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2 French Camp, CA 95321

3 Attorney for Defendant - Self-Represented Defendant

4 SUPERIOR COURT OF CALIFORNIA

5 COUNTY OF SAN JOAQUIN

6 THE PEOPLE OF THE STATE OF CALIFORNIA,

7 Plaintiff,

8 vs.

9 ROBERT A. SOMERVILLE,

10 Defendant

Case No.: CR-2022-1128

MARDEN REQUEST

PEOPLE VS. MARSDEN (1970) 2 CAL. 3D 118
S1.92 SUBSTITUTION OF COUNSEL
SUBMITTED EX PARTE, CAL PEN. CODE S198.5
CAL. PEN. CODE S745(A)

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13 To the District Attorney and to the Honorable Charlotte Orcutt, Judge:

14 PLEASE TAKE NOTICE that on July 30, 2024 at the hour of 1:30 p.m., or as soon thereafter as the matter
15 may be heard in Courtroom 8D of the above-entitled court or in the courtroom posted on the date of the Hearing, the
16 Defendant in this case will request an in camera hearing to assert his grounds for a substitution of attorney.

17 THE MOTION WILL BE MADE on one or more of the grounds calling for substitution of the Defendant's
18 appointed counsel expressed in People vs. Marsden (1970) 2 Cal 3D 118, Cal. Pen. Code S198.5 Presumption in
19 Favor of One who Uses Deadly Force Against Intruders .. S745 Sentencing on the Basis of Race, Ethnicity or
20 National Origin.

21 Pursuant to a Marsden Motion and its justification and per California Penal Code 1.92, the Defendant
22 brings to the Court's attention an array of factors contributing to the ineffective assistance of Counsel.

23 From the onset, Counsel failed to allow Defendant's participation/critique of the juror questionnaire. Mr.
24 Somerville noted positioning of "Summary of Allegations", could have tainted or otherwise influenced the Juror's
25 answers. Questions #48, 49 (2i, 2j) could have discriminatory screening abilities, since statistically, more people of
26 color are confronted by or involved with the judicial system, thus giving rise to a jury panel lacking ethnic diversity,
27 working to the Defendant's disadvantage. Lead Counsel, on more than one occasion, indicated he was there to do no

28 PEOPLE VS. MARSDEN (1970) 2 CAL. 3D 118 S1.92 SUBSTITUTION OF COUNSEL SUBMITTED EX
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1 more than keep things even! He cared about three (3) things only, "his daughters, his house and playing golf." Mr.
2 Somerville interpreted that as he would expend no more effort than necessary to create the image of a formidable
3 defense. This reality was made quite apparent in his weak cross-examination of witnesses, failure to object to
4 statements, and unfounded accusations asserted by the Prosecutor. Though Co-Counsel Chrim, supported Lead
5 Counsel Humphrey with indisputable facts, timelines and contestable witness testimony, that would have clearly
6 impacted the Jury verdict. These factors in conjunction with a grossly deficient closing argument, leading one to
7 assume Mr. Humphrey to be complicit in shaping the jury verdict. This indication was further accentuated by his
8 cavalier reaction to the verdict and his smiling while shaking the District Attorney's hand, this being totally
9 insensitive, inappropriate stunned Co-Counsel Chrim, as well as Mr. Somerville. Humphrey has made no effort to
10 assist Co-Counsel in further submissions to the Court in Mr. Somerville's defense, pursuant to S1.92, Defendant is
11 actively pursuing outside Counsel. Mr. Somerville requested vigorously to review the content of the 1181 new trial
12 motion, prior to the court filing because his request for review was ignored, the factors listed above were absent.
13 The retrial motion was further weakened by the Juror #10 dilemma. The Court ruling his postings to social media
14 inconclusive, doesn't negate the appearance of an agenda on his part. His desire to serve as a juror is divergent to
15 most when summoned. Then to act as Juror Foreman... The Court's reluctance to un-seal juror contact information,
16 thwarted Defense Counsel's ability to access any coaxing by Juror #10. The ultimate Litmus Test could have been
17 achieved by allowing the only black juror to be questioned. If this Juror had been empathetic to the Defendant's
18 case, her voicing that could be twisted by the fellow jurors as being ethnically motivated. One can only imagine the
19 vexing position she would endure, this being a lot to expect from anyone.

20 At the 1181 hearing, Mr., Somerville was asked to justify a Marsden Motion. Many of the above listed
21 elements, the Defendant would have submitted to the Court. It was unreasonable by the Court, to expect the
22 Defendant to instantly relay all the Marsden justifications. Mr. Somerville should have been afforded ample time to
23 prepare his response, as afforded the District Attorney or Defense Counsels preparation of submittals to the Court.

