

Mistatements of Fact in D.A.'s motion to oppose bail reduction:

1. alleges as fact that I threatened officers (see page one, lines 26-27) "defendant then began making threats of violence against the two fish and wildlife officers... he mentioned those two officers by name." See also page 2 lines 1-2. "def. went on to threaten three Deputy Sheriffs by name, stating that he would have his day of Reckoning" However, "threats" to fish and wildlife officers, while alleged by Dep. A.G. Feser, have never been specifically defined or recorded, are categorically denied by this defendant and there is no record anywhere that alleged "threats of violence" were of death or grave bodily injury as required by statute. Furthermore, in transcript of conversation with A.G. Feser, the deputies are mentioned on page one, paragraph five and a "reckoning" is not mentioned until 6 paragraphs later on page two, paragraph four. Merriam-Websters Dictionary defines RECKONING as 1. an act or instance of reckoning 2. a settling of accounts. Webster's defines reckon as ^(to) Count, calculate, ^(or) complete. Nowhere in Webster's definitions are any references to violence. As the District Attorney is considered an expert at law and statute, she has no excuse for using language in an official pleading that is so inexact as to have the effect of misleading this court and creating a judicial gloss so as to relieve herself of her obligation under the law to "establish facts that tend to prove every element required to prove the crime was committed."

"under California law, a prosecutor commits reversible misconduct if he or she makes use of deceptive or reprehensible methods when attempting to persuade either the trial court or the jury, and it is reasonably probable that without such misconduct, an outcome more favorable to the defendant would have resulted." - People Vs. Dykes, 46 Cal. 4th 731, 95 Cal. Rptr. 3d 78, 209 P.3d 1 (2009)

2. The district attorney, on page two of her opposition to bail reduction, on lines 2-5 states that this defendant told Dep. A.G. Feser that Mr. Feser "had one hour to call the cops and have them come arrest (this defendant) or Feser would be a target." However, Mr. Feser never said that at any time nor is it included in any of the police reports or Mr. Feser's statement to police.

"Prosecutorial misconduct may include, without limitation, mischaracterizing or mis-stating the evidence, referring to "facts" not in evidence or..." - People vs. Shazier, 212 Cal. App. 4th 520, 2012 WL 6734681 (6th Dist. 2012) Furthermore, "Conduct that falls short of the federal Due Process standard for prosecutorial misconduct may still constitute misconduct under state law if it involves the use of deceptive or reprehensible methods to persuade the trial court or the jury" - 14th Amendment to U.S. Const., California Const. and People vs. Foster, 50 Cal 4th 1301, 117 Cal. Rptr. 3d 658, 242 P. 3d 105 (2010) See also: People vs. Martinez, 47 Cal. 4th 911, 105 Cal. Rptr. 3d 131, 224 P 3d 877 (2010)

3. The district attorney, on page two of her opposition to defenses motion to reduce bail, lines 2-4 states that this defendant made remarks about "making Columbine look like a tea party" and that I would "kill a cop and go to jail laughing about it". Neither of these alleged statements are evidence of any individualised, criminal threats and are instead, a deliberate attempt to shock the conscience or appeal to passions or prejudice.

"Prosecutorial misconduct may include appealing to passions or prejudice" - People vs. Shazier (cite above). Furthermore, a prosecuting attorney is the "representative not of an ordinary party to a controversy, but of a Sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interests, therefore, in a criminal prosecution is not that it shall win a case, but that Justice shall be done. He may

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prosecute with earnestness and vigor - indeed, he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one - *Berger Vs. U.S.*, 295 U.S. 78, 55 S. Ct. 629, 633, 79 L. Ed. 1314, 1321 (1935)

"Bad faith is not a prerequisite to prosecutorial misconduct during argument (see *people Vs. Botton*, 23 Cal. 3d 208, 213, 152 Cal. Rptr 141, 589 P. 2d 396 (1979)) "the injury to the defendant is nonetheless an injury when committed inadvertently rather than intentionally. The term prosecutorial "misconduct" is somewhat of a misnomer to the extent that it suggests that a prosecutor must act with a culpable state of mind. A more apt description of the transgression is prosecutorial error. - See *people Vs. Hill*, 17 Cal. 4th 800, 822, 72 Cal. Rptr. 2d 656, 952 P. 2d 673 (1998).

3. District Attorney, on page two of her opposition to defense motion to reduce Bail goes on to say (on line 13) that this defendant was out on bail in two previous cases at the time of alleged Domestic Violence incident of August 22nd, 2015. This is patently false. This defendant was never arrested, and never posted bail in those cases. This assertion is not supported anywhere in court documents and is further evidence of prosecutorial error.

