

1 BIRGIT A. FLADAGER
District Attorney
2 Stanislaus County
832 12th Street, Suite 300
3 P.O. Box 442
Modesto, CA 95353
4 Telephone: (209) 525-5550
Facsimile: (209) 558-4027

5 Attorney for the Plaintiff

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15 SEP 17 PM 3:37

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY *Michelle Walner*

DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 FRANK CLIFFORD CARSON,
14 BALJIT ATWAL, DALJIT ATWAL, WALTER
15 WESTLEY WELLS, **GEORGIA DEFILIPPO**
16 EDUARDO QUINTARA, SCOTT MCFARLANE
AND CHRISTINA DEFILIPPO,

17 Defendants.

CASE NO.: 1490969

OPPOSITION TO DEFENDANT G.
DEFILIPPO'S MOTION TO
REDUCE BAIL

Date: September 21, 2015

Time: 10:00 a.m.

Dept. 26

The Honorable Barbara Zúñiga

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20 Comes now the People of the State of California, by and through their attorney, BIRGIT
21 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy
22 District Attorney, and respectfully submits the following points and authorities in support of its
23 opposition to defendant's motion to reduce bail.

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1 STATEMENT OF FACTS

2 On August 13, 2015, Judge Rigby of the Superior Court of the State of California issued
3 arrest warrants for Defendants Wells, Carson, G. DeFilippo¹, B. Atwal, D. Atwal, Robert Lee
4 Woody, Quintanar, and C. DeFilippo. As to defendants Carson, G. DeFilippo, Wells, D. Atwal,
5 Woody and B. Atwal, Judge Rigby set no bail. On August 18, 2015, defendants appeared for
6 arraignment before the Honorable Socrates Peter Manoukian and the court indicated its intention
7 of setting bail at \$10 million as to each defendant in custody, defendants Carson, G. DeFilippo,
8 B. Atwal, D. Atwal, and Wells. The People objected to the setting of bail for defendants in custody
9 and the matter was continued to August 25, 2015 for the court to set bail.

10 The People notified the Court on August 25, 2015 that they would not be seeking the death
11 penalty in this matter. The Honorable Socrates Peter Manoukian indicated his previous tentative
12 setting of bail at \$10 million. The People objected to the setting of bail and Attorney Percy
13 Martinez for defendant Carson requested that the **bail review hearing** proceed on August 25,
14 2015. The People's witness, Investigator Jacobson, was sworn, testified and cross-examined by
15 Attorneys Martinez, Hjertsonsson, Rein, Pori, and Carlton-Magana. Evidence was also presented
16 including the playing of a body wire recording from September 19, 2013 between defendant
17 Carson and a confidential informant; the playing of a wire-tap from July 16, 2012 between
18 defendant Carson and defendant G. DeFilippo. Following testimony and hearing arguments of
19 counsel, the Court denied bail as to defendants Carson, B. Atwal and D. Atwal and granted bail
20 in the amount of \$10 million as to defendants G. DeFilippo and Wells. The Court also informed
21 defendants that they are entitled to a "bail reduction hearing" with two days' notice. Defendants
22 were also informed on August 25, 2015 that the Honorable Barbara Zúñiga will preside over this
23 instant case.

24 On September 11, 2015, the People received defendant G. DeFilippo's Motion to Reduce
25 Bail for hearing on September 14, 2015. On September 14, 2015, the Court held a bail hearing
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28 ¹ Within the defense motion to reduce bail, counsel addresses defendant as Georgia Carson. The People refrain from causing confusion with the charging document and continue to address defendant as charged, Georgia DeFilippo or as here, G. DeFilippo, to avoid confusion with C. DeFilippo.

1 on defendant's motion. Stephen Krimel testified for the defense, the Court took judicial notice of
2 the transcripts from the bail hearing of August 25, 2015, and further bail review hearing was
3 continued to September 21, 2015.

