose of obtaining a ruling on whether it is privileged. (Evid. C. 915).

4 As husband and wife, Mr. Carson and Georgia DeFilippo will object to any and
5 all questions or evidence that calls for disclosure of a privileged confidential marital
6 communication.

7
8 III

9 The Court Must Respect Privileged Attorney- Client Communication Evid. C. 954.

10 Again the people don't get to define themselves or defeat the privilege by simply
11 asserting a supposed criminal purpose. The same issues of proving the exception arise here as in
12 the previously discussed presumption of confidentiality.

13
14 IV

15 Impugning The Character Of A Defendant To Try To Prove Up A Supposed Criminal
16 Act or Intent Is Improper.

17 Counsel cautions the court that the Peoples case is built, in a large part, on the
18 premise that Mr. Carson, in the People's opinion, is a rude and assertive individual and is
19 therefore criminally suspect. As the evidence before the court unfolds, accepting competent
20 evidence, the court will find otherwise.

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23
24 Respectfully Submitted,

25 

26 Preciliano Martinez
27 Attorney for Defendant,
28 FRANK C. CARSON

Dated: 10-12-15