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~~STANISLAUS COUNTY SUPERIOR COURT~~

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

CASE NO. 1490969

REPLY TO PEOPLE'S
HOMICIDE BRIEF

vs.

BALJIT SINGH ATHWAL,
Defendant.

INTRODUCTION

This Reply is in response to the many factual errors and legal misstatements in the People's Homicide brief. It is intended to correct the errors and briefly address the faulty application of homicide law to the instant case. A more thorough recitation of the facts and analysis of the applicable law as it applies to the facts will be filed at the time scheduled for argument.

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1 **ISSUES WITH THE PEOPLE'S FACTS**

- 2 1. Strike Page 2 lines 5,6 improper argument
- 3 2. Page 2 lines 11-17. Justin Reedy was Prop. 115'd.
- 4 According to the recording of Justin Reedy's interview
- 5 he did not recall what was said, and was told by
- 6 Sabrina Romero that he had told her of threat at time.
- 7 Sabrina Romero who was facing felony embezzlement
- 8 charges at the time of her testimony claimed on the
- 9 stand that she heard the threat. In the recording of
- 10 her interview she said she had not personally heard the
- 11 threat, but that Justin had told her that.
- 12 3. Strike page 3, line 10-13 as improper argument.
- 13 4. Page 3, line, 14,15. Strike. Part of Beverley
- 14 Woody's stricken testimony.
- 15 5. Page 3, line 18-21. The description was of white men
- 16 with blond hair, possibly armed, in the afternoon.
- 17 6. Page 3, line 24,25. Charlie O'Dell was prop. 115'd.
- 18 Mr. O'Dell speculated to Investigator Bunch that
- 19 thieves had crawled under the fence to gain access.
- 20 There is no evidence anyone ever crawled under the
- 21 fence.
- 22 7. Page 4 lines 1,2. Charlie O'Dell did not identify
- 23 Baljit Athwal as one of the people he saw on the
- 24 property. In fact he said he was too spun out on drugs
- 25 that day to identify anyone.
- 26 8. Page 4, line 6-9. The claims that Baljit Athwal,
- 27 "was known to regularly surveil defendant Carson's
- 28 property", and, "Baljit Atwal's (sic) presence on the

1 property is recognized by his role as security for
2 defendant Carson", misstates the evidence. The
3 proffered cite is that of Brian Woody who was Prop.
4 115'd, saying that Robert Woody said Baljit Athwal was
5 doing security on the property. The court took the
6 testimony subject to a motion to strike, and counsel
7 believes the court struck it.

8 9. Page 4, line 10,11. At different times Robert Woody
9 described the vehicle as a Toyota sedan or Chevy truck,
10 and described the vehicle as being parked several
11 houses down, or in the driveway.

12 10. Page 4, line 17,18. Robert Woody has been
13 thoroughly impeached with his many statements that he
14 never saw, a gun, or anything that looked like a gun,
15 and he did not know who shot Korey Kauffman.

16 11. Page 5, lines 1-5 have previously been stricken by
17 the prosecutor.

18 12. Page 5, line 11,12. At different times Robert Woody
19 claimed Baljit Athwal did not participate in cutting
20 off the fingers and toes.

21 13. Page 5, line 18-21. The People claim the body was
22 moved in April 2012 after Officers came into the
23 PopNCork asking questions. In fact the evidence is that
24 the first time any Officer entered the PopNCork asking
25 questions about Korey Kauffman was Deputy Barringer
26 entered on June 25, 2012.

27

28

1 14. Page 5, line 24, through page 6, line 4. Robert
2 Woody was taken to the Mariposa site by law enforcement
3 prior to being asked to describe it.

4 15. Page 6, line 8-10. Robert Woody testified on direct
5 that he'd scattered the fingers and toes at the
6 Mariposa site. On August 14, 2015 he claimed he'd
7 thrown them in the Merced River after returning to the
8 PopNCork then driving to the Merced with Robin on the
9 night they moved the body. On August 15, 2015 he
10 claimed he threw them up in the trees at the Mariposa
11 site.

12 16. Page 6, line 24,25. Daljit Atwal's phone was seized
13 pursuant to a search warrant. No such video was found.

14 17. Page 8, line 13-16. Misstates the testimony. At all
15 relevant times on March 30, 2012 calls to and from the
16 phone associated with Baljit Athwal show the phone to
17 be in the same cell sites and sectors as PopNCork.

