

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

<u>THE PEOPLE OF THE STATE OF CALIFORNIA</u> Plaintiff	VS.	<u>FRANK CLIFFORD CARSON</u> <u>BALJIT ATWAL</u> <u>DALJIT ATWAL</u> <u>WALTER WESTLEY WELLS</u> <u>GEORGIA DEFILIPPO</u> <u>CHRISTINA DEFILIPPO</u> <u>EDUARDO QUINTANAR</u> <u>SCOTT MCFARLANE</u> Defendants
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NATURE OF HEARINGS: CONTINUED ARRAIGNMENT; SETTING BAIL; Case No. 1490969
MOTIONS RE SHACKLING

JUDGE: SOCRATES PETER MANOUKIAN Bailiff: R. Moore Date: Aug. 25, 2015
Clerk: K. Stein Reporter: H. Scott Modesto, California

APPEARANCES:

Marlissa Ferreira, Deputy District Attorney and John Goold, Deputy District Attorney appearing on behalf of the People.

Defendant, Frank Carson, present with counsel, Percy Martinez, Esq.

Defendant, Baljit Athwal, present with counsel, Martha Carlton-Magana, Esq. and with the aid of Punjabi Interpreter: Kuldeep Dhindsa who is sworn in.

Defendant, Daljit Atwal, present with counsel, Hans Hjertonsson, Esq. and with the aid of Punjabi Interpreter: Robert Brara who is sworn in.

Defendant, Walter Wells, present with counsel, Timothy Rien, Esq.

Defendant, Georgia DeFilippo, present with counsel, Tim A. Pori, Esq.
 (Additional Punjabi Interpreter, Harinder Dhillon is sworn in.)
 (Investigator, Kirk Bunch is also present.)

Prior to this matter being called for hearing, the following documents are presented to the Courtroom Clerk for filing: (They were received in only pending instruction from the Court.)

- Notice of Motion and Motion to Recuse District Attorney (Cal. Pen. Code § 1424)
- Motion to Quash Ramey Warrant
- Motion for Judicial Notice re: Exhibits to Motion to Recuse District Attorney
- In Reply to Prosecution's Opposition to Bail

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Declaration of Tim A. Pori in Support of Motion to Recuse
District Attorney (Cal. Pen. Code Sec. 1424)

At 9:16 a.m. this case is called regularly for hearing.

Attorney, Mary Lynn Belsher, Esq., is present on behalf of Defendant Christina DeFilippo.

Attorney, Bruce Perry, Esq., is present on behalf of Robert Woody in a separate complaint.

Attorney, Rob Taro, County Counsel is present on behalf of the Stanislaus County Sheriff's Department.

Attorney, Ryan Roth, Esq. is present on behalf of Frank Carson in the civil matter case No. 2016630.

Punjabi Interpreters, Robert Brara, Harinder Dhillon and Kuldeep Dhindsa were all sworn in to interpret on behalf of Defendants, Daljit Atwal and Baljit Singh Athwal.

Counsel are admonished to not address the Court while their hands are in their pockets.

The Court discusses with counsel that the Court has been informed that possible derogatory words were alleged to have been made to Deputy District Attorney Marlissa Ferreira after the last proceeding in this case. The Court reminds counsel of Judicial Canon 3(d)(4) and admonishes the parties/counsel in this matter to remain professional at all times. Defendant, Frank Carson's counsel denies that any such remarks were made by his client.

Court discusses civil case No. 2016630 and informs counsel that the Honorable Robert Baysinger has been appointed by the Judicial Council to preside over both this criminal action as well as the civil case No. 2016630.

Attorney, Tim A. Pori, Esq. requests the Court provide a briefing schedule. The Court informs counsel that a briefing schedule will be set on Judge Baysinger's schedule.

