

SUPERIOR COURT OF THE STATE OF CALIFORNIA
STANISLAUS COUNTY

DATE: October 1, 2015
JUDGE: Barbara Ann Zúñiga

DEPARTMENT: 26
CLERK: K. Stein
REPORTER: Lisa DeRuiter
DOCKET: 1490969

PEOPLE OF THE STATE OF
CALIFORNIA,

CHIEF DEPUTY DISTRICT ATTORNEY:
MARLISA A. FERREIRA

Plaintiff,

vs.

FRANK CLIFFORD CARSON, et al.

DEFENSE COUNSEL:
PRECILIANO MARTINEZ, et al.

Defendants.

NATURE OF HEARINGS:

1) Continued Arraignment Hearings for Defendants, BALJIT SINGH ATHWAL, DALJIT ATWAL, FRANK CLIFFORD CARSON, WALTER WESTLEY WELLS, GEORGIA DeFILIPPO.

2) Motion to Recuse District Attorney.

APPEARANCES:

The People of the State of California is present by Marlisa Ferreira, Chief Deputy District Attorney. (Investigator Kirk Bunch is also present.)

Defendant, BALJIT SINGH ATHWAL is present with Martha Carlton-Magana, Esq. (Karen A. Kelly, Esq. is present to assist.)

Defendant, DALJIT ATWAL is present with Hans Hjertonsson, Esq.

Punjabi Interpreters: Gurpreet Kaur and Gulam Masih are sworn in to interpret for Defendants, BALJIT SINGH ATWAL and DALJIT ATWAL. Court makes findings that they have exceeded the provisional qualification period specified in Rule of Court 2.893. The Court signs orders for these interpreters that will be in effect for six months. Punjabi Interpreter: Hardev Grewal has a qualification of noncertified/non registered interpreter order on file and is also interpreting for these Defendants.

Defendant, FRANK CLIFFORD CARSON is present with Preciliano Martinez, Esq. and Stephen Schmid, Esq.

Defendant, WALTER WESTLEY WELLS is present with Timothy Rien, Esq.

Defendant, GEORGIA DeFILIPPO is present with Tim A. Pori, Esq.

Defendant, SCOTT McFARLANE is present with Lawrence Niermeyer, Esq.

Defendant, EDUARDO QUINTANAR, JR. is present with Alonzo J. Gradford, Esq.

Defendant, CHRISTINA ANNE DeFILIPPO is present with Ryan Roth, Esq. and Robert L. Forkner, Esq.

Attorney General's Office is present by Michael A. Canzoneri, Supervising Deputy Attorney General and Heather S. Gimle, Deputy Attorney General.

Rob Taro, Deputy County Counsel is present with Tanja Titre, DDA and for the Honorable Shawn D. Bessey. Jared Beeson, Esq. is present on behalf of Stanislaus County Superior Court.

Also present is Bruce Perry, attorney for Robert Woody in criminal case No. 1471110.

Case is regularly called for hearing at 10:33 a.m.

Prior to the case being called for hearing, the bailiffs removed Mr. Schmid from the courtroom as he was trying to place investigator Jacobson under citizen's arrest for being armed in the courtroom. Mr. Martinez objects to the removal of Mr. Schmid. Mr. Martinez argues that investigator Jacobson cannot be armed when he is a part in a case and asks that he be disarmed. Court informs Mr. Martinez it disagrees with his interpretation of the law. Investigator Jacobson is not a party in this case. Motion to disarm investigator Jacobson is **DENIED**. Mr. Schmid is allowed back into the courtroom.

Counsel for Defendants, FRANK CLIFFORD CARSON and GEORGIA DeFILIPPO request that these Defendants be able to be seated next to each other as they are both still in custody. This request is **GRANTED**.

Robert Forkner, Esq. files a Substitution of Attorney for Defendant, CHRISTINA ANNE DeFILIPPO. He states that Ryan Roth will assist him.

Marlisa Ferreira conducts voir dire as to SCOTT McFARLANE and EDUARDO QUINTANAR, JR. re their ten (Court) days' time waivers. Court finds the Defendants have been advised of their constitutional rights to a preliminary hearing in ten Court days and have knowingly and

intelligently waive the same. Court accepts the time waivers. Mr. Niermeyer and Mr. McFARLANE are excused and leave the courtroom.

