

FILED

MAY 25 2018

CLERK OF THE SUPERIOR COURT
BY: K. HAMBLY, DEPUTY CLERK

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5 Attorney for Mr. Gibbs

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SHASTA**

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 Plaintiff,

12 vs.

13 ROBERT ALAN GIBBS,

14 Defendant.

Case: 15F5736

**NOTICE OF MOTION AND POINTS &
AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE CHARGES IN
THE INFORMATION PURSUANT TO
PENAL CODE § 995.**

Date: June 11, 2018

Time: 9:30 a.m.

Dept.: 2

15 **TO THE CLERK OF THE ABOVE ENTITLED COURT AND THE DISTRICT ATTORNEY**
16 **OF SHASTA COUNTY:**

17 Please take notice that on the date and time set forth above, or as soon thereafter as the matter
18 may be heard in the above entitled court, Robert A. Gibbs will move for an order setting aside Counts
19 One, Two, and Three of the Information in 15F5736. This motion is based on this notice, the points and
20 authorities filed herein, the record of the preliminary hearing, and any other evidence adduced at the
21 hearing.

22 Dated: May 25, 2018

Respectfully submitted,

23
24 

25 Theodore P. Somers

26 **RECEIVED**

MAY 25 2018

SHASTA COUNTY
DISTRICT ATTORNEY

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE AND RELEVANT FACTS

3 Charged in 15F5736 with felony violations of Pen. Code § 422 in Counts One through Five, Mr.
4 Gibbs proceeded to preliminary hearing before the Honorable Judge Daniel E. Flynn on September 1,
5 2016. The prosecution called one witness, Detective Kyle Wallace, from the Shasta County Sheriff's
6 Office (hereinafter "SCSO"). At the conclusion of the preliminary hearing, Mr. Gibbs was held to
7 answer as charged, and the Complaint was deemed to be the Information.
8

9 During Detective Wallace's testimony, a recording of a phone conversation between Mr. Gibbs
10 and Deputy Attorney General ("DAG") John Feser was played into evidence. (Reporter's Transcription
11 of the Proceedings, hereinafter "R.T.," page 10.) The disc containing the audio of the phone call was
12 marked as Exhibit 1 and admitted. (R.T. page 10: lines 11-12.) While the parties agreed that the audio
13 of the phone call would not be reported by the court reporter, a transcription of the call was admitted as
14 Exhibit 1A. (R.T. 11: 9-19.)

15 In advance of his testimony at the preliminary hearing, Detective Wallace interviewed DAG
16 Feser. (R.T 7: 20-26.) Also prior to testifying, Detective Wallace interviewed the alleged victims: as to
17 Count One, SCSO Sergeant Brian Jackson (R.T. 14: at line 32); as to Count Two, SCSO Detective Chris
18 Edwards (R.T. 12: at line 13); as to Count Three, SCSO Sergeant Jose Gonzalez (R.T. 13: at line 33.); as
19 to Count Four, Game Warden Brian Boyd (R.T. 18: at line 3); and as to Count Five, Game Warden
20 Dwayne Little (R.T. 17: at line 1).
21

22 Detective Wallace testified that DAG Feser was familiar with Mr. Gibbs due to a civil suit
23 initiated by Mr. Gibbs, which named Wardens Boyd and Little as defendants; DAG Feser was
24 representing Boyd and Little in that litigation. (R.T. 7: 27-35; 8: 1-17.) During the phone call with Mr.
25 Gibbs that forms the basis of the instant criminal case, DAG Feser explained to Mr. Gibbs that his office
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1 would be unwilling to settle the civil suit, and Mr. Gibbs became upset and began ranting; in an
2 unrecorded portion of the phone call, DAG Feser said that Mr. Gibbs made specific threats to kill
3 Wardens Boyd and Little. (R.T. 8: 18-34; R.T. 20: 24-32.) DAG Feser explained to Deputy Wallace
4 that he began to record Mr. Gibbs because of the threats to kill Wardens Boyd and Little. (R.T. 8: 29-
5 35; 9: 2-12.) DAG Feser, after his phone call with Mr. Gibbs concluded, called Wardens Boyd and
6 Little; DAG Feser also called counsel for the SCSO officers listed as victims in Counts One, Two, and
7 Three, who together comprised the balance of the named defendants in Mr. Gibbs' civil suit. (R.T. 11:
8 28-33.)
9

