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FILED

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

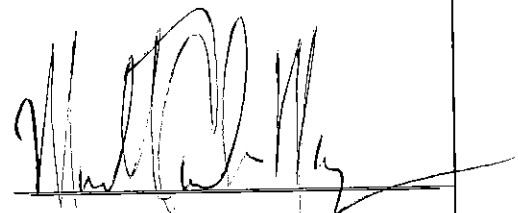
BY Ana Valencia

STANISLAUS COUNTY SUPERIOR COURT

PEOPLE OF THE STATE OF)	Case No.: 1490969
CALIFORNIA,)	
Plaintiff,)	NOTICE OF DEMURRER AND
vs.)	DEMURRER TO COMPLAINT
BALJIT ATHWAL,)	Date: October 1, 2015
Defendant)	Dept: 26
)	Time: 10:00 a.m.

To the People of the State of California and/or their representative, District Attorney of Stanislaus County: Defendant Baljit Athwal hereby demurs to the Complaint filed against him in the above-entitled matter on the ground that it appears from the face of the Complaint that it does not substantially conform to the provisions of Penal Code sections 951& 952 in that Count 1 does not state a crime, and that Count 2 does not state a crime with sufficient specificity to give adequate notice as required by the U.S. Constitution.

Dated: September 26, 2015,



Martha Carlton-Magaña
Attorney for Defendant

POINTS AND AUTHORITIES

Defendant submits the following points and authorities in support of his demurrer:

STATEMENT OF CASE

Defendant is charged by Complaint filed in Stanislaus County Superior Court on August 17, 2015, in count 1, with murder with the special circumstance pursuant to Penal Code section 190.2 of Lying in wait, and in count two, felony conspiracy to obstruct justice. Continued arraignment and a motion to recuse the prosecutor are presently scheduled for October 1, 2015.

ARGUMENT

I

A DEFENDANT MAY CHALLENGE BY DEMURRER ANY UNCERTAINTY IN THE PLEADING AGAINST HIM

The defendant may demur to the accusatory pleading at any time prior to the entry of a plea when it appears upon the face thereof that it does not substantially conform to the provisions of sections 950, 951 and 952. Penal Code section 1004(2).

Penal Code section 950 requires an accusatory pleading to contain a statement of the public offense charged.

Penal code section 952 provides in relevant part: “[I]n charging an offense, each count shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified.” Such statement, “may be in the words of the enactment describing the offense, or declaring the matter to be a public defense, or in any words sufficient to give the accused notice of the offense of which he is accused.” Section 952.

A literal compliance with Penal Code section 952 may be insufficient to withstand

a demurrer, where the language of the statute fails to give the accused constitutionally adequate notice of the offense with which the defendant is charged. *People v. Jordan* (1971) 19 Cal.App.3d 362, 369. A defendant is entitled to be advised with some particularity which of the several available factual theories the People will rely upon. Neither discovery nor an assumption that the accused has pertinent knowledge may be relied upon to furnish the requisite notice. *Lamadrid v. Superior Court* (1981) 118 Cal.App3d 787; *Salas v. Superior Court* (1978) 86 Cal.App.3d 737; *People v. Clenney* (1958). Where a statute contains several provisions, the violation of any of which is an offense, the statement of the offense should be such as to make the provision relied on apparent. *People v. Clenney*, supra, 165 Cal. App.2d 241; The Clenney court held; "There is a presumption that the defendant in a criminal case is innocent. An innocent defendant could not determine what offense he was accused of having committed from the information filed in this case. The remaining allegations in the pleading give him no clue as to what act he violated or what duty he neglected. The rule that it is not necessary to set forth in detail the evidence by which the offense charged is to be proven has no effect on this case." Ibid at 254.

In *People v. Clenney*, supra, the defendant was charged with driving under the influence with injury. The court held that the demurrer for failure to specify any unlawful separate from the act of driving under the influence, which caused the injury, should have been granted

In *People v. Salas*, supra, the defendant was charged with being under the influence of a controlled substance. The defendant demurred for failure to specify which controlled substance was involved. The court held the demurrer should have been granted.

In *Lamadrid v. Superior Court*, supra, the defendant was charged with vehicular manslaughter. The court held the demurrer to the complaint for failure to specify which unlawful act or lawful act unlawfully done had allegedly cause the accident. The court

held the demurrer should have been granted.