24 Pursuant to California Penal Codes 198.5, presumption in favor of one who uses deadly force against an
25 intruder. Any person using force intended or likely to cause death or great bodily injury within his or her residence
26 shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self or member
27 of household. This Code mirrors the same provisions outlined in the Castle Doctrine. Defense Counsel failed to

1 convey to the jury its application to the defense of the Defendant's reaction to an intruder. In fact, Mr. Somerville
2 exercised exceptional restraint under the circumstances. Had the Fire Department arrived at the Aurora location
3 with sirens activated, used any of the many tools at their disposal to alert any occupants of the building to their
4 presence. A siren, bullhorn, phone call or a knock on the door would have diverted the tragedy. The protocol of
5 announcing one's presence is stressed to all civil servants, police, paramedics and even civilians. The failure of SFD
6 and 911 dispatch to notify SFD, the building being occupied contributed also. The Defendant upon being aroused at
7 4:30 a.m. woke his assistant and had her dial 911 for police assistance. She having noticed smoke alerted 911 of
8 seeing smoke but no sign of fire. Had the Defendant suspected a fire, there was a fire pull station 7 ft. from the
9 entrance to his bedroom. This alarm sounds directly to SFD. With no way to identify who was attempting entry the
10 Defendant announced his being armed (twice), fired the weapon, one of the bullets allegedly striking the fireman.
11 The prosecution asserts an array of accusations based on nothing in evidence. With no objection by Defense
12 Counsel, the District Attorney was allowed to infer Mr. Somerville 's state-of-mind (as) being angry, though he has
13 no history of such, no sign of anger during the detective's interview, nor any anger demonstrated within the Court
14 process. The state-of-mind formulated on facts would be one of fear, great bodily injury or death when considering
15 the residence being located in a marginalized downtown area, a large homeless encampment literally next door,
16 while at the peak of the COVID pandemic. The Defendant was unable to get renter's insurance as a result. Mr.
17 Somerville's fears were warranted two days after the accident, (when) Mr. Somerville's son, in an attempt to act as
18 security at 142 So. Aurora St. was robbed at gunpoint for one of the collector vehicles. Traumatized by the act, his
19 mother forbid his return. Three other associates were threatened while securing the location. After Code
20 Enforcement and the building's owner attempts to secure all entry, it was systematically breached and looted of well
21 over a million dollars of content. These facts known by the District Attorney and Defense Counsel, were not
22 mentioned in the Court, nor the witnesses called to testify on these incidents.

23 On January 31, 2022, Mr. Somerville did no more than attempt to de-escalate what he thought to be a
24 formative threat. All who familiarized with this case, all draw the exact conclusion. When posing this case to A.I.,
25 the conclusion is consistent, the Defendant at the most, should have been charged with Involuntary Manslaughter.
26 Being the Court proceedings were unable to yield the same conclusion, with the same facts at its disposal, it is
27 evident that other driving forces were present and influential. Pursuant to Cal. Pen. Code S745(A)(1) sentencing on

1 the basis of race, ethnicity or national origin the U.S. Supreme Court recognizes that the Judicial System is plagued
2 with racial discrimination. The Defendant, an engineer and manager in various Fortune 500 companies, was often
3 the only Black with these job titles. Extensive travel domestically and internationally, Mr. Somerville is very
4 familiar with racial bias whether subtle or overt. He's been a victim of racial profiling within the City of Stockton
5 for years. The business location, the types of cars he drove, attract the attention of police. Often being stopped for
6 no reason or minor infractions, just to have a canine unit search for drugs, obviously never finding anything.
7 Running a successful business serving the Stockton community and beyond for over twenty (20) years, Mr.
8 Somerville put his faith in the Judicial System. Unfortunately, naivete proved to be detrimental. Discrimination is
9 evident as well as a two-tier Judicial System. Charging the Defendant with murder before any discovery to be
10 examined, speaks volumes. The two-tier system is displayed when comparing Somerville's case to that of actor
11 Alec Baldwin's case, charged with Involuntary Manslaughter. Before any evidence was examined, he was allowed
12 to finish a movie, and if found guilty, sentenced to eighteen (18) months. This case contained gross negligence with
13 far less consequences. Per Cal. Pen. S745 requiring a similar case comparison.

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15 Who dials 911, then assaults the Responder? The District Attorney will argue that his intention was only to
16 protect his property. If one is to believe what he asserts, then it would make no sense to harm a fireman who is
17 dispatched to protect life and property. The District Attorney's argument then Defendant was unaware of the
18 identity of the presumed intruder. If one is to believe this, then would that not confirm the incident being
19 accidental? There is more to the case than that being adjudicated in Court. Why was no effort made to find the
20 arsonist? Why did the fire department arrive in silence? Why would Officer Yeager try an(d) sell fire penetrating a
21 16 inch brick wall? Why would the fire department choose the slowest manner of entry if they suspected fire
22 inside? Why would Yeager allow the least experienced, perform CPR on Officer Fortuna? While he paced up and
23 down the sidewalk? Why were the police so adamant to open the vault, and what were they looking for? These are
24 all questions I'm sure no one will answer or want to be asked.

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1 The Defendant Respectfully Asks, based on the foregoing;

2 A) To vacate the conviction, in the interest of justice, and impose the lesser charge of
3 Involuntary Manslaughter (which is what it should have been initially), and credit for time served of 30 months.

4 B) Reconsider 1181 Re-Trial Motion.

5 C) