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COUNTY OF STANISLAUS

Ana Valencia

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

FRANK CLIFFORD CARSON
BALJIT ATWAL, DALJIT ATWAL, WALTER
WESTLEY WELLS, GEORGIA DEFILIPPO
EDUARDO QUINTARA, SCOTT MCFARLANE
AND CHRISTINA DEFILIPPO.

Defendants.

CASE NO.: 1490969

SUPPLEMENT TO PEOPLE'S
ARGUMENT TO CONTINUE THE
PRELIMINARY HEARING AND
MAINTAIN JOINDER

Date: September 21, 2015
Time: 8:30 a.m.
Dept. 8 (26)

The Honorable Barbara Zufiga

Comes now the People of the State of California, by and through their attorney, BIRGIT FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy District Attorney, and respectfully submits the following points and authorities in support of its argument to continue the Preliminary Hearing and maintain joinder of the defendants.

STATEMENT OF FACTS

On September 14, 2015, defendants Carson, B. Atwal, D. Atwal, Wells, G. DeFilippo, Quintara, McFarlane and C. DeFilippo appeared before the court for Arraignment. Defendants Christina DeFilippo and Scott McFarlane entered pleas of not guilty and did not waive time to proceed to Preliminary Hearing. The remaining defendants agreed to waive time.

1 **LAW AND ARGUMENT**

2 **I. THE COURT MAY FIND GOOD CAUSE TO CONTINUE THE PROCEEDINGS**

3 Cal. Penal Code section 1050.1 provides,

4 In any case in which two or more defendants are jointly charged in the same
5 complaint, indictment, or information, and the court or magistrate, for good cause
6 shown, continues the arraignment, preliminary hearing, or trial of one or more
7 defendants, the continuance shall, upon motion of the prosecuting attorney,
8 constitute good cause to continue the remaining defendants' cases so as to maintain
9 joinder.

10 “[T]here is a statutory preference for joint trials of jointly charged defendants (§ 1098),
11 and “past decisions of this court make it clear that the substantial state interests served by a joint
12 trial properly may support a finding of good cause to continue a codefendant's trial...” (*People v.*
13 *Williams* (2013) 58 Cal.4th 197, 249 cert. denied sub nom. *Williams v. California* (2014) 134
14 S.Ct. 2673 citing *People v. Sutton* (2010) 48 Cal.4th 533, 560 see § 1050.1).

15 In *People v. Sutton* (2010) 48 Cal.4th 533, 559, as modified (May 20, 2010), the California
16 Supreme Court remarked, “More than 40 years ago, in *People v. Teale* (1965) 63 Cal.2d 178, this
17 court rejected a contention that the trial court had violated the defendant's statutory speedy-trial
18 rights under section 1382 in continuing one defendant's trial date beyond the statutory period in
19 order to permit a single joint trial with a codefendant whose trial date properly had been
20 continued.” The Court further noted, “past decisions of this court make it clear that the substantial
21 state interests served by a joint trial properly may support a finding of good cause to continue a
22 codefendant's trial beyond the presumptive statutory period set forth in section 1382. (See *People*
23 *v. Teale*, supra, 63 Cal.2d 178; *People v. Clark*, supra [(1965)] 62 Cal.2d 870.) And numerous
24 Court of Appeal decisions properly have applied this general principle. (See, e.g., *Ferenz v.*
25 *Superior Court*, supra, [1942] 53 Cal.App.2d 639, 641–643; *People v. McFarland*, supra,
26 [(1962)] 209 Cal.App.2d 772, 776–778; *Hollis v. Superior Court*, supra, [1985] 165 Cal.App.3d
27 642, 646–647; *Greenberger v. Superior Court*, supra, [1990] 219 Cal.App.3d 487, 496–501; 219
28 Cal.App.3d at pp. 508–511 (conc. & dis. opn. of Johnson, J.).” *Ibid.*

29 The Court in *Sutton* also mentioned, “[A] lengthy continuance of an objecting
30 codefendant's trial to facilitate a joint trial is permissible only in instances in which the state