18 18, Page 8, line 26, through Page 9, line 6. Completely
19 misstates the testimony. The testimony is that over 80
20 calls were made to Korey Kauffman's phone. Of those
21 call, four phone numbers always called when the phone
22 was on, and never called when the phone was off. Every
23 one else called while the phone was off. Those four
24 phone numbers belong to Eula Keyes, Kevin Pickett,
25 Laurie Frietas and Laurie Frietas mother. The only
26 explanation is that each of those callers had Korey
27 Kauffman's phone, and turned it on when they called it.
28 Further, on all but two occasions the Kauffman phone

1 was in the same cell site and sector as the residence
2 of each of those callers at the time they called.

3
4 **ISSUES WITH THE PEOPLE' LAW AND ARGUMENT**

5 **Malice.**

6 To quote the People's brief, "Express malice
7 requires a showing that the assailant either desires
8 the victim's death or knows to a substantial certainty
9 that the victim's death will occur. *People v.*
10 *Covarrubias*(2016) 1 Cal.5th 838,890". There is no such
11 evidence in the described attempts by Mr. Carson to
12 stop the thefts on his property. Further, there is no
13 credible evidence that Baljit Athwal was aware of such
14 thefts prior to the meeting at Mr. Carson's office May
15 23, 2012. In particular the paragraph at page 15, lines
16 9-19 is absurdist nonsense that counsel will not
17 attempt to parse except to point out that lines 17-19
18 are incorrect. Scott Rollins who was Prop. 115'd said
19 in his recorded interview that he learned from people
20 on the street that the individual he said he saw in the
21 store security video was Korey Kauffman. Further, the
22 physical description he gave of the person in the video
23 as small and 145 lbs, makes that person substantially
24 smaller than Korey Kauffman who was described as six
25 feet, 165 lbs in the missing persons flyers.

26 As to the next paragraph, again there isn't any
27 credible evidence that there was any "continued
28 surveillance" by Baljit Athwal. Even Robert Woody only

1 claimed that Baljit Athwal might have spotlighted the
2 property.

3 As to the next paragraph Robert Woody's claim is
4 that Baljit Athwal was in a weaponless fistfight with
5 Korey Kauffman, and that Korey Kauffman was still
6 fighting when Robert Woody turned away and heard a
7 shot. There is no evidence of malice on the part of
8 Baljit Athwal, even if Robert Woody is to be believed.
9

10 **Murder in the First Degree.**

11 There is no evidence of deliberation and
12 premeditation. Assuming the facts argued in support of
13 this theory were credible, these facts do not include
14 any "facts prior to the killing which would show that
15 the defendant was engaged in activity directed toward
16 the killing or had preconceived design to take the
17 victim's life. *People v. Anderson* (1968) 70 Cal.2d 15,
18 26-27." (People's brief, page 18.) Again, on the
19 People's interpretation of the evidence, Baljit Athwal
20 found a thief on the property and tried to detain him
21 without using any weapons; a fight ensued of unknown
22 length, which was in progress when Robert Woody showed
23 up with Daljit Atwal; Korey Kauffman was standing up
24 fighting back when he was shot once. There is no
25 evidence of deliberation and premeditation in this
26 scenario.

27 //

1 **First Degree Lying in Wait.**

2 Again, quoting from the People's brief at page 21,
3 "This state of mind simply is the intent to watch and
4 wait for the purpose of gaining advantage and taking
5 the victim unawares in order to facilitate the act
6 which constitutes murder. *People v. Mattison* (1971, 4
7 Cal.3d 177, 183." There is no evidence here of
8 "watching and waiting for the purpose of gaining
9 advantage". Under the People's scenario Korey Kauffman
10 left the Cooley Keyes residence with the possible
11 intent to steal from the Carson property at 11:00 pm on
12 March 30 2012. His last outgoing phone call was at
13 about that time. According to their scenario Baljit
14 Athwal came into contact with Korey Kauffman at about
15 1:00 a.m to 1:30 a.m. Under their scenario Korey
16 Kauffman was on the property long before Baljit Athwal.
17 Further, Baljit Athwal arrived unarmed. One is not
18 lying in wait to commit an act likely to cause death,
19 when one is neither there to watch and wait, nor armed
20 appropriately to cause grave bodily harm or death.

21
22 **Aiders and Abettors.**

23 The People correctly point out that an individual
24 can be guilty of first degree murder as an aider and
25 abettor if that individual aided or encouraged the
26 commission of the murder with knowledge that the
27 perpetrator intended to kill, and acted with the intent
28 or purpose to commit, encourage, or facilitate the

1 murder. However, that is not instant case. The People
2 have not presented any evidence that Frank Carson
3 planned to have anyone found on his property killed.
4 Even if they'd had such evidence, they have not
5 produced any evidence that Frank Carson communicated
6 such a plan to Baljit Athwal, either directly or
7 through a third party, and they have failed to produce
8 any evidence that Baljit Athwal intended to carry out
9 any such a plan, or that he intended to help anyone
10 else to carry out such a plan. As expressly stated in
11 Cal. Crim. 400, mere presence at the scene of a crime,
12 of failure to prevent the crime, does not make one, by
13 itself, an an aider and abettor.

