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8 Attorney for defendant:  
**GEORGIA DEFILIPPO, aka GEORGIA CARSON**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF STANISLAUS**

11 PEOPLE OF THE STATE OF CALIFORNIA, )  
12 )  
13 Plaintiff, )

14 vs. )

15 FRANK CARSON, Esq., GEORGIA G. CARSON, )  
16 aka GEORGIA DEFILIPPO, CHRISTINA ANNE )  
17 DEFILIPPO, et al., )  
18 Defendants. )

**Case No.: 1490969**

**REPLY BRIEF TO PROSECUTION  
OPPOSITION TO DEFENDANT'S  
RELEASE ON BAIL**

**Date: August 25, 2015  
Time: 9:00 a.m.  
Dept: 8**

**FILED**  
**AUG 25 2015**  
CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY *[Signature]*  
**DEPUTY**

*rcvd*  
**AUG 25 2015**  
*10*

18 **INTRODUCTION**

19  
20 Frank C. Carson, Esq., is a member of the State Bar of California (CSB #136261) and  
21 one of fewer than 400 State Bar Certified Criminal Law Specialists of the roughly 250,000  
22 licensed attorneys in this state. He maintains an active and successful law practice at 811  
23 Fifteenth Street, Modesto, California. Moving defendant GEORGIA CARSON ("GEORGIA")  
24 is his wife and law office manager. Salient factors relevant to own-recognize release and/or  
25 setting a reasonable bail amount are set forth below.  
26  
27  
28

*AZ*  
*GN*

1 LEGAL ARGUMENTS

2 I. BEYOND THE 'LYING IN WAIT' ALLEGATION.

3 GEORGIA CARSON IS A PERFECT CANDIDATE

4 FOR AN OWN-RECOGNIZANCE RELEASE

5  
6 Despite the operative own-recognition ("OR") releases statute (§1318.1 Penal Code)  
7 and authorities (CA Criminal Trial Judges' Desk book 1980, Keene, 123, 142.41-142.43; Van  
8 Atta v. Scott (1980) 27 Cal. 3d 424, 450-451), there is no detailed procedure for the making of  
9 an OR request, and OR motions may be made at the time appropriate for a bail motion.

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

13  
14 (1.) The detainees ties to the community, including employment, the duration  
15 and location of residence, family attachments, property holdings, and any  
16 independent reasons to wanting to leave or remain in the community.

17  
18 (a.) GEORGIA CARSON was born in Modesto on November 24, 1951 to  
19 Charles and Barbara Heckendorf. She graduated from Modesto's Downey High  
20 School in 1969, and attended college at the University of the Pacific in  
21 Stockton, obtaining a Bachelors of Art Degree in English. She has resided in  
22 Stanislaus County for 62 of her 64 years, with two years in Merced County.  
23 Mrs. Carson has two adult daughters who reside in Stanislaus County; in  
24 addition to her law office employment since 1997, in her adult life she has  
25 worked as a retail clerk with the New Deal and Albertson's Markets and with  
26 the Unites States Postal Service (USPS). She was also the owner of a bookstore  
27

1 in the 1990's. If released Mrs. Carson's will return to her job as the office  
 2 manager at the Law Office of Frank C. Carson, her husband. Since 2014, she  
 3 also is a partnership with Mary Martinez in a Modesto retail store for herbal  
 4 products known as "God's Goodness". Georgia Carson had two siblings,  
 5 brother Phillip (deceased 2011 of Melanoma) and brother Charles Heckendorf  
 6 who still resides in Modesto. Mrs. Carson's first husband Alan DeFilippo,  
 7 retired several years ago from his position as a Deputy District Attorney for  
 8 Stanislaus County in Modesto. He lives by in nearby Riverbank. Mrs. Carson's  
 9 entire group of friends and family are long time Stanislaus County residents;  
 10 she has no family elsewhere.

