

FILED

2015 SEP 14 PM 1:16

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

Ana Valencia

1 Tim A. Pori (SBN 189270)
2 LAW OFFICES OF TIM A. PORI
3 521 Georgia Street
4 Vallejo, CA 94590
5 Telephone: (707) 644-4004
6 Facsimile: (707) 644-7528

7 506 Broadway
8 San Francisco, CA 94133
9 Telephone: (415) 986-5591
10 Facsimile: (415) 421-1331
11 (San Francisco Office)

12 Attorney for Defendant
13 GEORGIA CARSON

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF STANISLAUS

16 PEOPLE OF THE STATE OF CALIFORNIA, Case No. 1490969

17 Plaintiff,

18 NOTICE OF MOTION AND
19 MOTION TO REDUCE BAIL

20 vs.

21 Date: September 14, 2015
22 Time: 8:30 a.m.
23 Dept: 8

24 GEORGIA CARSON, aka DEFILIPPO,

25 Defendant.
26 _____/

27 TO THE CLERK OF THE SUPERIOR COURT FOR THE COUNTY OF STANISLAUS
28 AND TO THE DISTRICT ATTORNEY OF STANISLAUS COUNTY:


PLEASE TAKE NOTICE that on September 14, 2015, at 8:30 a.m.,
defendant GEORGIA CARSON, aka DEFILIPPO, a lifelong resident of
Stanislaus County with no previous arrest in her 64 years and the
wife and office manager to her co-defendant FRANK C. CARSON (A
State Bar Certified Criminal Law Specialist [SBN 136261]), by and
through counsel TIM A. PORI, will move this Court for its order

1 releasing Mrs. Carson on her Own Recognizance (OR) or
2 alternatively, reducing the amount of bail heretofore set in this
3 matter from \$10,000,000 to \$500,000.

4 This motion will be made on the grounds that Mrs. Carson
5 qualifies for an OR release and the bail set is excessive within
6 the meaning of the Eighth Amendment to the United States
7 Constitution and of Article I, §12 of the California
8 Constitution. Mrs. Carson has never before been arrested, is a
9 threat to no one, has lived her 64 years in Stanislaus County, is
10 only peripherally involved, if at all, in the death at issue, is
11 a college graduate and paralegal who is needed by her counsel to
12 assist in her own defense, and has never shown anything but the
13 highest regard and respect to the courts of Stanislaus County.

14 This motion will be based on this notice, the court's files,
15 the several declarations filed in support hereof, a memorandum of
16 points and authorities filed herewith, and in court testimony
17 from several persons who know her well, the expert testimony of
18 Stephen B. Krimel, and on such oral and documentary evidence and
19 argument as may be presented at the time of hearing of the
20 motion.

21 DATED:

22 
23 _____
24 TIM A. PORI
25 Attorney for Defendant
26 GEORGIA CARSON
27
28

1 prohibits the setting of a bail in an excessive amount. As Judge
2 Manoukian has admitted Georgia Carson to bail per the county
3 schedule, she is statutorily entitled to this reduction hearing
4 per Penal Code §1289 . In re Annis (2005) 127 Cal.App.4th 1190.

5 The United States Supreme Court has repudiated the concept
6 of a disparate system of bail which requires those unable to post
7 high bail (such as Mrs. Carson at \$10 million bail, which under
8 California law would require a premium of minimally \$700,000) to
9 remain in custody while allowing the rich to obtain their freedom
10 no matter how dangerous they may be. To the contrary, in Stack
11 v. Boyle (1951) 342 U.S. 1, 72 S.Ct. 1, the court held that when
12 bail is available, it must be fixed only in that the amount
13 necessary to guarantee the bailee's appearance at trial. Any
14 higher bail amount is excessive under the Eighth Amendment.
15 California's § 1275 P.C. adds other factors to consider, as
16 discussed below.

17 Since passage of Proposition 21 on the 1998 California
18 ballot and subsequent legislative enactments, public safety has
19 become the primary consideration in setting or denying bail.
20 (§1275(a) P.C.) Because the trial court may impose bail
21 conditions intended to ensure public safety (Judge Manoukian, in
22 addition to a \$10 million bail, directed Mrs. Carson (a) wear an
23 ankle PS monitor, (b) not travel outside Stanislaus County, and
24 (c) surrender her passport), reliance on an extraordinarily high
25 bail such as was set herein is unwarranted.

26 While (1) public safety has been deemed the primary
27
28

1 consideration in setting bail in the Court's discretion (Griffin
2 v. Superior Court (1972) 26 Cal.App.3d 672, 702), in setting or
3 reducing bail, the following factors must also be taken into
4 consideration per Cal. Const. Article I, § 12; Penal Code § 1275;
5 (2) the seriousness of the offense charged; (3) the defendant's
6 previous criminal record; and (4) the probability of the
7 defendant appearing at hearing or trial of the case.