II

COUNT I FAILS TO STATE A PUBLIC OFFENSE AND FAILS TO GIVE CONSTITUTIONALLY ADEQUATE NOTICE

Count 1 consists of the substantive charge of murder in the language of section 187(a), "On or about March 30 2012 (Defendants) did commit a felony murder, a violation of section 187(a) of the California Penal Code, in that the defendants did willfully, unlawfully, and feloniously and with malice aforethought murder Corey Kauffman", and a special circumstance allegation, expressly charged pursuant to Penal Code section 190.2(a)(15), of murder by means of lying-in-wait. However, there is no such crime. The defendant is presently charged with second degree murder. Special circumstance allegations in section 192 attach only to first degree murders. First degree murders are defined in Penal Code section 189, thusly:

"All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. **All other kinds of murders are of the second degree.**

The proper remedy is to strike the surplusage, the special circumstance allegation charged pursuant to Penal Code section 190.2(a)(15).

Count I of this complaint does not provide the defendant with constitutionally adequate notice of the charges against him. The crimes of second degree murder, first degree murder, and first degree murder with the special circumstance circumstances, each contain very different elements, each with extremely serious consequences, which must be proved and defended against. For example; lying- in -wait first degree murder may

overlap with the special circumstance lying-in -wait, but does not require the same mental state. The first degree murder element lying-in-wait requires proof beyond a reasonable doubt that defendant, by means of lying in wait did an act with "wanton and reckless intent to inflict injury likely to cause death", while the special circumstance murder by means of lying in wait requires proof beyond a reasonable doubt that the defendant had the specific intent to kill. *People v. Gutierrez* (2002) 28 Cal.4th 1006; *People v. Superior Court (Broadway)* (2003) 105 Al.App4th 297. This complaint fails to give the defendant constitutionally adequate notice of the offense with which he is charged, and leaves him confused as to exactly what crime he is accused of committing. As the charged substantive offense is second degree murder the special circumstance is surplusage and must be stricken.

III

COUNT II FAILS TO GIVE CONSTITUTIONALLY ADEQUATATE NOTICE OF THE THEORY OF OBSTRUCTION OF JUSTICE ON WHICH THE PROSECUTOR INTENDS TO RELY

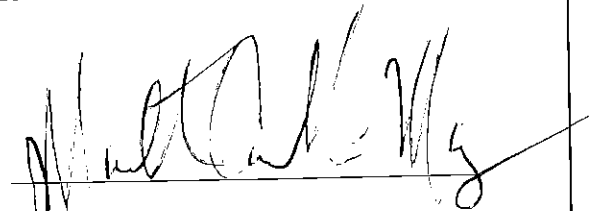
The defendant and his co-defendants are charged in count II with a felony violation of Penal Code section 182(5) Conspiracy to Obstruct Justice. Conspiracy to obstruct justice is defined in section 182(5) as; "To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws." Clearly the offense covers an extremely wide range of possible unlawful acts. It is impossible to defend against such a charge without further specificity as to the prosecutors target behavior. Frequently, that specificity can be gleaned from the nature of the charged overt acts (See *People v. Hardeman* (1966) 244 Cal.App.2 11) however that is not the case here. Here there are 17 alleged overt acts covering the time periods before and after the disappearance of Corey Kauffman. If the accusation is interference with the investigation, overt acts 1,2,3,4,5,6,7, and 11, should be stricken. All but overt act 11 occurred before the disappearance of Mr. Kauffman, and none involve public

morals, the perversion or obstruction of justice, or due administration of the laws. If there is some other target or objective, then it should be specified.

CONCLUSION

For all of the reasons stated above and those to be argued at the time of hearing, Defendant Baljit Athwal respectfully requests the Court to sustain his demurrer to the Indictment.

Dated: September 26, 2015



Martha Carlton-Magaña

Attorney for Defendant

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PROOF OF SERVICE

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

I served the following document(s): PEOPLE v. BALJIT ATHWAL SSCN 1490969; NOTICE OF DEMURRER AND DEMURRER, and served in the manner and/or manners described below to each of the parties herein, addressed as stated below:

Mailed

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

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

Martha Carlton- Magaña