11 (b.) GEORGIA CARSON has a community property interest in several  
 12 properties she and her husband Frank Carson own. The following list include  
 13 best estimates.

| 15 Address:                                  | County:    | Description:   | Current Value: | Equity:   |
|--|------------|----------------|----------------|-----------|
| 16 811 15 <sup>th</sup> Street, Modesto      | Stanislaus | Law Office     | \$300,000      | \$300,000 |
| 17 1026 McHenry, Modesto                     | Stanislaus | Center         | \$1,000,000    | \$700,000 |
| 18 24 Acres m/e                              | Calaveras  | Raw Land       | \$350,000      | \$350,000 |
| 19 8713 E. Monte Vista, Denair               | Stanislaus | Ranchette      | \$400,000      | \$200,000 |
| 20 914 (+12) 9 <sup>th</sup> Street, Turlock | Stanislaus | Res. + Cottage | \$250,000      | \$250,000 |
| 21   |            |                |                |           |
| 22 Total equity in properties (1/2 interest) |            |                |                | \$900,000 |

23  
 24 (c.) GEORGIA DEFILIPPO, aka CARSON, 64 years of age has never before  
 25 been arrested or cited, so she has no record of non-appearance in court.

26 (d.) GEORGIA CARSON is charged with MURDER (§ 187(A) PC; Count  
 27  
 28

1 1.) with a special allegation of 'LYING IN WAIT' per § 190.2(A) (15) PC;  
2 CONSPIRACY TO OBSTRUCT JUSTICE; (§ 182 (A) (5) PC) with her  
3 named in only one of 17 overt acts, to wit No. 2, which states she 'conspired  
4 electronically' to facilitate the false imprisonment and assault with GBI of  
5 "unidentified persons found to be trespassing at 838 9<sup>th</sup> Street in the City of  
6 Turlock.

## 7 II.

### 8 AS APPLIED IN THIS CASE, THE 'LYING IN WAIT' SPECIAL CIRCUMSTANCE 9 ALLEGATION SHOULD NOT PRECLUDE AN OWN-RECOGNIZE RELEASE 10

11 Under California Law, the special circumstance of lying in wait, as basis for death  
12 eligibility is a murder prosecution, requires that circumstances include (1) a concealment of  
13 purpose; (2) a substantial period of watching and waiting for an opportune time to act; and (3)  
14 immediately thereafter, a surprise attack on an unsuspecting victim from a position of  
15 advantage *People v. Cruz* (2008) 44 Cal. 4<sup>th</sup> 636, certiorari denied 129 S. Ct. 1531; *People v.*  
16 *Lewis* (2008) 43 Cal. 4<sup>th</sup> 415, cert. den. 129 S. Ct. 1037.

17 The subject complaint at issue herein is a fine example of over charging and, in fact  
18 fantasy as to Mrs. Carson and others. With specific reference to pretrial release in this case the  
19 prosecution, on 8-21-2015, served a Memorandum in 'Opposition to Defendants' Release on  
20 Bail' (6 pg.), supported by 12 page, single-spaced 'Declaration of Investigator Bunch' in a  
21 support opposition. In the entirety of those opposition and the criminal complaint documents,  
22 there are only four references to moving party GEORGIA CARSON, as follows:

23  
24 (1.) On p.2 of the Opposition, the District Attorney Claims Mrs. Carson was  
25 present at her home in Turlock the day decedent Korey Kauffman went  
26 missing, and when her resident was subsequently searched sometime later she  
27

1 allegedly sarcastically asked a searcher "if they'd found any bodies?" (In brief  
2 but not in the affidavit of Investigator Bunch in Support of Opposition to Bail).

3 (2.) On A-1, Investigator Bunch claims a computer entry between GEORGIA  
4 CARSON and her daughter Christina DeFilippo "indicated Frank Carson was  
5 "freaking out" about the thefts at his properties and would be there that night  
6 with a gun.

7 (3.) On February 23, 2011 GEORGIA CARSON called the Turlock Police  
8 Department to report her husband and a neighbor were arguing about "stolen  
9 property" (A-Z) and that Georgia Carson to his residence several times in the  
10 past, "making threats over thefts".