Mr. Martinez objects to the People having Judge Rigby sign search warrants in this case now that her Honor has been appointed in this matter. Ms. Ferreira states it was their understanding Judge Rigby was appointed to handle the search warrants and they are merely trying to follow the directions given to them. Court responds the assignment will be located and provided to counsel.

Mr. Rien indicates that his client Defendant, WALTER WESTLEY WELLS joins in on all defense motions. He also joins in the judicial notice request re the Ramey warrant. Attorney Martha Carlton-Magaña requests judicial notice be taken of any affidavit in support of application for intercept of wire tap communications. The Court will have staff locate this affidavit so that the Court can review it.

Mr. Pori states that his client, Defendant, GEORGIA DeFILIPPO joins in on all motions and replies made by the other Defendants in this case as well as on pleadings filed by Mrs. Carlton-Magaña to incorporate by reference.

The Court begins to hear the motion to recuse the Stanislaus County District Attorney's Office by ruling on evidentiary objections.

Court recesses for lunch at 12:05 p.m.

At 1:43 p.m., all counsel and parties are present with the exception of Mr. Niermeyer and his client, SCOTT McFARLANE.

Mr. Forkner requests the motion to recuse the district attorney's office be continued for a week. Martha Carlton-Magaña joins in this continuance request. Marlisa Ferreira objects on behalf of the People.

Court and counsel confer at the bench.

Motion to recess motion is **GRANTED** over the objection of the People.

The Court asks that one defense counsel be the lead counsel for this motion, and be the only attorney that files affidavits re this motion. Defense counsel all agree Mr. Martinez will be the lead attorney for this one motion.

The Court **ORDERS** the defense to provide their responses to any affidavits, judicial notice issues, any affidavits, and other additional requests, on file by October 21, 2015. By November

6, 2015, the People shall file their reply to just the affidavits and judicial notice. Mr. Forkner may reply orally in open Court. Hearing on evidentiary issues only will be set after preliminary hearing.

The Court **ORDERS** that Defendant, BALJIT SINGH ATHWAL'S reply re their Motion to Dismiss Because of Outrageous Government Misconduct must be on file by October 14, 2015.

Mrs. Carlton-Magana withdraws Defendant, BALJIT SINGH ATHWA'S demurrer, without prejudice.

Defendant, GEORGIA DeFILIPPO'S Motion to Recuse District Attorney Defendant and BALJIT SINGH ATHWAL, DALJIT ATWAL, FRANK CLIFFORD CARSON, WALTER WESTLEY WELLS, CHRISTINA ANNE DeFILIPPO and EDUARDO QUINTANAR, JR.'S joinders thereon will be set during the preliminary examinations.

All Defendants' Preliminary Examination hearings are **SET for October 13, 2015 at 9:30 a.m. in Department 26**. There is a three to four week estimate. The preliminary examinations shall be heard five days a week, however, due to a conflict with Mr. Rien's schedule on October 23rd and 26th, the Defendants present in Court today formally waive their rights to a continuous preliminary hearing.

The Court shares her concerns that there are attorneys switching who they are representing and that attorneys are visiting co-Defendants. Counsel will need to discuss this with their clients, advise them and obtain their consents re these issues.

Mr. Gradford indicates he will be meeting and conferring with counsel early next week to go through a long list of names to determine that no conflict exists. The Court instructs Mr. Gradford to have this determination made prior to starting the preliminary examinations. The Court **SETS** this matter for hearing on **October 5, 2015 at 10:00 a.m. in Department 26** to discuss conflicts, substitution of attorney issues, getting acknowledgments from their clients on the record, and a waiver that they know counsel are talking to co-Defendants. Mr. Martinez informs the Court Mr. Schmid will be appearing for Defendant, FRANK CLIFFORD CARSON. Mr. Pori indicates that Mary Lynn Belsher, Esq. will be subbing in as counsel for Defendant, GEORGIA DeFILIPPO. **Ms. Belsher will need to be here for this hearing.** Defendants, BALJIT SINGH ATHWAL, FRANK CLIFFORD CARSON, GEORGIA DeFILIPPO, and CHRISTINA DeFILIPPO shall be present at this hearing. Defendants, EDUARDO QUINTANAR, JR., SCOTT McFARLANE, DALJIT ATWAL and WALTER WESTLEY WELLS are excused from this hearing.