Attorney, Martha Carlton-Magana, on behalf of her client, Defendant, Baljit Athwal enters a **CCP § 170.6 against Judge Baysinger**. The Court has attorney, Martha Carlton-Magana sworn in and she recites her statements re disqualifications for the record. **The Court accepts said disqualification under CCP § 170.6 and requests that administration contact Judicial Council right away in order to have another judge assigned immediately.**

Court discusses the setting of bail with counsel. Deputy District Attorney, Marlissa Ferreira states they are NOT seeking the death penalty in this case.

Attorney, Percy Martinez, Esq. requests the arraignment be held today of his client, Frank Carson, with leave to demurrer. He also requests that the bail review hearing proceed today.

Deputy District Attorney, Marlissa Ferreira states the motion re restraints has not been properly served on County Counsel.

Court gives all counsel time to review the pending motion re recusal of the deputy district attorney.

Court reviews the bail schedule and informs counsel that the bail schedule amount for the charge of murder is Ten Million Dollars (\$10,000,000.00). Court hears oral arguments from Deputy District Attorney, Marlissa Ferreira.

Attorney, Martha Carlton-Magana, Esq. moves to have all non-testifying witnesses re this bail hearing be excluded from the courtroom. The Court will grant this motion if testimony is needed.

Attorney, Tim Pori, Esq. states that he will prefer to cross-examine the affiant re this bail motion. Attorney, Percy Martinez, Esq. also states he prefers to cross-examine the affiant for a bail hearing pertaining to his client Frank Carson.

Oral arguments are made by Percy Martinez, Esq. re arguments/statements made during the bail review hearing.

Court hears from Rob Taro, County Counsel re the motions re shackles. Counsel states he does not have the declarations re these. Mr. Pori, Esq. states he personally served County Counsel and the prosecution with this motion. Court hears oral arguments from Tim Pori, Esq. re his client's motion re shackles. Counsel states there may be 6th and 8th amendment issues re the shackles. Counsel state he cannot assist his client when he is with her. She is housed in maximum security twenty-four (24) hours a day. Counsel states that in other jails, counsel has not seen his clients being shackled while in the interview rooms.

Counsel states this is a deep infringement on her 6th amendment rights.

Court finds there are two (2) separate shackling issues here:

1) restraints in the jail interview room and 2) restraints being used in close quarters in the courtrooms.

Attorney, Timothy Rein, Esq. continues to join in this motion, as do all counsel.

Counsel would like the Court to enter an order on the Minute Order that Mr. Rein be permitted to meet with his client in the interview room in the jail with at least one (1) hand unshackled.

County Counsel, Robert Taro objects and outlines his objections on the record. He states that all maximum security prisoners are shackled per the policy of the Sheriff's Office here. This is for the security of the jail inmates, staff and persons in the jail.

County Counsel, Robert Taro requests a chance to fully litigate this issue.

Attorney, Percy Martinez, Esq. states his client was brought to him in an interview room on the 3rd floor of the jail with both hands shackled as well as being shackled to the floor while sitting on a stool near a small table. He states he cannot even push up his glasses unless he uses the table to do so. He needs one (1) hand available to assist counsel in the jail interview room. Mr. Martinez, Esq. feels the security argument holds no weight.

The Court **ORDERS** that the Sheriff at least unshackle one (1) hand; the Defendants in this case are to have at least one (1) hand free in the interview room of the jail. This is an **INTERIM ORDER**. This interim order is made without prejudice. The Court will NOT change the current shackling policy in the courtroom. The Court will NOT get into the size of the table.

County Counsel Robert Taro objects to the said interim order. Court states County Counsel, on behalf of the Sheriff's Department, may file any opposition/points and authorities and defense counsel may file additional documents re this issue.

Court is informed and announces to parties and counsel that the **Honorable Barbara Zuniga is officially assigned to preside over this matter.**

The Court notifies counsel of her upcoming available dates, as follows: She is available between September 8, 2015 and into the future except for October 7, 8 and 9, 2015.

County Counsel, Robert Taro requests that he be able to brief the shackling matter and requests the Court vacate the interim order just made. The Court will allow counsel to brief the Court and set a date for the motion, however, the Court will NOT vacate the interim order.