11 (4.) On June 23, 2012, several months after Kauffman's disappearance, a wire-  
12 tap intercepted a call between GEORGIA CARSON and her daughter Christina  
13 in which the daughter advised that she had broken a window in the Turlock  
14 Carson residence because the neighbor were taking care of the lawn! In  
15 response to Christina's apparent over-reaction, GEORGIA CARSON  
16 responded sarcastically "You want me to come shoot them?!" ( Investigator  
17 Bunch at A-8 opined there was no "joking type response from Christina  
18 DeFilippo". Clearly, nothing in the bail opposition is germane to 'lying in wait'  
19 or fitness for an OR release. It may be assumed that since the filing was  
20 specifically to oppose bail, these obvious omissions and short comings by the  
21 prosecution are the product of fact and reality Mrs. Carson is grossly  
22 overcharged, probably in an effort to further pressure Mr. Carson. This clear  
23 and unequivocal overcharging should not deny Mrs. Carson to be considered  
24 for a statutorily warranted OR release.

1 In all serious violent felony cases where the defendant has not failed to appear in any  
2 previous felony OR case, the court, in considering an OR release must consider (1) the  
3 existence of any outstanding felony warrants on the person [NONE] (2) any information  
4 presented in a report of county OR staff (§ 1318.1 PC) if that report is received by the time of  
5 the hearing [NONE known] and (3) any information presented by the prosecution [contained  
6 in Opposition to Bail documents previously filed and served.] § 1319 (b) PC.

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

### 15 III.

#### 16 IF AN OWN-RECOGNIZANCE RELEASE IS DENIED

#### 17 GEORGIA CARSON IS ENTITLED TO HAVE A REASONABLE BAIL SET

18 GEORGIA CARSON is entitled to have bail set in a reasonable amount under Article  
19 1, § 12 of the California Constitution and the prohibition against excessive bail contained in  
20 the Eighth Amendment to the United States Constitution. Bail may be denied in non-capital  
21 cases only under certain circumstances: cases in which the facts are evident or the  
22 presumption great can be denied bail if:

- 23 (1) The detainee inflicted “acts of violence” on another and the court finds, by  
24 clear and convincing evidence, that there is ‘a substantial likelihood’ a release  
25 would result in great bodily harm to others; or (2) the detainee is shown by  
26  
27

1 clear and convincing evidence, to have threatened great bodily harm and there  
2 is a substantial likelihood that release on bail would result in the threat being  
3 consummated, or (3) it is legitimately charged as a capital case, even if People  
4 are not seeking death. *People v. Superior Court (Kim)* (1993) 20 Cal. App. 4<sup>th</sup>  
5 936; *In re York* (1995) 9 Cal. 4<sup>th</sup> 1133, 1139-1140.

6  
7 When applying the standard of “when the facts are evident or the presumption great”,  
8 it is not necessary that the evidence would support a conviction of the accused, but it must be  
9 sufficient to point to the party seeking bail and induces the belief that he (or she) may have  
10 committed the offense charged. Clear and convincing evidence requires “a finding of high  
11 probability, based on evidence so clear as to leave no substantial doubt,” and sufficiently  
12 strong to command the unhesitating assent of every reasonable mind. *In re Nordin* (1983) 143  
13 Cal. App. 3d 538, 543. Public safety shall be the primary consideration in granting bail in this  
14 state. § 1275 (a) PC.

15 Unless the prosecution can show this court that the facts are evident or the  
16 presumption of guilt is great, GEORGIA CARSON is entitled to a reasonable bail despite the  
17 blatant overcharging ( and the ‘lying in wait’ special circumstance). *In re Bright* (1993) 13  
18 Cal. App. 4<sup>th</sup> 1664, 1672, clearly articulates the analysis for bail setting when, as here, a  
19 defendant is faced with when charged with a special circumstance homicide:

20  
21 “For the purposes of bail, the phrases “capital crime” and “offenses punishable  
22 by death” include any offense which statutorily may be punished by death. Bail  
23 may properly be denied in such a case where the facts are evident or the  
24 presumption is great...(emphasis provided).  
25  
26  
27  
28

1 As Detailed above, regardless of which evidentiary standard the prosecution is held to,  
2 it cannot escape the fact that GEORGIA CARSON is entitled to have bail set. Nothing in the  
3 326 page arrest warrant affidavit, the 12 page affidavit of Kirk Bunch in opposition to Bail,  
4 and the complaint filed herein allows the People to make sufficient showing to warrant the  
5 denial of bail. **No facts set forth as evidence, or presumptions of guilt, support bail denial**  
6 **under California law and authorities.**

7  
8 **IV.**

9 **GEORGIA CARSON'S BAIL SUM SHOULD BE FAR LESS THAN THE COUNTY**  
10 **BAIL SCHEDULE, IN AN AMOUNT WHICH ASSURES HER APPEARANCES**

11  
12 As set forth above in this memorandum, GEORGIA CARSON'S 64 year life warrants  
13 an OR release. If that request is denied, this court should ignore the local bail schedule  
14 (designed for jailer's to set bail upon arrest, prior to court appearance) and assess Mrs. Carson  
15 individually for an appropriate bail sum.