10 While DAG Feser described a specific threat to kill Wardens Boyd and Little, Deputy Wallace's
11 testimony does not reflect that DAG Feser recounted any specific threat made by Mr. Gibbs to any
12 SCSO officer prior to the recorded portion of his conversation with Mr. Gibbs. Likewise, during the
13 recorded and transcribed portion of the phone call, Mr. Gibbs makes no specific threat to any SCSO
14 personnel. Only a question from Senior Deputy District Attorney Ben Hanna, who handled the
15 preliminary hearing for the prosecution, suggests that there was any specific reference to the listed
16 victims in Counts One, Two, and Three. (R.T. 12: 5-12.) A threat articulated by Mr. Gibbs to kill or
17 cause great bodily injury to Sergeant Jackson, Detective Edwards, or Sergeant Ramirez, is therefore not
18 contained within the record of the preliminary hearing.
19

20 LAW AND ARGUMENT

21 "[T]he preliminary examination is not merely a pretrial hearing." (*Jones v. Superior Court*
22 (1971) 4 Cal.3d 660, 668.) "[I]t is a proceeding designed to weed out groundless or unsupported
23 charges of grave offenses." (*Ibid.*) The defendant is prejudiced by prosecutorial overreaching because
24 of the "burden of standing trial on the greater charge, the tactical advantage conferred upon the
25 prosecutor in respect to plea bargaining . . . and the various collateral effects of the more serious
26

1 accusation itself.” (*People v. Superior Court (Mendella)* (1983) 33 Cal.3d 754, 760.) Where the
2 evidence at the preliminary hearing fails to establish sufficient cause for a holding order, that charge
3 must be dismissed pursuant to Penal Code section 995. (*Ibid.*)

4 **I. PENAL CODE SECTION 422 REQUIRES THAT A THREAT TO KILL OR CAUSE**
5 **GREAT BODILY INJURY BE MADE TO A SPECIFIC VICTIM; GENERALIZED**
6 **THREATS OF VIOLENCE DO NOT SUFFICE.**

7 The plain language of subdivision (a) of Pen. Code § 422 makes clear that the offense is
8 committed against an identifiable victim. Thrice does the statute underscore as much: “any person who
9 threatens to commit a crime which will result in death or great bodily injury to *another person*” . . . “is
10 so specific, unconditional, immediate, and specific as to convey *to the person* threatened” . . . “and
11 thereby causes *that person* reasonably to be in sustained fear . . .” (Pen. Code § 422.) The elements of
12 the violation, as listed in CALCRIM 1300, are consistent in requiring the naming of a specific victim of
13 the offense. Because the record at the preliminary hearing does not include any evidence that Mr. Gibbs
14 made a specific threat to the SCSO personnel listed in Counts One, Two, and Three, those charges must
15 now be dismissed.

16 **CONCLUSION**

17 For the forgoing reason, Mr. Gibbs respectfully requests that this Court dismiss Counts One,
18 Two, and Three of the Information.

19 Dated: May 25, 2018

Respectfully Submitted,

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22 Theodore P. Somers

1 **PROOF OF SERVICE**

2 **PEOPLE v. ROBERT ALAN GIBBS**

3 **SHASTA COUNTY SUPERIOR COURT DOCKET # 15F5736**

4 I am, and was at the time of service hereinafter mentioned, over the age of 18 years and not a party to the
5 above-entitled cause. My home business address is 1714 West Street, Suite C, Redding, CA 96001.

6 On May 25, 2018, I personally, or by mail,¹ served the document(s) identified as:

7 **NOTICE OF MOTION AND POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET**
8 **ASIDE CHARGES IN THE INFORMATION PURSUANT TO PENAL CODE § 995**

9 on the interested party(ies) set forth below:

10 Shasta County District Attorney

11 1355 West Street Redding 96001-
Address City California Zip Code

12 County Probation Department

13 Address City California Zip Code

14

15 Address City California Zip Code

16

17 Address City California Zip Code

18 I declare that the foregoing is true and correct under penalty of perjury under the laws of the State of
19 California. Executed on May 25, 2018, in Redding, CA.

20 

21 Signature of Declarant

Theodore P. Somers
Print Name of Declarant

22
23
24
25
26 ¹ I personally placed the document(s) described hereinabove in a sealed envelope, postage pre-paid, and placed the sealed envelope in a legal United States Postal Service receptacle.