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SEP 18 AM 8:19  
CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
*Barbra Zuniga*  
DEPUTY

7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF STANISLAUS

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10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 FRANK CLIFFORD CARSON, BALJIT  
15 ATWAL, DALJIT ATWAL, WALTER  
16 WESTLEY WELLS, GEORGIA DEFLIPPO,  
17 EDWARD QUINTARA, SCOTT  
18 MCFARLANE AND CHRISTINA  
19 DEFLIPPO,

20 Defendants.

No. 1490969

DEFENDANT MCFARLANE'S  
POINTS AND AUTHORITIES FOR  
PRELIMINARY EXAMINATION AND  
SPEEDY TRIAL

Date: 09/21/15  
Time: 1:30 pm  
Dept.: 26  
Honorable Barbra Zuniga

21 To The Honorable Barbra Zuniga Judge Presiding and the People of the State of  
22 California through the Stanislaus County District Attorney, Marlisa A. Ferreira, Defendant  
23 SCOTT MCFARLANE, (hereinafter "MCFARLANE"), hereby submits the following points  
24 and authorities in support of his request to have his Preliminary Examination Hearing and  
25 Trial within the statutory time limits of 10 & 60 days from Arraignment.

26 The requested continuance by the People is not warranted, would violate  
27 MCFARLANE'S statutory rights, and would be highly prejudicial to MCFARLANE'S future  
28 ability to have a fair and impartial jury should he be held to Answer.

**I. STATEMENT OF FACTS:**

1 MCFARLANE is employed with the California Highway Patrol and has never been  
2 associated with the criminal justice system as a "Defendant". MCFARLANE is married with  
3 two children and is the sole provider for his family. MCFARLANE was arrested for violation  
4 of Penal Code Sections 182(a)(5) and 32 on August 16, 2015 and was released on bail the  
5 same day with an arraignment date set for September 14, 2015. MCFARLANE is currently  
6 on administrative leave from the CHP with an unfettered desire to return as soon as possible.  
7 Continued employment with the CHP is threatened each day that MCFARLANE remains a  
8 defendant to this action. A prolonged continuation or delay violates his statutory rights and  
9 casts upon him an unreasonable miscarriage of justice.  
10

11  
12 On September 14, 2015, all Defendants and counsel appeared before this Court on  
13 multiple issues/motions, i.e... 170.6, OSC against Sheriff and bail reduction, none of which  
14 MCFARLANE filed or joined; nor is MCFARLANE a party to any of the pending motions,  
15 i.e.. recusal etc.... The sole purpose of MCFARLANE being present on September 14, 2015  
16 was for arraignment. MCFARLANE and Co-Defendants CHRISTNA DEFILIPPO and  
17 EDUARDO QUINTARA were the only Defendants arraigned and each entered pleas of not  
18 guilty. Neither MCFARLANE nor EDUARDO QUINTARA agreed waive time to proceed  
19 to Preliminary Hearing or Trial, while CHRISTNA DEFILIPPO waived her ten day but not  
20 her 60 day Trial time. The remaining Defendants were not arraigned and thus have not  
21 waived time.  
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23  
24 MCFARLANE is NOT charged in Count I, Murder. While MCFARLANE is  
25 included in Count II, a violation of Section 182(a)(5) of the Cal. Pen. Code, obstruction of  
26 justice, he is only named in one "Overt Act" namely, No. 12, and described as "actively  
27 directing co-conspirators in investigative techniques used by law enforcement in an effort to  
28

1 thwart the investigation into the murder of Korey Kauffman”; and Count III, a violation of  
2 Section 32 of the Cal. Pen. Code, accessory by harbor, conceal or aid, a principal in such  
3 felony with the intent that said principal may void or escape from arrest, trial conviction or  
4 punishment, having knowledge that said principal has committed such felony or has been  
5 charged with such felony or convicted thereof.”

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8 **II. LAW AND ARGUMENT:**

9 **1. MCFARLANE IS ENTITLED TO HIS PRELIMINARY**  
10 **EXAMINATION WITHIN TEN COURT DAYS**

11 Cal Penal Code § 859b. “Both the defendant and the people have the right to a  
12 preliminary examination at the earliest possible time, and unless both waive that right or good  
13 cause for a continuance is found as provided for in Section 1050, the preliminary examination  
14 **shall be held within 10 court days** of the date the defendant is arraigned or pleads,  
15 whichever occurs later, or within 10 court days of the date criminal proceedings are reinstated  
16 pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.”

