

FILED

2015 SEP 28 AM 10:59

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

Ana Valencia

1 MARTHA CARLTON-MAGAÑA CSB #70391
2 1012 Eleventh Street Suite 103
3 Modesto, CA 95354
4 (209) 524-5616
5 Attorney for BALJIT SINGH ATHWAL

6 STANISLAUS COUNTY SUPERIOR COURT
7 STATE OF CALIFORNIA

8 THE PEOPLE OF THE STATE OF CALIFORNIA,

9 Plaintiff,

CASE NO. 1490969

10 MOTION TO RECUSE
11 REQUEST OF COURT
12 TO TAKE JUDICIAL NOTICE
13 LIST OF ITEMS

13 vs.

14 BALJIT ATHWAL,

Hearing: Oct 1, 2015
Time: 10: a.m
Dept: 26

15 Defendant.

16 _____
17 Counsel for the defendants have asked the court to take judicial notice of
18 a number of court records and other items pursuant California Evidence Code section and 452
19 in their Motion to Recuse the District Attorney. Below is a list of these items to assist the
20 court. This list may not be complete, and counsel may request the court take judicial notice of
21 items not on the list at the hearing on the Motion to Recuse.

22
23 1. Baljit Athwal, et.al. v. Stanislaus County, et.al., United States Federal Court for the
24 Eastern District of California Case No. 1:15-cv-00311-TLN-BAM.

25 Including; the complaint and status of case (Exhibit C in B. Athwal Joinder to Motion
26 to Recuse)

27 2. Frank C. Carson v. Steve Jacobsen, Stanislaus County Superior Court #2001620.
28

1
2 3. People v. Frank C. Carson et. al. Stanislaus County Superior Court #1490969.

3 Including; the Affidavit in Support of the Ramey Warrants issued August 13, 2015,
4 and the Affidavit in Support of the Application for Intercept of Wire Tap Communications
5 issued June 23, 2012, the transcript of the hearing of August 25, 2015, including the
6 testimony of Steve Jacobsen, and the prosecutor Marlisa Ferreira's offer of proof re exhibit.

7 4. People v. A.J Pontillo, Stanislaus County Superior Court #1436501.

8 Including; the complaint, counsel of record, Pitchess motion with attached
9 declarations. verdict, and the contempt proceedings against David Harris and Steve Jacobsen
10 including the Order to Show Cause in Re Contempt and the supporting declaration of the
11 Honorable Scott Steffen, Judge (Exhibit D in Georgia DeFillipo Motion to Recuse)

12
13 5. People v. Praveen Singh, Stanislaus County Superior Court #1465156

14 Including; assigned judge, and motion to recuse District Attorney (Exhibit H in
15 Georgia DeFillipo Motion to Recuse)

16
17 6. People v. Carmen Sabatino, Stanislaus County Superior Court #1061284.

18 Including; the length of Search Warrant Affidavit of Kirk Bunch, the defense counsel
19 at trial, the declaration of a hung jury, and the dismissal.

20
21 7. The declaration of Frank C. Carson re Kirk Bunch submitted at the United States Federal
22 Court, Central District of California trial of United States v. Wqas Khan. (to be submitted at
23 the hearing on the motion)

24 8. Modesto Bee Newspaper Article on the contempt proceedings of David Harris and Steve
25 Jacobsen (Exhibit E in Georgia DeFillipo Motion to Recuse)

26
27 9. Modesto Bee Newspaper Article on the comments of Prosecutor at dismissal of trial of
28 Frank Drummond. (attached hereto as B. Athwal joinder to Exhibit G

1 10. People v. Francisco Drummond, Stanislaus County Superior Court #1411276.

2 Including; Attorney of record, declaration of hung jury, and dismissal.

3
4 11. People v. Michael Hoyt, Stanislaus County Superior Court #1414124.

5 Including; Attorney of record, verdict of not guilty on murder count and declaration of
6 hung jury on voluntary manslaughter.

7
8 12. People v. Jakari Phyll, Stanislaus County Superior Court #1423449.

9 Including; Attorney of record, verdict of not guilty on defendant Phyll.

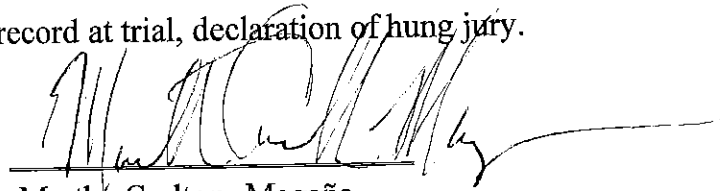
10
11 13. People v. Richard Jolly, Stanislaus County Superior Court #1420057

12 Including complaint, date of opening statements, and judgment.

13
14 14. People v. Juan Manual Tello, Stanislaus County Superior Court #1440911.

