

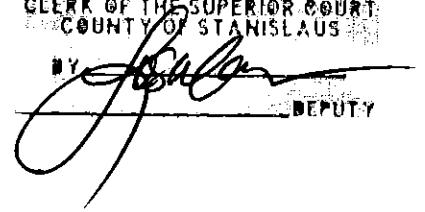
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

FILED

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY



DEPUTY

PEOPLE OF THE STATE OF
CALIFORNIA,

v.

FRANK CARSON, BALJIT
ATHWLA & DALJIT ATWAL

CASE NO. 149069
Dept. 26

RULING ON PENAL CODE
SECTION 995 MOTION

The defendants have filed a motion to dismiss the lying in wait special circumstance allegation. (Pen. Code §190.2 subd. (a) (15).) Additionally defendant Carson moves to dismiss count four alleging perjury. (Pen. Code §118 subd. (a).) The court will grant the motion with regard to the special circumstance allegation, but deny the motion with regard to the perjury.

The Special Circumstance Allegation

By the language of Penal Code section 190.2 the special circumstance applies where “The defendant intentionally killed the victim by means of lying in wait.” For the intentional killing to be by means of lying in wait it must be “committed under circumstances which include (1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) ... a surprise attack on an unsuspecting victim from a position of advantage...[Citation.]” (*People v. Johnson* (2016) 62 Cal.4th 600, 629.) In the present case the evidence at the preliminary hearing is insufficient to support a strong suspicion that the alleged homicide occurred by means of

lying in wait. Furthermore, the evidence does not support a strong suspicion that the person who purportedly lay in wait had an intention to kill.

While the record is lengthy, the evidence surrounding the actual homicide is scant, even read it in the light most favorable to sustaining the information. For some time defendant Carson had had problems with thefts by trespassers on a property in Turlock California he owned, but at which he did not reside. The two brothers, defendants Daljit Atwal and Baljit Athwal, operated a local liquor store in Turlock. The homicide victim, Korey Kauffman, was possibly one of the trespassers. In an effort to stop the thefts, defendant Baljit Athwal, on the night of the homicide, left the liquor store and went to "spot check" the Carson property. At the property he became involved in a fist fight with the homicide victim. Fifteen or twenty minutes after Baljit Athwal left for the property his brother Daljit Atwal and testifying accomplice Robert Woody, an employee of the liquor store, followed him there. When they arrived they found Baljit and Kauffman fighting. Daljit Atwal joined in the fight and during the course of the struggle shot Kauffman.

The record presents no evidence of how the fight started, and most importantly it presents no evidence of whether Daljit Athwal watched and waited for an opportune time to attack or whether he launched a surprise attack on the victim from a position of advantage. There is evidence that the defendants, or some of them, may have placed easy to steal goods out on the property with the intention a luring in and catching a trespasser. However, the use of this tactic would not resolve the essential problem that the evidence does not show anything about Baljit Athwal's actual conduct at the scene.

At the preliminary hearing the magistrate dismissed the special circumstance allegation, focusing on the absence of intent to kill. Of particular importance for the magistrate's ruling was the lack of any evidence Baljit Athwal was armed. The more encompassing problem is that there is just no evidence from which the inference can be drawn that Baljit Athwal had the intent to kill when he was on the property.

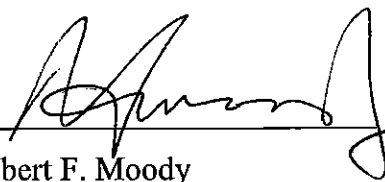
Perjury

The court expressed itself at length during argument on the 995 motion regarding the perjury allegation that defendant Carson failed to report property owned by his wife when he filed the statutorily mandated financial disclosure during his unsuccessful campaign for district attorney. Defendant Carson argues that this omission was not material and therefore not perjury. The standard for materiality in this context is whether a reasonable person would have considered the information important in evaluating the defendant's candidacy. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 406-7.) Suffice it to say here that there is no reason to conclude that the magistrate was incorrect in finding probable cause to believe the omission was material.

Ruling

The motion to dismiss the special circumstances allegation is granted. The motion to dismiss count four alleging perjury is denied.

6-9-2017
Date


Robert F. Moody
Judge of the Superior Court

Lawrence T. Niermeyer, Esq.
LAW OFFICES OF MOORAD, CLARK & STEWART
1420 F Street
Modesto, CA 95354

Alonzo J. Gradford, Esq.
LAW OFFICE OF ALONZO J. GRADFORD
1202 H Street, Suite C
Modesto, CA 95354

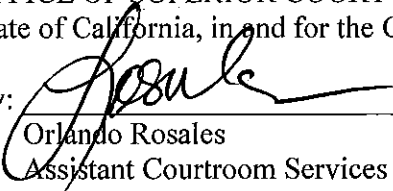
Said envelope was then sealed and postage thereon fully prepaid, and thereafter was on June 16, 2017 deposited in the United States mail at Modesto, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

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

Executed on June 16, 2017 at Modesto, California

OFFICE OF SUPERIOR COURT ADMINISTRATOR
State of California, in and for the County of Stanislaus

By: _____



Orlando Rosales
Assistant Courtroom Services Manager