

10/15/09 H. Behar

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FILED
SUPERIOR COURT-STOCKTON
2009 OCT 15 PM 4:19
ROSA JUNQUEIRO, CLERK
BY STROOKS
DEPUTY

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12 Attorneys for Defendant MELISSA HUCKABY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN JOAQUIN

15 PEOPLE OF THE STATE OF CALIFORNIA,

No. SF112495A

16 Plaintiff,

DEFENDANT'S 995 AND
COMMON LAW MOTION
TO DISMISS

17 vs.

Date: Motion Setting 10/30/09
Time: 8:30 a.m.
Department: 14

18 MELISSA HUCKABY,

19 Defendant.

20 **NOTICE OF MOTION AND MOTION TO DISMISS INDICTMENT
21 PURSUANT TO PENAL CODE SECTION 995, OR IN THE
22 ALTERNATIVE, COMMON LAW MOTION TO DISMISS INDICTMENT**

23 TO THE DISTRICT ATTORNEY OF THE COUNTY OF SAN JOAQUIN, AND TO THE
24 ABOVE-ENTITLED COURT:

25 PLEASE TAKE NOTICE that on the 30th day of October 2009 at 8:30 a.m., or as soon
26 thereafter as the matter may be heard in Department 114 of the above-entitled court, defendant
27 MELISSA HUCKABY, through counsel, will request a date for hearing on defendant's motion,
28 pursuant to Penal Code section 995, or in the alternative, pursuant to common law, dismissing
the grand jury indictment against defendant on the grounds that:

(1) the prosecutor conducted the grand jury proceedings without regard to certain
statutory and common law principles governing indictment grand juries, thereby violating Penal

1 Code section 995(a)(1)(A), as well as defendant's state and federal constitutional rights to due
2 process of law; and

3 (2) the prosecution failed to present sufficient competent evidence on the charges, and the
4 special circumstance allegation, and thus secured the indictment against the defendant on those
5 charges without reasonable or probable cause in violation of Penal Code Section 995(a)(1)(B) .

6 PLEASE TAKE FURTHER NOTICE that in order to preserve their right to pretrial
7 appellate review pursuant to Penal Code Section 1510, defendants hereby move the court for an
8 order setting aside the information in the above-entitled action pursuant to Penal Code Section
9 995 on the specific grounds stated in the attached Topical Index.

10 This motion is based upon this Notice, the attached Declaration of Counsel, the files and
11 records of this case, the Statement of Facts and the Memorandum of Points and Authorities to be
12 timely filed prior to the hearing of this motion, and any additional evidence, authorities, and
13 argument to be presented at the hearing.

14 DATED: October 15, 2009

15 Respectfully submitted,

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Samuel Behar
Deputy Public Defender

20 Attorney for Defendant MELISSA HUCKABY
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TOPICAL INDEX

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STATEMENT OF THE CASE 1

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 I. THE ADMISSIBLE EVIDENCE PRESENTED TO THE GRAND JURY DOES NOT
 ESTABLISH REASONABLE OR PROBABLE CAUSE FOR THE INDICTMENT
 AGAINST MELISSA HUCKABY

 A. Introduction

 B. The Evidence Presented To The Grand Jury Is Not Sufficient To Sustain
 The Reasonable Or Probable Cause Finding That Melissa Huckaby
 Violated Penal Code Sections 207, 209, 288, or 289, Or That The Special
 Circumstances Grounded On These Charges Was Warranted

 C. The Evidence Presented To The Grand Jury Is Not Sufficient To Sustain
 The Reasonable Or Probable Cause Finding the Homicide Was Willful,
 Deliberate and Premeditated

 D. The Evidence Presented To The Grand Jury Is Not Sufficient To Sustain
 The Reasonable Or Probable Cause Finding That Melissa Huckaby
 Violated Penal Code Sections 288.7, 273a, or 347 (a)(1)

 II. THE MANNER IN WHICH THE GRAND JURY PROCEEDINGS WERE
 CONDUCTED RAN AFOUL OF MELISSA HUCKABY'S DUE PROCESS RIGHTS
 UNDER THE RELEVANT STATUTORY AND COMMON LAW PRINCIPLES
 GOVERNING INDICTMENT GRAND JURIES

 A. Introduction

 B. The Prosecutor Violated Penal Code Section 939.7 And *Johnson v.*
 Superior Court (1975)15 Cal.3d 248 In Failing To Inform The Grand Jury
 Of Evidence Favorable To Melissa Huckaby

 1. The prosecutor failed to inform the grand jury of evidence negating
 Melissa Huckaby's guilt of the crimes charged

 a. Melissa Huckaby's Exculpatory Statements

 b. Evidence of diminished actuality

 d. Forensic Evidence

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- e. Other Exculpatory Evidence
- 2. The prosecutor failed to inform the grand jury of powerfully mitigating evidence relevant to the special circumstance allegations
- 3. Conclusion
- C. The Prosecutor Improperly Presented Incompetent, Irrelevant and Highly Prejudicial Evidence to the Grand Jury in Violation of *People v. Backus* (1979) 43 Cal. 3d 360, and of Melissa Huckaby's Constitutional and Statutory Rights to Have the Grand Jury Consider Only Legally Competent Evidence
- D. The Indictment Should Be Dismissed Because the Prosecutor's Instructions Were So Egregiously Misleading, Confusing And Deficient That The Fundamental Integrity Of The Indictment Process Itself Was Compromised
- 1. The prosecutor failed to inform the grand jury that this was a potentially capital case in which the grand jury had the unfettered discretion to dismiss the charges against Melissa Huckaby or to indict for a lesser or noncapital offense
- 2. The prosecutor misled the grand jury on the probable cause standard of proof required to indict
- 3. The prosecution's instructions eliminated necessary elements of the alleged crimes and special circumstance allegation
- a. The Special Circumstance Instructions
- b. The Instructions Regarding the Alleged Crimes
- 4. The prosecutor failed to instruct the grand jury on its obligation to hear exculpatory evidence
- 5. Conclusion
- E. The Prosecutor Converted His Limited Statutory Authority To Advise The Grand Jury Into An Opportunity To Advocate His Case by Making Improper Opening and Closing Arguments, And Acting As A Witness , Thereby Depriving The Grand Jury Of Its Independence And Violating Melissa Huckaby's State And Federal Constitutional Rights To Due Process
- F. The Manner in Which the Grand Jury was Selected Violated Melissa Huckaby's Due Process Rights Under the Relevant Statutory and Common Law Principles Governing Indictment Grand Juries
- G. The Pursuit and Return of this Indictment in the Midst of a Massive Amount Of Prejudicial Publicity Denied Melissa Huckaby Her Right to an Unbiased Grand Jury

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- H. The Prosecutor Violated Melissa Huckaby's State And Federal Constitutional Right To Counsel By Conducting The Presentment Of The Indictment *Ex Parte*
- I. The Prosecutor Violated Melissa Huckaby's Statutory Rights Pursuant to Penal Code Sections 976 and 978 to be Arraigned Upon the Filing of the Indictment
- J. The Indictment Should Be Dismissed As A Violation Of Due Process And Penal Code Section 859b, Because Of The Prosecution's Unreasonable Delay In Seeking The Indictment
- K. The Indictment Should Be Dismissed Because The Prosecution's Exercise Of Discretion In Selecting The Charging Method Was Arbitrary, Capricious And Violative Of State And Federal Constitutional Guarantees Of Equal Protection
- L. The Prosecution's Actions In Seeking The Indictment Were Vindictive And Violative Of Melissa Huckaby's Due Process Rights
- M. Conclusion

CONCLUSION

PROOF OF SERVICE

LIST OF EXHIBITS

DECLARATION OF COUNSEL

FILED
SUPERIOR COURT-STOCKTON

2009 OCT 15 PM 4:19

I, Samuel Behar, declare as follows:

I am a Deputy Public Defender for the County of San Joaquin and in that capacity I represent defendant MELISSA HUCKABY in the above-entitled special circumstance murder case.

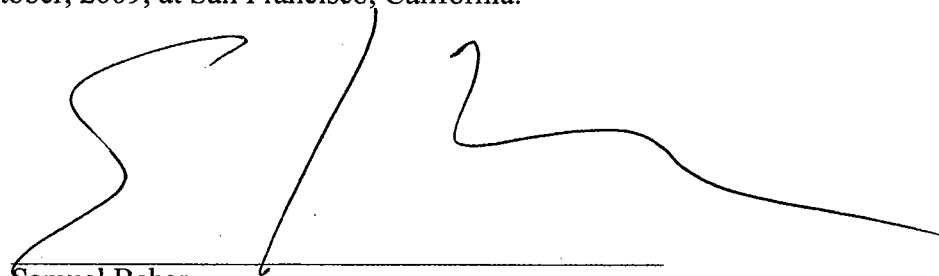
ROSA JUNQUEIRO, CLERK
BY [Signature]
DEPUTY

My review of Ms. Huckaby's voluminous (1850 page) grand jury transcript, filed on August 25, 2009, indicates the meritoriousness of the present motion pursuant to Penal Code Section 995. However, due to the complexity of the legal and factual issues raised by the present motion, and the need for further factual investigation and legal research, the Memorandum of Points and Authorities has not been filed with the motion. Instead, I will file the Memorandum of Points and Authorities in support of the motion in a timely fashion once the hearing date is set. The filing of this motion is timely within the meaning of Penal Code Section 1510.

A status conference in this case is set for October 30, 2009. My co-counsel Michael Burt was appointed in this case on October 8, 2009. My co-counsel and I are diligently conducting legal research and writing and factual investigation in support of the present motion. We will file the required Memorandum in support of the motion well in advance of any hearing date selected by the court for the hearing of this motion.

I declare under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to those matters stated upon information and belief; and as to those matters, I declare that I believe them to be true and correct.

Executed this 15th day of October, 2009, at San Francisco, California.



Samuel Behar
Deputy Public Defender