15 Including complaint, attorney of record at trial, declaration of hung jury.

16 Dated: September 28, 2015



17 Martha Carlton- Magaña
18 Attorney for Defendant Baljit Athwal
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27
28

1 Martha Carlton-Magaña
Attorney at Law
2 1012 Eleventh Street, Suite 103
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3 Telephone (209) 524-5616
Attorney for BALJIT ATHWAL
4

5 **PROOF OF SERVICE**

6 I am a citizen of the United States and am employed in the Stanislaus County; I am
7 over the age of eighteen (18) years and not a party to the within action; my business address
8 is 1012 Eleventh Street, Suite 103, Modesto, California 95354.

9 I served the following document(s): PEOPLE v. BALJIT ATHWAL SSCN 1490969;
Motion to Recuse request to take Judicial Notice List of Items, and served in the manner
10 and/or manners described below to each of the parties herein, addressed as stated below:

11 Mailed

12
13 Office of the Attorney General
1300 "I" Street
14 Sacramento, CA 95814-2919
15 Phone: (916) 445-9555

16 Served at District Attorney Box Stanislaus County Court House

17 Birgit Fladager
18 Stanislaus County District Attorney
832 12th Street, Suite 300
19 Modesto, California 95354,

20 Served by electronic transmission

21 Precilliano Martinez
22 1120 14TH St Suite 5
23 Modesto, Ca. 95354
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24

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26 Livermore, Ca. 94550
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15 724 10th St.
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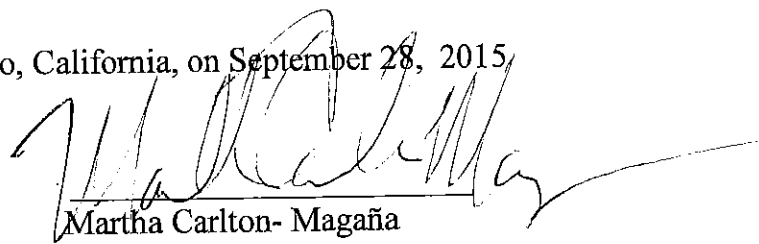
18 Lawrence J. Niermeyer
19 1020 15th St. Suite 10
20 Modesto, Ca. 95354
21 ltmiermeyer@aol.com

22 Bruce Perry (conflict II)
23 948 11th St. suite 16
24 Modesto, Ca. 95354

25 By mail, or electronically if available, or at the Attorney Box
26 Stanislaus County Court Clerks Office
27 800 11th St. Modesto, California 95354

28 I caused such envelope(s) to be delivered by hand to the address(s) listed above, the attorney
box, or electronically.
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 September 28, 2015,



Martha Carlton- Magaña

EXHIBIT G

BALJIT ATWAL MOTION FOR JOINDER OF MOTION
TO RECUSE DISTRICT ATTORNEY

CRIME

APRIL 22, 2015

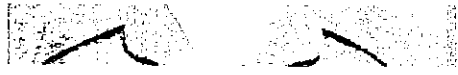
Prosecutors drop charges against former cop in Modesto sex abuse case

BY ROSALIO AHUMADA
rahumada@modbee.com

Prosecutors on Wednesday dropped all charges against a former police officer and Modesto Junior College instructor accused of sexually molesting two girls.

There will be no second trial for defendant Francisco "Frank" Jose Drumond. The jurors in his first trial could not reach a unanimous verdict, so the judge declared a mistrial and sent the jurors home. A large majority of the jurors voted to acquit Drumond.





Prosecutors on Wednesday dropped all charges against Francisco "Frank" Jose Drumond, a former police officer and college instructor who was accused of sexually molesting two teenage girls. **Unknown - Modesto Police Department**

Deputy District Attorney Beth O'Hara De Jong told the judge Wednesday morning that the prosecution was not dropping the charges because of a lack of evidence against Drumond.

She said they would not seek a second trial because the victims did not want to dedicate one more day to this case and wanted to move on with their lives. De Jong told the judge all three accusers were subjected to "excruciating harassment" during cross-examination by the defense attorney, so much so that one of the alleged victims stopped her testimony during trial and was omitted from the case.