8 In Mrs. Carson's case, while the charge is serious, her
9 involvement is extremely dubious. There is no competent evidence
10 shown to date (326 page arrest affidavit of Kory Brown, a twelve
11 (12) page affidavit in opposition to bail by D.A. Investigator
12 Kirk Bunch), and Bunch's courtroom testimony on August 25, 2015,
13 that implicates her in any crime, or likelihood of danger to
14 others, or flight risk. To the contrary, Mrs. Carson filed with
15 the Court for a hearing on August 25, 2015, a motion for release
16 on her Own Recognizance (OR) or for the setting of a reasonable
17 bail, a memorandum of law and the declaration of expert witness
18 Stephen B. Krimel in support of same, which are all incorporated
19 herein by this reference. Judge Manoukian never mentioned those
20 defense pleadings and never denied the OR release request.

21 Judge Manoukian, having reviewed prosecution pleadings and
22 heard prosecution witness testimony, set Mrs. Carson's bail
23 pursuant to the Stanislaus County Bail Schedule, which may be the
24 highest in the state at \$10 million dollars. For instance,
25 obtained copies of a small group of mostly nearby counties. Bail
26 schedules reflect:

1 * 2015 Los Angeles County Bail Schedule: the preamble
2 correctly states its purpose: "The purpose of this bail
3 schedule is to fix an amount upon which a person who is
4 arrested without warrant may be released from custody prior
5 to appearance in court." (Emphasis added.) "**Murder, §187**
6 **P.C...\$1,000,000."**

7 * Merced County Bail Schedule: "**Murder, §187 P.C...\$1,000,000"**

8 * Contra Costa County Bail Schedule: "**Murder,**
9 **§187...\$1,000,000."**

10 * Solano County Bail Schedule: "Murder, §187 P.C...
11 **Presumptive, bail upon Court hearing is \$1,500,000."**

12 A review of murder bails set for Stanislaus County jail
13 inmates in custody as of August 21, 2015, conducted by defense
14 expert witness Stephen B. Krimel, Esq. (California attorney 1981-
15 present, certified criminal law specialist 1993-2013; California
16 private investigator, license no. A-6478-I, 1977 to present;
17 Nevada Bail Agent, 2005 to present, and president of Nevada Bail
18 Agents' Association, 2008 to current) set forth in his
19 declaration, revealed certain germane dates, as follows:

20 A. Krimel randomly selected thirty (30) persons
21 incarcerated in the Stanislaus County Jail on August 21, 2015,
22 held on bail set for §187 P.C. charges. In these thirty cases,
23 three (3) bails remained at the bail schedule sum of \$10 million
24 dollars, two were set at \$5 million dollars [included a separate
25 count of §§664/187 P.C.], one bail was set at \$4 million, sixteen
26 bonds, or over 50%, were set at \$2 million, four bails were set

1 at \$1,250,000, and four bails were set at \$1 million. Of these
2 thirty bails for §187 P.C. charges, only three (or 10%) remained
3 as set by the Bail Schedule, while twenty-seven were
4 substantially reduced therefrom.

5 Based upon his experience in bail and crime matters,
6 interviews with Georgia Carson and her family, friends and
7 acquaintances, an assessment of discovery received todate (only
8 the 326 page Ramey warrant affidavit and the twelve page
9 affidavit of Det. Bunch opposing the setting of bail for all
10 defendants) and his random review of bail pending for § 187 P.C.
11 arrestees in the Stanislaus County Jail, the defense expert has
12 recommended an OWN RECOGNIZANCE RELEASE OR BAIL IN THE SUM OF
13 \$500,000.

14 III.

15 AN OWN RECOGNIZANCE RELEASE IS
16 WARRANTED FOR DEFENDANT GEORGIA
17 CARSON

18 Despite the operative own-recognizance ("OR") releases
19 statute (§ 1318.1 Penal Code) and authorities (CA Criminal Trial
20 Judges' Desk Book 1980, Keene, 123, 142.41-142.43; Van Atta v.
21 Scott (1980) 27 Cal.3d 424, 450-451), there is no detailed
22 procedure for the making of an OR request, and OR motions may be
23 made at the time appropriate for a bail motion.

24 The sole issue at the OR hearing is whether the detainee
25 will appear for subsequent court proceeding if released on OR.
26 Van Atta v. Scott, supra, 27 Cal.3d at p. 438. To answer this
27 question, the trial court must consider the following factors:
28

1. The detainee's ties to the community, including employment, the duration and location of residence, family attachments, property holdings, and any independent reasons to wanting to leave or remain in the community.