At 10:54 a.m. the Court takes a short morning break.

During the break, the Court instructs the Courtroom Clerk to file-mark the foregoing documents: (Outstanding motion hearings will be set on a date to be determined.) Notice of Motion and Motion to Recuse District Attorney (Cal. Pen. Code § 1424); Motion to Quash Ramey Warrant; Motion for Judicial Notice re: Exhibits to Motion to Recuse District Attorney; In Reply to Prosecution's Opposition to Bail; Declaration of Tim A. Pori in Support of Motion to Recuse District Attorney (Cal. Pen. Code Sec. 1424). Said documents are filed and copies given to Mr. Pori, Esq.

At 11:11 a.m. the Court is back in session. All counsel and respective parties are present.

Court continues to hear arguments from Deputy District Attorney, Marlissa Ferreira re bail setting.

Court hears objections to arguments made by DDA Marlissa Ferreira. Arguments by DDA Marlissa Ferreira and respective defense counsel are made in open Court.

Attorney, Percy Martinez, Esq. requests that one (1) of Mr. Carson's hand be unshackled during witness testimony, that way he is able to take notes. The Court **ORDERS** that the dominant hand of Frank Carson be unshackled for this purpose.

Attorney, Tim Pori also request that one (1) hand be unshackled of his client. The Court **GRANTS** this request. Due to the seating arrangement, the request is temporarily withdrawn.

Attorney, Martha Carlton-Magana, Esq. inquires as to why a computer has been set up at the witness stand and objects to any statements being played from said computer system as she has not been provided with any discovery re this. The Court defers this matter and proceeds with the bail hearing.

People's witness, Steven Jacobson is sworn in (as affirmed) and testifies re the bail hearing.

At 11:57 a.m. the Court takes the lunch recess. Court requests the Courtroom Clerk make appropriate copies of Mr. Jacobson's Supplement Report KBB and Supplemental Report SPJ-#1 for counsel and the Court. The copies are made and distributed as requested.

At 1:34 p.m. the Court is back in session. All counsel and respective parties are present.

Counsel stipulate that portions of the reports recited will not need to be reported by the Court Reporter. Attorney, Tim Pori submits on the Marital Communications Privilege on behalf of his client, Georgia DeFilippo as to the July 16, 2012 communications. Attorney, Percy Martinez asserts the same privilege as to his client Frank Carson. Deputy District Attorney Marlissa Ferreira objects stating this is not a confidential communication. She submits that it fails under the exception. She states that this is relevant for the bail review hearing to show Georgia DeFilippo's involvement. Objections are made and are **OVERRULED**. Attorney, Martha Carlton-Magana, requests a few moments to review the documents just presented to her. Court allows her to review the reports/documents.

People's witness Steven Jacobson returns to the witness stand and continues his testimony, remaining under oath.

A phone call recording between Praveen Singh and Frank Carson is played in open Court over objections by Mr. Carson and Georgia DeFilippo's counsel who both cited attorney-client privilege.

People's witness Steven Jacobson continues his testimony, remaining under oath.

People play the recording of Body Wire 9-19-2013 in open Court between Frank Carson and a confidential informant. Court **ORDERS** that a complete copy of the transcript and full recordings of this Body Wire be turned over to defense counsel.

People play the recording of Wire Tap dated 7-16-2012 between Frank Carson and Georgia DeFilippo.

People's witness Steven Jacobson continues his testimony, remaining under oath.

People's Exhibit No. 1 is marked for identification for the Bail Review Hearing. (Four (4) page document - handwritten in English and Gurmukhi.) People move to have Exhibit No. 1 received into evidence. Attorney, Martha Carlton-Magana and attorney, Timothy Pori object. Objections are **SUSTAINED** for the truth of the matter asserted.

People's witness Steven Jacobson continues his testimony, remaining under oath.

At 2:44 p.m. the Court takes a short afternoon break.

At 2:55 p.m. the Court is back in session. All counsel and respective parties are present.