1 interest in avoiding multiple trials is especially compelling—as when the trials are likely to be
2 long and complex and impose considerable burdens on numerous witnesses (see, e.g.,
3 *Greenberger v. Superior Court* (1990) 219 Cal.App.3d 487, 501–506, 267 Cal.Rptr. 849
4 [upholding six-month continuance of a complex murder trial involving numerous witnesses,
5 where trial court found counsel for codefendants needed substantial time to prepare adequately
6 for trial]...)”(*Id.* at 560.) In *Greenberger*, the Court found good cause to continue the trial where
7 defendant would not waive time and codefendants needed additional time to prepare for trial. *Id.*

8 Here as in *Greenberger*, this is a very complex murder case involving multiple defendants
9 and numerous witnesses and as in *Greenberger*, co-defendants are not prepared to proceed. As
10 noted in *Teale, Williams, Sutton* and countless other decisions, there is sufficient good cause to
11 support the Court in permitting a continuance.

12 13 II. PENAL CODE SECTION 954 SUPPORTS JOINDER

14 Cal. Pen. Code § 954 provides specifically that an “accusatory pleading may charge two
15 or more different offenses connected together in their commission, of different statements of the
16 same offense or two or more offenses of the same class of crimes or offenses, under separate
17 counts, and if two or more accusatory pleadings are filed in the such cases in the same court, the
18 court may order them to be consolidated.” Offenses of the “same class” within the meaning of
19 §954 PC possess common characteristics or attributes. (*People v. Kemp* (1961) 55 Cal.2d 458,
20 476; *People v. Ross* (1960) 178 Cal.App.2d 801, 805; *Aydelott v. Superior Court* (1970) 7
21 Cal.App.3d 718.) And, joinder of two or more offenses is required if the offenses are related, i.e.
22 where the same act or course of conduct plays a significant part in each [offense.] (*Kellet v.*
23 *Superior Court* (1966) 63 Cal.2d 822, 827.)

24 Similarly, the U.S. Supreme Court held that “[j]oint trials play a vital role in the criminal
25 justice system[;] it would impair both the efficiency and the fairness of the criminal justice system
26 to require...that prosecutors bring separate proceedings, presenting the same evidence again and
27 again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma)
28 of testifying” (*Richardson v. Marsh* (1987) 481 U.S. 200, 209-210.)

1 In arriving at its decision in *Greenberger*, the Court of Appeal in the Second District, also
2 noted several cases supporting joint trials and further stated, "As these cases demonstrate, the
3 preference for joint trials encompasses varied and significant interests. So significant, in fact, that
4 they may serve as counterweights to a defendant's right to confront witnesses (*Richardson v.*
5 *Marsh*), his privilege against self-incrimination, (*People v. Kelly*), his right to exclude prejudicial
6 character evidence, (*People v. Keenan*), and others (*People v. Turner, People v. Lara, and People*
7 *v. Harris*). (*Greenberger, supra.* 219 Cal.App.3d at p. 499.)

8 A preliminary hearing in this case will already encompass multiple witnesses, enhanced
9 security concerns and a great deal of counsel's time. Similar to *Richardson*, requiring counsel and
10 the court to conduct multiple preliminary hearings in the instant case would be judicially
11 inefficient and would result in a great consumption of the court's already limited resources.

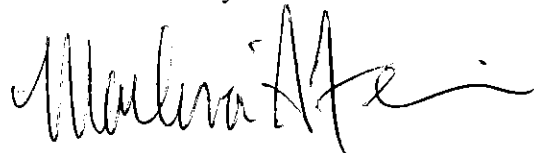
12
13 **CONCLUSION**

14 The People respectfully request the Court continue maintain joinder and continue the
15 defendants' Preliminary hearing.

16 Dated this 15th day of September 2015, at Modesto, California.

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18 Respectfully submitted,

19 BIRGIT FLADAGER
20 District Attorney

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22 Marlisa A. Ferreira
23 Chief Deputy District Attorney

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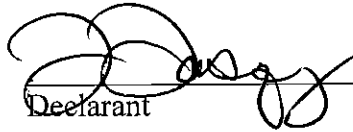
I, the undersigned, declare as follows:

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 Supplement to the People's Argument to Continue the Preliminary Hearing and Maintain Joinder on September 15, 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 roth@Roth-LEgal.com, Stephanie Mitchell at stephanie.mitchell@stanct.org and Bruce Perry at brucerperry@msn.com

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

Executed this 15th day of September 2015, at Modesto, California.


Declarant

Case No. 1490969
People v. Carson et al.
Hearing: 9/21/2015
Dept. 8