(A) Georgia Carson was born in Modesto on November 24, 1951 to Charles and Barbara Heckendorf. She graduated from Modesto's Downey High School in 1969, and attended college at the University of the Pacific in Stockton, obtaining a Bachelors of Art Degree in English. She has resided in Stanislaus County for her 64 years, with two years in Merced County. Mrs. Carson has two adult daughters who reside in Stanislaus County; in addition to her law office employment since 1997, in her adult life she has worked as a retail clerk with the New Deal and Albertson's Markets and with the United States Postal Service (USPS). She was also the owner of a bookstore in the 1990's. If released, Mrs. Carson's will return to her job as the office manager at the Law Office of Frank C. Carson, her husband. Since 2014, she also is a partnership with Mary Martinez in a Modesto retail store for herbal products known as "God's Goodness".

Georgia Carson had two siblings, brother Phillip (deceased 2011 of melanoma) and brother Charles Heckendorf who still resides in Modesto. Mrs. Carson's first husband, Alan DeFilippo, retired several years ago from his position as a Deputy District Attorney for Stanislaus County in Modesto. He lives by in nearby Riverbank. Mrs. Carson's entire group

1 of friends and family are long time Stanislaus County
2 residents; she has no family elsewhere.

3 (B) Georgia Carson has a community property interest
4 in several properties she and her husband, Frank Carson,
5 own. The following list include best estimates:

6 Address:	County:	Description:	Current Value:	Equity:
7 811 15 th St Modesto	Stanislaus	Law Office	\$ 300,000	\$300,000
8 1026 McHenry, Modesto	Stanislaus	Center	1,000,000	700,000
9 24 Acres m/L	Calaveras	Raw Land	350,000	350,000
8713 E. Monte Vista, Denair	Stanislaus	Ranchette	400,000	200,000
10 914 (+12) 9 th Street, Turlock	Stanislaus	Res. + Cottage	250,000	250,000
		TOTAL EQUITY IN PROPERTIES (½ INTEREST)		\$900,000

11
12
13 (C) Georgia Carson, aka Defilippo, 64 years of age has
14 never before been arrested or cited, so she has no
15 record of non-appearance in court.

16 (D) Georgia Carson is charged with MURDER (§ 187(A)
17 Penal Code; Count 1 with a special allegation of "LYING IN
18 WAIT" per §190.2(A)(15) P.C.; CONSPIRACY TO OBSTRUCT JUSTICE
19 (§182(A)(5) P.C. with her named in only one of seventeen
20 overt acts, to wit No. 2, which states she "conspired
21 electronically" to facilitate the false imprisonment and
22 assault with GBI of "unidentified persons found to be
23 trespassing at 838 9th Street in the City of Turlock.

24 (Emphasis added.)

25 Under California law, the special circumstance of lying in
26 wait requires that circumstances include (1) a concealment of
27

1 purpose; (2) a substantial period of watching and waiting for an
2 opportune time to act; and (3) immediately thereafter, a surprise
3 attack on an unsuspecting victim from a position of advantage
4 People v. Cruz (2008) 44 Cal.4th 636, certiorari denied, 129
5 S.Ct. 1531; People v. Lewis (2008) 43 Cal.4th 415, cert. den.,
6 129 S.Ct. 1037. Lying in wait by Mrs. Carson is a prosecution
7 fantasy.

8 The subject complaint at issue herein is a fine example of
9 overcharging and, in fact, absurdity as to Mrs. Carson and
10 others. With specific reference to pretrial release in this
11 case, the prosecution, on 8-21-2015, served a Memorandum in
12 "Opposition to Defendants' Release on Bail" (6 pp.), supported by
13 twelve pages, single-spaced "Declaration of Investigator Bunch"
14 in a support opposition. In the entirety of those opposition and
15 the criminal complaint documents, there are only four references
16 to moving party GEORGIA CARSON, as follows:

17 1. On page 2 of the Opposition, the District Attorney
18 claims Mrs. Carson was present at her home in Turlock the day
19 decedent Korey Kauffman went missing, and when her residence was
20 subsequently searched weeks later, she allegedly sarcastically
21 asked a searcher "if they'd found any bodies?" (In brief but not
22 in the affidavit of Investigator Bunch in Support of Opposition
23 to Bail).

24 2. On A-1, Investigator Bunch claims a computer entry
25 between Georgia Carson and her daughter Christina DeFilippo
26 "indicated Frank Carson was 'freaking out' about the thefts at
27
28

1 his properties and would be there that night with a gun."

2 3. On February 23, 2011, thirteen months before Kauffman's
3 disappearance, Georgia Carson called the Turlock Police
4 Department to report her husband and a neighbor were arguing
5 about "stolen property". During a follow-up investigation of
6 burglary suspect, Michael Cooley, he told the police that Frank
7 and Georgia Carson had been to his residence several times in the
8 past, "making threats over thefts".