People's witness Steven Jacobson retakes the witness stand and continues his testimony, remaining under oath. Mr. Jacobson corrects a portion of his testimony for the record.

Attorney, Percy Martinez, Esq. cross-examines People's witness Steven Jacobson.

Attorney, Hans Hjertonsson, Esq. cross-examines People's witness Steven Jacobson.

Attorney, Timothy Rein, Esq. cross-examines People's witness Steven Jacobson.

Attorney, Tim A. Pori, Esq. cross-examines People's witness Steven Jacobson.

Attorney, Martha Carlton-Magana, Esq. cross-examines People's witness Steven Jacobson.

Court makes the following **INDICATED RULING**:

Bail shall be set pursuant to the bail schedule as to Georgia DeFilippo and

Walter Wells in the amount of Ten Million Dollars (\$10,000,000.00) each subject to them remaining in the County of Stanislaus and must sign a Waiver of Extradition if they do leave the County of Stanislaus. They must submit to search and seizure and must surrender their passports to the Court.

Bail is **DENIED** as to Defendants, Frank Carson, Daljit Atwal and Baljit Singh Athwal. They shall remain on a No Bail status.

Court reminds counsel that they are entitled to a bail reduction hearing with two (2) days' notice.

Attorney, Percy Martinez, Esq. requests that Mr. Carson's bail be set at Ten Million Dollars (\$10,000,000.00). Court hears oral arguments from Mr. Martinez in support of this request.

Deputy District Attorney, Marlissa Ferreira requests that if Georgia DeFilippo and Walter Wells posts bail, they shall be subject to a stay-away order as to the victim's family and witnesses identified in affidavit.

Court **ORDERS** that if Defendant, Georgia DeFilippo and Defendant, Walter Wells post bail, they shall have no contact with the victim's family, they shall remain five hundred (500) yards away from the victim's family and they shall have no contact with any witnesses identified in the affidavit. District Attorney's Office shall provide defense counsel with a map showing a radius of the intersection of Berkeley and Monte Vista in Turlock, California.

Attorney, Hans Hans Hjertonsson, Esq. argues for bail to be set in the amount of Ten Million Dollars (\$10,000,000.00) as to his client, Defendant Daljit Atwal. Deputy District Attorney, Marlissa Ferreira provides oral argument opposing this. Court **DENIES** his request. His bail shall remain set at No Bail.

Court hears further oral arguments pertaining to this matter from Martha Carlton-Magana, Esq. and the allegations in the complaint and proper charges. Court reminds her that this is an arraignment and bail setting hearing only. Attorney Tim Pori, Esq. joins in her arguments. Court hears oral arguments re the allegations stated in the complaint from Deputy District Attorney, Marlissa Ferreira.

Court states counsel can raise these issues at preliminary hearing/demurrer.

Court **ORDERS** that discovery shall be provided/downloaded by September 4, 2015.

This case is **SET** for Continued Arraignment as to Defendants, Frank Carson, Daljit Atwal, Baljit Singh Athwal, Walter Westley Wells, and Georgia DeFilippo on **September 14, 2015 at 10:00 a.m. in a department to be announced.**

Attorney, Percy Martinez, Esq. requests that Mr. Carson be allowed to appear in civil clothing (be dressed out) at pre-trial hearings. Motion is **DENIED** without prejudice.

Court orders that today's transcript be prepared and provided to respective counsel in this matter.

Pleas are NOT ENTERED at today's proceedings re these Defendants.

All counsel waive time on behalf of their clients with respect to a continued arraignment hearing set for September 14, 2015.

Defendants are ordered to return on the above date and are remanded to the custody of the Sheriff.

Bail is set in the foregoing amounts:

As to Defendants, Frank Carson, Baljit Singh Athwal and Daljit Atwal - Bail is set at NO BAIL.

As to each Defendant, Georgia DeFilippo and Walter Westley Wells - Bail is set at TEN MILLION DOLLARS (\$10,000,000.00).

At 5:20 p.m. the Court recesses for the day.

(People's Exhibit No. 1 was returned to counsel.)