17  
18 In the instant matter, MCFARLANE has not waived time and respectfully requests,  
19 in the interests of justice and the ability to maintain his livelihood and continued support of  
20 his family, that his preliminary examination be held within the specified time under Section  
21 859b. As the People do not even have the required discovery ready, it is clear why they argue  
22 for a finding of good cause to continue MCFARLANE’S preliminary examination. Simply  
23 stated, they are not ready to proceed with the prosecution of MCFARLANE and are using this  
24 delay in order to provide them more time with the hope of developing a case against  
25 MCFARLANE. Such a tactic should not be condoned or allowed.  
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1 As the People unilaterally elected to file their Complaint against MCFARLANE,  
2 thus placing his entire life on indefinite hold pending preliminary examination and/or trial,  
3 they should be required to proceed under the statutory guidelines. When the Complaint was  
4 filed, the People were well aware of MCFARLANE'S limited exposure within the Complaint  
5 along with his statutory rights to a preliminary examination and speedy trial. With this  
6 information the People filed against MCFARLANE but now claim and/or request a  
7 continuance as they are not ready to proceed. Any argument that their requested continuance  
8 is based on the remaining Co-Defendants agreement to waive time, lacks any merit and/or  
9 factual basis as Co-Defendants FRANK CLIFFORD CARSON, BALJIT ATWAL, DALJIT  
10 ATWAL, WALTER WESTLY WELLS and GEORGIA DELILIPPO, all charged in Count I  
11 with Murder, have not been arraigned and have not waived time. Accordingly, the People's  
12 contention that a continuance should be granted so as to maintain joinder of the defendants  
13 pursuant to Cal. Penal Code § 1050.1 fails to have any persuasive basis and must be  
14 disregarded.  
15  
16

17 In reliance on *Greenberger v. Superior Court* (1990) 219 Cal.App.3d 487, the  
18 People argue that the instant case is analogist as being a "very complex murder case", in  
19 which counsel for codefendants needed additional time to prepare for trial. MCFARLANE  
20 cannot confirm or deny the complexity of the murder case as it pertains to those defendants  
21 charged with "murder" as he is NOT within that category. However, in the absence of the  
22 "murder" Defendants, having been arraigned or waiving time, the People cannot state with  
23 any certainty when the "murder" Defendants will in fact be ready for preliminary examination  
24 or trial.  
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2           **2.       GOOD CAUSE IS NOT FOUND UNDER PEN. CODE § 1050.1**

3           Penal Code § 1050 states in pertinent part:

4           “1050. (a) The welfare of the people of the State of California requires that  
5           all proceedings in criminal cases shall be set for trial and heard and determined  
6           at the earliest possible time. To this end, the Legislature finds that the criminal  
7           courts are becoming increasingly congested with resulting adverse consequences  
8           to the welfare of the people and the defendant.” ... “ It is therefore recognized  
9           that the people, *the defendant, and the victims and other witnesses have the*  
10          *right to an expeditious disposition,* and to that end it shall be the duty of all  
11          courts and judicial officers and of all counsel, both for the prosecution and the  
12          defense, to expedite these proceedings to the greatest degree that is consistent  
13          with the ends of justice.” (Emphasis added)

14          1050.1. In any case in which two or more defendants are jointly charged in the  
15          same complaint, indictment, or information, and the court or magistrate, *for*  
16          *good cause shown, continues the arraignment, preliminary hearing,*  
17          or trial of one or more defendants, the continuance shall, upon motion of  
18          the prosecuting attorney, constitute good cause to continue the remaining  
19          defendants' cases so as to maintain joinder. The court or magistrate shall not  
20          cause jointly charged cases to be severed due to the unavailability or  
21          unpreparedness of one or more defendants unless it appears to the court or  
22          magistrate that it will be impossible for all defendants to be available and  
23          prepared within a reasonable period of time.

24          In compliance with the legislative intent for criminal cases to be heard in an  
25          expeditious fashion absent delay, Defendants have those statutory rights as delineated in  
26          Penal Code § 859(b) and discussed herein above. While MCFARLANE acknowledges the  
27          preference of joint trials of jointly charged defendants, Penal Code § 1098, MCFARLANE  
28          contends that the instant case is ripe for extensive delay, as evidenced by the plethora of  
29          motions that have already been filed by “Murder” charged Co-Defendants; and that pure  
30          speculation will be the only bases upon which any prediction will rest as to when they will be  
31          arraigned, let alone whether or not they will waive time. Such uncertainly and further delay  
32          will only subject MCFARLANE to suffer extensive collateral damage to his livelihood,

1 substantial prejudice to his statutory rights and deny him due process with the *right to an*  
2 *expeditious disposition*, in clear violation of Penal Code § 1050(a).