Frank Carson, Drumond's attorney, said they had evidence to impeach the prosecution's witnesses. He argued in the trial that the allegations against his client were fabricated.

"Thank God for the jury system." Carson told the judge after the prosecutor's announcement. "I'm glad this nightmare is over for Mr. Drumond."

In the courthouse hallway, Drumond said, "I want to thank the jury, I want to thank Mr. Carson. Thank God this is over."

On March 18, after about two days of

deliberating, the jury of five women and seven men voted 10-2 to acquit on the charge stemming from Jane Doe No. 1's allegations. There was an 11-1 vote to acquit on the charge stemming from Jane Doe No. 2's allegations.

The prosecutor told the judge the victims also didn't want to endure more delays by the defense if the case proceeded to a second trial. De Jong said the first trial was scheduled seven times but was postponed because of the unavailability of Drumond's attorney.

She argued that time is crucial in cases of alleged crimes against children, who could start forgetting details as a case stalls - something the defendant, a former police officer, should be well aware of.

Carson told the judge that the jury's vote clearly reflected the weakness of the prosecution's evidence against his client. The attorney later said he spoke to the jury foreman, who was upset the jurors could not reach a verdict.

A day after the first trial ended, a man who identified himself as a member of the jury told The Modesto Bee that he believed there was reasonable doubt in the allegations made against Drumond. He also said the prosecution had not presented enough evidence to meet its burden of proof.

In early March, Stanislaus Superior Court Judge Marie Silveira dropped one count of sexual misconduct against Drumond because Jane Doe No. 3 refused to continue her testimony under

cross-examination. The judge ordered the jurors to disregard all testimony from the woman.

Jane Doe No. 3 was a 17-year-old police Explorer more than 20 years ago, when she says Drumond forced her to perform oral sex on him. She cried on the witness stand while calling Carson's questions "appalling."

Carson argued during the trial that his client was a 24-year-old man then, and that Jane Doe 3 was 18 and 19 years old when she had consensual sex with the defendant. He has said it was more than one isolated incident.

Jane Does No. 1 and No. 2 were friends of Drumond's daughter, and were at a sleepover at the Drumond family home in August 2009 when the alleged incidents occurred.

Jane Doe 1 testified that Drumond molested her in August 2009. She said they were watching a movie when Drumond started massaging her. She testified that the touching slowly escalated to Drumond slipping his hand inside her bikini bottoms.

Drumond testified that the incident Jane Doe 1 described did not happen, and that he never made her promise to keep silent about anything, as she'd said he did. He said the girl had been at his home four to six times in the 10 days before the allegations surfaced and never had acted strange or disturbed around him.

About a week later, Jane Doe 1 joined

Drumond and his daughter on a road trip to the Bay Area. They were going to drop off a teenage German exchange student at the airport. Jane Doe 2 also went along on the road trip.

Jane Doe 2 told investigators that she rode in the front passenger seat of Drumond's Chevrolet Tahoe, and that the defendant rubbed her arms, legs and across the top of her chest throughout the drive back to Modesto from the Bay Area.

Drumond testified that his daughter rode in the front passenger seat during the entire ride home, and that Jane Doe 1 and 2 were in the back seat.

Jane Doe 2 told investigators that she and Jane Doe 1 were on both sides of Drumond on the living room couch that night, watching TV, while the defendant's daughter was asleep on the other end of the couch. She said the defendant later touched her upper inner thigh before groping her buttocks.

The defendant testified that nothing like that happened. He said he was working in his office before joining the girls in the living room, and that all three girls were awake watching a movie.

Jane Doe 2 told investigators she went to the bathroom three times that night with Jane Doe 1 to explain what Drumond was doing to her. She said the girls returned to their positions on the couch twice, before hiding in Drumond's daughter's bedroom after the third trip to the

bathroom.

Drumond testified that the girls used the bathroom only once that night, and that he wasn't keeping track of where they were going.

Drumond resigned from his job as a reserve Ripon police officer days after police showed up at his Modesto home to investigate the claims of lewd acts with the teenage girls. He previously worked as a police officer in Modesto and Patterson.

He was arrested Aug. 28, 2009, during a staff meeting at the Modesto Junior College East Campus, where he taught criminal justice.

Bee staff writer Rosalio Ahumada can be reached at rahumada@modbee.com or (209) 578-2394. Follow him on Twitter @ModBeeCourts.



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