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

21  
22 Penal Code §1275 sets forth the factors the court must consider in setting bail:

- 23 1. The protection of the public;  
24 2. The seriousness of the offense(s) charged;  
25 3. The previous criminal record of defendant; and  
26 4. The probability of his or her appearance at trial or hearing of the case. (§ 1275 PC).



1 In numerous cases the California Supreme Court has declared to be unreliable and frequently  
2 erroneous expert predictions that persons will engage in future violent conduct (see above).  
3 *People v. Burnick* (1975) 14 Cal. 3d 306, 326-327; *People v. Murtishaw* (1981) 29 Cal 3d  
4 733, 767-775. The court has the inherent power to impose bail conditions; it follows that the  
5 conditions may be designed to ensure public safety. *In re McSherry* (2003) 112 Cal App. 4<sup>th</sup>  
6 856, 861-863.

7 Moving defendant GEORGIA CARSON advises the court she has a passport  
8 and will surrender it to the court whenever requested. Furthermore, Mrs. CARSON advises if  
9 granted and released on bail she would consent to wear a GPS ankle monitor, would adhere to  
10 court imposed curfews, travel restrictions, stay-away orders and check-in directives.

11  
12 CONCLUSION  
13

14 Giving due consideration to Mrs. CARSON'S lawful history, her lifetime in Stanislaus  
15 County, the over-charged complaint, the exaggerated affidavits for arrest, search and in  
16 opposition to bail, the 3 ½ years she and her husband were aware of this investigation prior to  
17 their arrests and the extreme paucity of any competent evidence against her, counsel for Mrs.  
18 CARSON requests she be granted a non-monetary OR release herein, or alternatively, that bail  
19 be set for Mrs. CARSON in the sum of \$100,000.

20  
21 Dated: August 24, 2015

Respectfully submitted,

22  
23 

24 Tim A. Port, Esq.  
25 Attorney for GEORGIA CARSON  
26  
27  
28

**PROOF OF SERVICE**

I declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of Stanislaus. I am over the age of eighteen years and not a party to the within action. My business address is as follows: 811 15<sup>th</sup> Street, Modesto, CA 95354.

On the date set forth below, I caused the attached **REPLY BRIEF TO PROSECUTION'S OPPOSITION TO DEFENDANT'S RELEASE ON BAIL** to be served on the parties to this action as follows:

BY MAIL-

I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Modesto, California, addressed to the parties as set forth on the attached service list. C.C.P. §§1013 (a), 2015.5.

BY FEDERAL EXPRESS

I retained Federal Express to personally serve a true copy thereof on \_\_\_\_\_ on the parties as set forth on the attached service list. C.C.P. §§1013 (c), 2015.5.

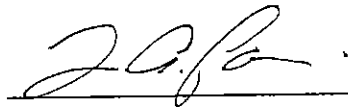
BY FACSIMILE TRANSMISSION-

I am readily familiar with this law firm's business practices for collection and processing of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile number (s) as set forth on the attached service list. C.C.P. §§1013 (e), 2015.5 and C.R.C. §2008.

BY PERSONAL SERVICE- to the Stanislaus County District Attorney

I personally served a true copy thereof on the parties as set forth on the attached service list to 832 12<sup>th</sup> Street, Modesto, CA. C.C.P. §§1011, 2015.5.

Executed on August 25, 2015 at Modesto, California.

  
\_\_\_\_\_

1 Re: **People of the State of California v. Georgia Carson, aka Georgia DeFilippo**

2 STANISLAUS County Superior Court Case No.: 1490969

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**SERVICE LIST**

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6

7 Stanislaus County District Attorney

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