4 **LAW AND ARGUMENT**

5 **I.**

6 **APPLICATION FOR BAIL REDUCTION IS NOT PROPERLY**
7 **BROUGHT UNDER PENAL CODE SECTION 1289.**

8 By its plain language, Penal Code section 1289 addresses the court's ability to reconsider
9 bail *after the information* has been filed:

10 **After a defendant has been admitted to bail upon an indictment or**
11 **information**, the Court in which the charge is pending may, upon good cause
shown, either increase or reduce the amount of bail. (Boldface added.)

12 This limiting language is echoed by the Court of Appeal. In *People v. Annis* (2005) 127
13 Cal.App.4th 1190, the appellate court stated that "once a defendant has been admitted to bail on
14 the indictment or information, the court may increase or decrease the amount of bail only upon a
15 showing of good cause or a change in circumstances." (*Id.* at p. 1195, citing § 1289; *In re Alberto*
16 (2002) 102 Cal.App.4th 421, 430.)

17 Here, not only has there been no indictment or information filed, the defendant cannot
18 show a change in circumstances. In *In re Alberto, supra*, 102 Cal.App.4th 421, the Court of
19 Appeal explained that "the good cause must be founded on changed circumstances relating to the
20 defendant or the proceedings, not on the conclusion that another judge in previously setting bail
21 committed legal error." (*Id.* at p. 430.)

22 In sum, the requirements of section 1289 are not met. As such, the defendant's request
23 for a reduction in bail must fail.

24 **II.**

25 **WHILE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REASONABLE BAIL,**
26 **THERE IS NO PRESUMPTION OF AN ACCUSED'S GUILT OR INNOCENCE**
27 **BEFORE TRIAL.**

28 The California Supreme held in *In re York* (1995) 9 Cal.4th 1133, 1148,

1 "In rejecting the detainees' argument that this presumption affected the validity of
2 the conditions of their pretrial detention, the United States Supreme Court held in
3 *Bell*: "The presumption of innocence is a doctrine that allocates the burden of proof
4 in criminal trials; it also may serve as an admonishment to the jury to judge an
5 accused's guilt or innocence solely on the evidence adduced at trial and not on the
6 basis of suspicions that may arise from the fact of his arrest, indictment, or custody,
7 or from other matters not introduced as proof at trial. [Citations.] It is 'an
8 inaccurate, shorthand description of the right of the accused to "remain inactive
9 and secure, until the prosecution has taken up its burden and produced evidence
10 and effected persuasion; ..." an "assumption" that is indulged in the absence of
11 contrary evidence.' [Citation.] Without question, the presumption of innocence
12 plays an important role in our criminal justice system. 'The principle that there is
13 a presumption of innocence in favor of the accused is the undoubted law, axiomatic
14 and elementary, and its enforcement lies at the foundation of the administration of
15 our criminal law.' [Citation.] **But it has no application to a determination of the
16 rights of a pretrial detainee during confinement before his trial has even
17 begun.**" (*Bell v. Wolfish* (1979)) 441 U.S. [520] at p. 533, boldface added.)

18 The rule set forth in *Bell v. Wolfish, supra*, 441 U.S. 520, 533 mirrors established
19 California law. (See *Ex parte Duncan* (1879) 53 Cal. 410, 411 [no presumption of
20 innocence attaches to a pretrial determination of the amount of bail to be set]; see
21 also *Blunt v. United States* (D.C.App.1974) 322 A.2d 579, 584 ["**The
22 presumption of innocence ... has never been applied to situations other than
23 the trial itself. To apply it to the pretrial bond situation would make any
24 detention for inability to meet conditions of release unconstitutional.**"].)
25 Clearly, whether a pretrial detainee is released OR with—or without—conditions
26 has no bearing upon the presumption of innocence to which that person is entitled
27 at trial. We therefore reject petitioners' contention that the OR release conditions
28 challenged in the present case infringe upon the presumption of innocence to which
petitioners are entitled. (Boldface added.)