14 Under *People v. Chiu*(2014) 59 Cal.4th 155, the seminal
15 case cited in the People's brief at page 26, an
16 individual may be guilty of second degree murder as an
17 aider and abettor if the death was a natural and
18 probable consequence of the illegal conduct or activity
19 in which he or she acted as an aider and abettor. Here,
20 again, Baljit Athwal was not engaged in any illegal
21 conduct or activity either as a principle or aider and
22 abettor. If Robert Wood's testimony is to be believed,
23 he was in the process of checking the property of a
24 friend, found a thief on the property, and tried,
25 without the use of deadly force, to stop the thief.

26 **CONCLUSION**

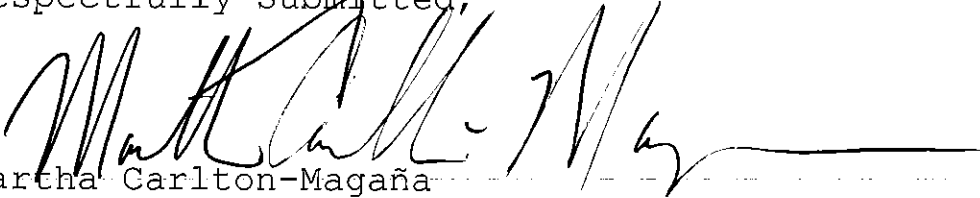
27 The People's evidence does provide not probable
28 cause to believe defendant Baljit Athwal guilty of

1 murder under any theory. *Cooley v. Superior Court*
2 (*Marentez*) (2002) 29 Cal.4th 228; *Nienhouse v. Superior*
3 *Court*(1996)42 Cal.App.4th 83. Robert Woody is not a
4 credible witness as discussed at length in defendant's
5 forthcoming brief re Insufficient Evidence to Find
6 Probable Cause. Neither, for that matter, are Eula
7 Keyes, Michael Cooley, Linda Burns, Rickey Cooley,
8 Patrick Hampton, or Ronald Cooper. There isn't a
9 scintilla of physical evidence to corroborate that
10 Korey Kauffman was killed in the manner described by
11 Mr. Woody, or that his body was disposed of in the
12 manner described by Mr. Woody. There is substantial
13 evidence that contradicts his many and varied
14 iterations of his claims including the evidence of the
15 Emery's, the phone evidence, and the physical evidence,
16 including the condition of the remains, and the the
17 clothes, socks, and boots. But, even adopting some
18 version of events described by Mr. Woody, as the People
19 have, there is insufficient evidence to hold Baljit
20 Athwal for murder or any other crime. Under the
21 People's scenario he arrived unarmed with any weapon at
22 the Carson property and came upon a thief. He tried to
23 detain the thief and a fight ensued. Under their
24 scenario his brother arrived, joined in the fight, and
25 failing to subdue Korey Kauffman, stepped back and,
26 without any shouting or warning, shot him once in the
27 back. Under this scenario Baljit Athwal is merely
28 present at the death.

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Dated: December 3, 2016

Respectfully Submitted,



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4 **PROOF OF SERVICE**

5 I am a citizen of the United States and am employed in the
6 Stanislaus County; I am over the age of eighteen (18) years and not a
7 party to the within action; my business address is 1012 Eleventh
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8 On December 5, 2016 I served the following document(s): PEOPLE v.
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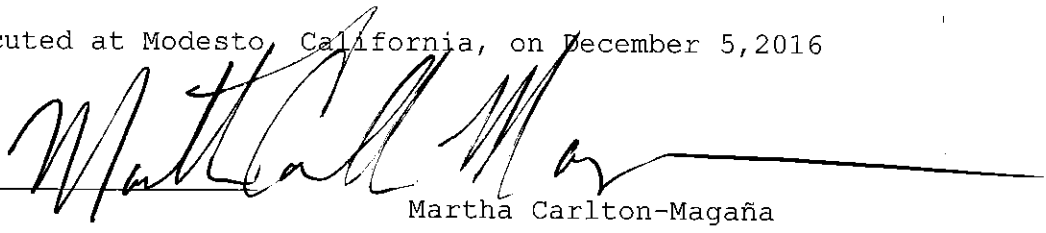
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I caused such envelope(s) to be delivered by hand to the address(s)
listed above, the individuals listed above, the attorney box, or
electronically served each.

I declare under penalty of perjury, under the laws of the State of
California, that the

Foregoing is true and correct.

Executed at Modesto, California, on December 5, 2016



Martha Carlton-Magaña