9 4. On June 23, 2012, several months after Kauffman's
10 disappearance, a wiretap intercepted a call between Georgia
11 Carson and her daughter Christina in which the daughter advised
12 that she had broken a window in the Turlock Carson residence
13 because the neighbor was taking care of their lawn! In response
14 to Christina's apparent over-reaction, Georgia Carson responded
15 sarcastically "You want me to come shoot them?!" (Investigator
16 Bunch at A-8 opined there was no "joking type response from
17 Christina DeFilippo".)

18 Clearly, nothing in the bail opposition is germane to "lying
19 in wait" or fitness for an OR release. It may be assumed that
20 since the filing was specifically to oppose bail, these obvious
21 omissions and shortcomings by the prosecution are the product of
22 fact and reality Mrs. Carson is grossly overcharged. This clear
23 and unequivocal overcharging should not deny Mrs. Carson to be
24 considered for a statutorily warranted OR release.

25 In all serious violent felony cases where the defendant has
26 not failed to appear in any previous felony OR case, the court,
27

1 in considering an OR release must consider (1) the existence of
2 any outstanding felony warrants on the person [NONE]; (2) any
3 information presented in a report of county OR staff (§ 1319(b)
4 P.C.) If that report is received by the time of the hearing [NONE
5 known] and (3) any information presented by the prosecution
6 [contained in Opposition to Bail documents previously filed and
7 served.] (§1319(b) P.C.

8 In Van Atta v. Scott, supra, 27 Cal.3d at pp. 438-444, the
9 California Supreme Court held that after the detainee had
10 produced evidence and proof at an OR hearing of community ties,
11 the burden of proof is on the prosecution concerning the other
12 issues considered at the hearing, including the detainees record
13 for making appearances and the severity of the possible sentence.
14 Id. At pp. 443-444. The court concluded the prosecution must
15 bare the burden of proving the detainee would not appear as
16 required if given an OR release by clear and convincing evidence.
17 See § 1319(b) P.C. The prosecution cannot meet their burden
18 regardless of what that standard may be.

19 IV.

20 IF DENIED AN OWN RECOGNIZANCE RELEASE,
21 GEORGIA CARSON'S CURRENT \$10 MILLION DOLLARS
22 BAIL SHOULD BE DRAMATICALLY REDUCED.

23 As set forth above in this memorandum, Georgia Carson's 64
24 year life warrants an OR release. If that request is denied,
25 this Court should depart from the local bail schedule (designed
26 for jailers to set bail upon arrest, prior to court appearance)
27 and assess Mrs. Carson individually for an appropriate bail sum.

1 County courts must adopt a bail schedule (§ 1269(b)(c) P.C.;
2 CRC Rule 4, 102); this uniform schedule allows incoming arrestees
3 to have a bail set upon booking by the jailor. Arrestees may
4 post the bail amount listed in the bail schedule and be released
5 before appearing in court. An arrestee for a crime has a right
6 to be promptly taken before a magistrate and at that time move
7 for a reduction of bail. (§§ 825, 849 and 859(b) P.C.)

8 Again, Penal Code § 1275 sets forth the factors the court
9 must consider in setting bail:

- 10 1. The protection of the public;
- 11 2. The seriousness of the offense(s) charged;
- 12 3. The previous criminal record of defendant; and
- 13 4. The probability of his or her appearance at trial or
14 hearing of the case.

15 In numerous cases the California Supreme Court has declared
16 to be unreliable and frequently erroneous expert predictions that
17 persons will engage in future violent conduct (see above).

18 People v. Burnick (1975) 14 Cal.3d 306, 326-327; People v.
19 Murtishaw 91981) 29 Cal.3d 733, 767-775. The court has the
20 inherent power to impose bail conditions; it follows that the
21 conditions may be, and have been, designed to ensure public
22 safety. In re McSherry (2003) 112 Cal.App.4th 856, 861-863.

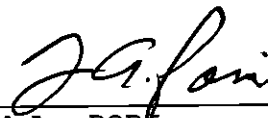
23 CONCLUSION

24 Giving due consideration to Mrs. Carson's lawful history,
25 her lifetime in Stanislaus County, the overcharged complaint, the
26 exaggerated affidavits for arrest, search and in opposition to
27

1 bail, the 3 ½ years she and her husband were aware of this
2 investigation prior to their arrests and the extreme paucity of
3 any competent evidence against her, counsel for Mrs. Carson
4 requests she be granted a non-monetary OR release herein, or
5 alternatively, that bail be set for Mrs. Carson in the sum of
6 \$100,000.

7 DATED: 9/11/15

8 Respectfully submitted,

9
10 

11 _____
12 TIM A. PORI
13 Attorney for Defendant
14 GEORGIA CARSON
15
16
17
18
19
20
21
22
23
24
25
26
27
28