1 The defendant also cites *In re Annis, supra*, 127 Cal.App.4th 1190, which as explained in
2 the foregoing section explicitly states that "once a defendant has been admitted to bail on the
3 indictment or information, the court may increase or decrease the amount of bail **only upon a**
4 **showing of good cause or a change in circumstances.** (*Id.* at pp. 1195-96, citing Cal. Pen. Code
5 § 1289; *In re Alberto, supra*, 102 Cal.App.4th 421, 430; *In re Berman* (1930) 105 Cal.App. 270,
6 271-273.) (Emphasis added.)

7 As previously noted, neither information nor indictment have been filed in this case, as
8 there has been no probable cause determination. In addition, the defendant has failed to show
9 good cause or a change in circumstances, but rather supports her arguments with erroneously
10 named "random" samplings of inmates in custody for murder.

11 While not wishing to belabor the point, the People previously cited to the Court a case
12 wherein the denial of bail was found constitutionally reasonable even where the death penalty was

1 not being sought, but the crime was capital in and of itself. (*People v. Superior Court (Kim)* 20
2 Cal.App.4th 936. In *Kim*, the Court noted, “The test for bail is, and continues to be, the gravity
3 of the offense itself, not the individual characteristics of the specific defendant.” (*Id.* at 938.)
4 While defendant Kim was a juvenile and could not be charged with death, the Court found denial
5 of bail was supported by the charge. (*Ibid.*)

6 **III.**

7 **AN “ON OWN RECOGNIZANCE” RELEASE IS UNWARRANTED.**

8 “The sole issue at OR [is not] whether the detainee will appear for subsequent court
9 proceedings.” (Defense Motion, p. 7)

10 In *Van Atta v. Scott, supra*, 27 Cal.3d 424, 438, we stated that “[t]he sole issue at
11 the OR hearing is whether the detainee will appear for subsequent court
12 proceedings if released,” and cited, in support of that proposition, our earlier
13 decision in *In re Underwood* (1973) 9 Cal.3d 345, 348. The *Underwood* decision,
14 however, was based upon language contained in former article I, section 12, of the
15 California Constitution, the bail provision that thereafter was superseded in 1982
16 by the passage of Proposition 4 (see *ante*, at p. 331, fn. 4 of 40 Cal.Rptr.2d, p. 807).
17 Accordingly, insofar as the quoted statement in *Van Atta* may be understood to
18 reflect a state constitutional limitation upon the considerations that a court or
19 magistrate properly may take into account in determining whether to grant a
20 defendant's request for OR release, **it is clear that *Van Atta* no longer accurately
embodies the state constitutional principles that govern release on bail or OR.**
Nothing contained in the current language of article I, section 12—which provides,
in relevant part, that “[a] person may be released on his or her own recognizance
in the court's discretion”—properly may be interpreted to limit a court or
magistrate to imposing only those OR release conditions that are aimed at ensuring
a defendant's appearance at future court proceedings.

20 (*In re York, supra*, 9 Cal. 4th at p. 1143.)

21 **A. The People’s Statements Are Accurately Based on the Arrest Warrant Affidavit**

22 Defendant also attacks the People’s statements in the initial Bail Opposition. In reference
23 to the statement that G. DeFilippo was at the Turlock location where the victim was believed to
24 be murdered, on page 316 of the Arrest Warrant Affidavit: On March 30, 2012, C. DeFilippo sent
25 text to a device associated with F.Carson/G.DeFilippo and received a text back from that device,
26 both texts connect to the southwest facing sector of AT & T Cell Site SE Turlock which covers
27 the area of F. Carson’s property at 838 9th Street in Turlock. As evidenced by messages between
28 C. DeFilippo and G. DeFilippo, it is reasonable to infer that G. DeFilippo was at the location.

1 Furthermore, on page 157 of the Arrest Warrant Affidavit, G. DeFilippo asks **defendant Carson**
2 during the search if officers found any bodies. G.DeFilippo also offered to shoot the neighbors
3 for C. DeFilippo simply because the neighbors were mowing their lawn next door. (Arrest
4 Warrant Affidavit, page. 49.) Finally, numerous statements by the defendant demonstrate that
5 she was involved in the planning stage of the murder. For example, defendant G. DeFilippo told
6 her daughter C. DeFilippo that she should have woken up Frank when the motion detector beeped
7 twice then night before. G. DeFilippo reiterates that it is very important that she and Frank know
8 when the motion detector goes off. In other words, they should be contacted, not law enforcement.
9 (See Affidavit, p. 27, lines 12-18.)