The Court informs counsel the Special Master was contacted yesterday. The Special Master was instructed to have the forensic company pick up the computers by no later than Monday,

October 5, 2015. Both the prosecution and the defense raised concerns as to who actually had possession of the computers as the Court was left with the impression they were in the possession of law enforcement.

The Court informed counsel the location of the computers would be clarified with the Special Master and an update provided on October 5, 2015. Court informs counsel that the protocol/search word that is going to be used is "Korey Kauffman". Pursuant to law, the forensic company will then retrieve that information, the Special Master will review it, assuming any is collected, and determine if there is a confidentiality (attorney-client) problem. Those documents will be separated out from the rest. He will then submit all documents (to the Court). The Court will review those *in camera*.

A packet submitted pursuant to a subpoena duces tecum served by the People on the accounting firm of Polkinghore and Sereno was formally opened by the Courtroom Clerk. The Court described the contents of the packet as being income tax returns for Mr. CARSON and Ms. DeFILIPPO. Stephen Schmid objects to these documents for any use as privileged. Ms. Ferreira indicates that the information pertains to Count IV. The inner sealed envelope was placed back into the outer envelope, which was sealed. The Court **ORDERS** the Courtroom Clerk to maintain this discovery packet in a Court vault and in a sealed condition as this issue will be litigated.

Arraignments are conducted as to Defendants, BALJIT SINGH ATHWAL, DALJIT ATWAL, FRANK CLIFFORD CARSON, GEORGIA DeFILIPPO, and WALTER WESTLEY WELLS. Each of these Defendants enters a plea of Not Guilty as charged in the complaints. The Defendants deny any special allegation alleged/special circumstance allegations. People shall file a First Amended Complaint.

A Waiver of Defendant's Personal Appearance and Consent to Waiver is filed by Defendant, WALTER WESTLEY WELLS.

Mr. Rien requests the People provide him the requested discovery re the cell tower reports that he is does not have. Marlisa Ferreira states that he has this discovery in his possession. She is still waiting on the final report from their expert, Jim Cook and will try to get this to him prior to the preliminary examination hearings as a courtesy. The Court **ORDERS** the District Attorney to get the final report to Mr. Rien prior to the preliminary examination hearings. The expert shall have his final report to the District Attorney by October 7, 2015 and it shall be provided to counsel by October 8, 2015. The Court **ORDERS** that as soon as Ms. Belsher, Esq. files her appearance for Defendant, GEORGIA DeFILIPPO, Mr. Pori must turn all discovery over to her. Further discussions are held re discovery issues.

Rob Taro, Deputy County Counsel makes a request that all of the witnesses he represents which remain under subpoenas be released from their subpoenas and re-subpoenaed, if necessary. The Court **GRANTS** this request

Court informs counsel that Mr. McQuigg, a research attorney from Contra Costa County, will be handling research for her on this case so that no one from Stanislaus County is involved with any research on this case. Ms. Carlton-Magaña requests a copy of any orders that exist regarding the recusal of the entire bench. Court provides counsel with recusal order dated August 25, 2015.

The Court informs counsel the Court has asked the Court administrator to locate the previous recusals. As soon as they are located they will be provided to counsel.

The Court **CONTINUES** Defendant, BALJIT SINGH ATHWAL'S Motion to Dismiss Because of Outrageous Government Misconduct to **November 12, 2015 and November 13, 2015 at 10:00 a.m. in Department 26**. All Defendants will be present at this hearing.

Defendants, FRANK CLIFFORD CARSON, BALJIT SINGH ATHWAL and DALJIT ATWAL are remanded to the custody of the Sheriff. Their bail is currently set at No Bail.

Defendant, WALTER WESTLEY WELLS is remanded to the custody of the Sheriff. His bail is currently set at \$10,000,000.00. Defendant, GEORGIA DeFILIPPO is remanded to the custody of the Sheriff. Her bail is currently set at \$4,500,000.00.

Defendants, SCOTT McFARLANE, EDUARDO QUINTANAR, JR., and CHRISTINA ANNE DeFILIPPO are released on bail.

cc: L. Niermeyer, Esq. (via facsimile)