3           Such uncertainty would also negate any argument that the People may have in  
4 ~~trying to down play~~ their requested continuance as only being the first such request. While  
5 the first simply commences the continuance process and sets a precedence for the second,  
6 third, fourth, fifth....and so on; as each flood commences with the first drop of water, this  
7 first continuance could easily lead to the slippery slope of MCFARLANE losing his statutory  
8 rights and continuing to be associated with and tried with the "Murder" Co-Defendants all to  
9 his extreme prejudice.  
10

11           In support of their request and the finding of "good cause" the People argue and offer  
12 citations in which several Courts have determined that the state interests served by a joint trial  
13 may properly support a finding of "good cause" to continue a codefendant's trial beyond the  
14 presumptive statutory period set forth in section 1382. *People v. Teale*, (1965) 63 Cal.2d 178;  
15 *People v. Clark* (1965) 62 Cal.2d 870; and most recent, *Greenberger v. Superior Court*  
16 (1990) 219 Cal.App.3d 487.  
17

18           MCFARLANE contends that the instant case is distinguishable from those relied upon  
19 by the people and that his individual interests outweigh the People's interests served by a  
20 joint trial. Bearing in mind that MCFARLANE is not charged with murder and that the  
21 charges against him only survive if one of the "murder" Co-Defendants is found guilty.  
22 Accordingly, if the requested continuance is granted, MCFARLANE will be required to sit on  
23 the sidelines while the main players, i.e.. the "murder" Co-Defendants make their long and  
24 treacherous journey through the legal system. While one or two Co-Defendant may not cause  
25 significant delay and requirement of the Court's time, such as the case in *People v. Teale*,  
26 (1965) 63 Cal.2d 178, where the Defendant did if fact waive his 60 day time; *People v. Clark*  
27  
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1 (1965) 62 Cal.2d 870; and most recent, *Greenberger v. Superior Court* (1990) 219  
2 Cal.App.3d 487, the instant case requires that such potential delay and time requirements be  
3 multiplied by a factor of five, for each "murder" Co-defendant so charged. Additionally, as  
4 the People have charged all five of the Co-Defendant's in this case with the same murder, it is  
5 highly anticipated that each will have their own separate and distinct line of defense(s),  
6 requests, motions and hearings. The potential and anticipated time delay is astronomical.  
7 All along, MCFARLANE waits, and waits, and waits as his employment is eliminated, any  
8 potential alternative livelihood is thwarted, he loses his home, and he along with his wife and  
9 children are place on the street.  
10

11           Allowing MCFARLANE to proceed to preliminary hearing does not prejudice the  
12 People in any fashion while continuing the matter until all of the remaining Defendants are  
13 ready to proceed, which maybe several months or even a year, is a clear violation  
14 MCFARLANE'S statutory rights.  
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17           **III. CONCLUSION:**

18           The requested continuance should be denied and the Preliminary Hearing set within  
19 the prescribed statutory time frame.  
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22  
23 DATED: September 18, 2014  
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LAWRENCE T. NIERMEYER  
Attorney for Defendant

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**PROOF OF SERVICE BY ELECTRONIC MAIL**

**STATE OF CALIFORNIA            )**  
**)**  
**COUNTY OF STANISLAUS        )**

I am employed in the County of Stanislaus, State of California. I am over the age of eighteen and am not a party to the within action. My business address is: 1020 15th Street, Suite 10, Modesto California. On September 18, 2015, I served the following document(s):

**DEFENDANT MCFARLANE'S POINTS AND AUTHORITIES FOR  
PRELIMINARY EXAMINATION AND SPEEDY TRIAL**

in this action, pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Stanislaus County District Attorney, Marlisa A. Ferreira at [marlisa.ferreira@standa.org](mailto:marlisa.ferreira@standa.org), Timothy Rien at [rienlaw@sbcglobal.net](mailto:rienlaw@sbcglobal.net), Tim Allen Pori at [tim@defense-attorney-pori.com](mailto:tim@defense-attorney-pori.com), Martha Carlton-Magana at [carltnm@hotmail.com](mailto:carltnm@hotmail.com), Preciliano Martinez at [attymartinez@yahoo.com](mailto:attymartinez@yahoo.com), Hans Hjertonsson at [Hans.hjertonsson@gmail.com](mailto:Hans.hjertonsson@gmail.com), Alonzo Gradford at [gradfordlaw@gmail.com](mailto:gradfordlaw@gmail.com), Ryan Roth at [rroth@Roth-Legal.com](mailto:rroth@Roth-Legal.com), Stephanie Mitchell at [Stephanie.mitchell@stanct.org](mailto:Stephanie.mitchell@stanct.org), and Bruce Perry at [bruceperry@msn.com](mailto:bruceperry@msn.com).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 18, 2015, at Modesto, CA.

  
LAWRENCE T. NIERMEYER