10 **B. Bail for G. DeFilippo Should Remain at \$10 Million**

11 The local bail schedule provides that a defendant in violation Penal Code section 187 shall
12 be provided no bail until arraignment. Here, the Court granted her bail of \$10 million and
13 defendant G. DeFilippo has not been arraigned.

14 The court has already reduced the defendant's bail. Any subsequent relief after the "one
15 automatic review" may be sought elsewhere. "Habeas corpus is an appropriate vehicle by which
16 to raise questions concerning the legality of bail grants or deprivations." (*In re Catalano* (1981)
17 29 Cal.3d 1, 8; *In re Newbern* (1961) 55 Cal.2d 500, 503.)

18 Rather, it is settled that defendants may correct error in the setting of bail by
19 seeking a writ of habeas corpus or other extraordinary writ ordering
20 reconsideration of custody status or release. (*Ibid.*; [(*People v. Jimenez* (1993) 19
21 Cal.App.4th 1175, 1178] see also *Ex Parte Newbern* (1961) 55 Cal.2d 500, 503;
22 *In re McSherry* (2003) 112 Cal.App.4th 856, 859-860 [noting that the court can
23 "grant relief without an evidentiary hearing if the return admits allegations in the
24 petition that, if true, justify relief"]; *In re Alberto, supra*, 102 Cal.App.4th 421,
25 431.) The same procedures are available when a court fails to grant OR release
pursuant to section 859b. (See *In re York, supra*, 9 Cal.4th at p. 1139 [petitioners
employed a petition for writ of habeas corpus to challenge conditions of OR
release]; *In re Annis, supra*, 127 Cal.App.4th at p. 1192 [the defendant's habeas
corpus petition challenged revocation of release on OR].)

26 (*People v. Standish* (2006) 38 Cal.4th 858, 884, *as modified* (Aug. 23, 2006); see also *In re*
27 *McSherry* (2003) 112 Cal.App.4th 856, 859-60.)

28 Here, the People submit defendant has had her one *automatic* review of bail. There has

1 been no change in circumstances since August 25, 2015. Accordingly, the defendant is not
2 entitled to a bail review hearing. Penal Code section 1289, the section under which the defendant
3 brings her motion, applies after a defendant has been "admitted to bail upon an indictment or
4 information." In other words, after a probable cause determination, a stage not yet reached in the
5 defendant's case. Should the defendant seek additional redress, her option is by way of writ.

6 **CONCLUSION**

7 The People respectfully request the Court deny defendant's motion to reduce bail.

8 Dated this 17th day of September 2015, at Modesto, California.

9
10 Respectfully submitted,

11 BIRGIT FLADAGER
12 District Attorney

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14 Marliisa A. Ferreira
15 Chief Deputy District Attorney

16 MAF:vav

PROOF OF SERVICE BY ELECTRONIC MAIL

STATE OF CALIFORNIA)
COUNTY OF STANISLAUS)


I, the undersigned, declare as follows:

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

That I served a copy of the People's Opposition to Defendant's Motion to Reduce Bail on September 17, 2015, pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Timothy Rien at rienlaw@sbcglobal.net, Tim Allen Pori at tim@defense-attorney-pori.com, Martha Carlton-Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinezp@yahoo.com, Hans Hjertonsson at Hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com, Larry Niermeyer at lniermeyer@aol.com, Ryan Roth at rroth@Roth-LEgal.com, Bruce Perry at brucerperry@msn.com and Stephanie Mitchell at stephanie.mitchell@stanct.org.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of September 2015, at Modesto, California.



Declarant

Case No. 1490969
People v. Carson et al.
Hearing: 9/21/2015
Dept. 26