District Attorney, on page two, line 21, refers to irrelevant and prejudicial alleged comments that I referred to alleged Domestic Victim as "that Bitch" This is clearly, further evidence that the D.A. is appealing to passions or prejudice and is prosecutorial error. District Attorney, on page two, line 25 misleadingly references a statement I have made in the past, that it was, in fact, the alleged victim in the Domestic incident who was actually the aggressor, as if this were inculpatory as opposed to exculpatory evidence, is a mis-characterization of the evidence and is further evidence of prosecutorial error.

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Prosecutor, on page 3 of her opposition makes several more mis-statements or mis-characterizations of facts, stating on line 12 that "multiple eye-witnesses stopped to speak with the officer" (actually, it was three people but CHP. officer Heuer only memorializes the comments of one witness, there by making irrelevant the comments of the other two drivers because the defense has a right to confront the testimony of witnesses but cannot because the officer never reported those witnesses actual statements). Prosecutor, on page 3 line 16 says I was arrested and charged with Child endanger (actually I was never arrested for this alleged offense and was not even cited until many months later, by mail). Prosecutor, on page 3, lines 17-20 again mischaracterises as inculpatory the obviously exculpatory written statements of both myself and one of my passengers that officer Heuer deliberately lied on the stand at my preliminary to "bolster his case".

at: line 23, prosecutor states that I "allege" that officer Heuer chastised me for my alleged driving behavior ^{before he even spoke to witnesses} but this is a fact that is indisputable and is documented in Heuers own report. Prosecutor, on page 4, line 3 states that alleged domestic victim Cheri Dubuque disclosed to her parole agent that she was "suffering abuse at the hands of the defendant". Upon examination of all police reports and witness statements I could not find one reference to any such statement being made to her agent. Once again, the prosecutor deliberately refers to alleged "facts" that are not in evidence, which is direct evidence of prosecutorial misconduct. On page 5, lines 2-4, prosecutor again presents exculpatory evidence as if it were somehow inculpatory, admitting that I have alleged an entrapment defence to charges in #14F4854 that has been attested to in interviews of witness Cheri Dubuque in interview with Dep. Dist. Attorney Craig Omura. at line 7-8, Prosecutor claims I was "seen" littering by using a back-hoe to dam up a stream, and used a car battery and used motor-oil container to build the alleged Dam. In fact, these assertions (made by an anonymous,

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disgruntled trespasser) were later found to be completely false by fish and wildlife officers (Please see report in #13M4757). Prosecutor deliberately and dishonestly goes on to make even more bold misrepresentations of fact, such as stating that I have had my bail amount reviewed regularly in department one and Judge Flynn chose to leave my bail as it was. The truth is that I have not been allowed one single bail hearing since bail was set in 2015. Nor has Judge Flynn made any statements reflecting that he had made any review of bail other than in response to my Habeas Corpus motion where Judge Flynn stated that he would hear a motion for a change in bail if my attorney requested it. Prosecutor mischaracterises my having to be removed from Court for vociferously defending myself as "Combative" or "aggressive" behavior. From all of these deliberately disingenuous mis-statements, mis-characterizations and outright lies, it is abundantly clear that this prosecutor is more than willing to utilise deceptive tactics to purposely mislead this Court.

"a prosecutor who uses deceptive or reprehensible methods to persuade the trial Court commits misconduct even when those actions do not result in a fundamentally unfair trial" - People Vs. Katzenberger, 2009 WL 3539833 (Cal. App. 3rd Dist. 2009) "a prosecutor must refrain from making inflammatory statements" - People Vs. Vienne, 142 Cal. App. 2d 172, 297 P.2d 1027 (3rd Dist. 1956) "prosecutors are held to higher standards than that imposed on other attorneys" - People Vs. Hill, 17 Cal. 4th 800, 72 Cal. Rptr. 2d 656, 952 P.2d 673 (1998) "with regard to prosecutorial misconduct, the ultimate question to be decided is whether it is reasonably probable that a result more favorable to the defendant would have occurred, had the prosecutor refrained from the conduct" and "the sheer number of instances of prosecutorial misconduct and other legal errors raised the strong possibility that the aggregate, prejudicial effect of those errors was greater than the sum of the prejudice of each error standing alone" - People Vs. Hill (See cite above).

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By my Court, in this District Attorneys one single opposition document before this Court, there are at least, eighteen instances of misrepresentation, exaggeration, mis-statements, references to alleged facts not in evidence, or obvious and bald attempts to prejudice this defendant before the Court and unfairly manipulate the outcome of these proceedings. If this defendant cannot get a simple, fair bail reduction hearing without this prosecutor resorting to these kinds of deceptive and underhanded tactics, then one can only speculate how completely unconstitutional and skewed must be the entire case against this defendant. Therefore, this defendant does respectfully move this Court to use its own discretion under penal Code §1385 to dismiss, with prejudice all charges against this defendant.

Signed under penalty of perjury,
Robert A. Gibbs

this 6th Day of June, 2018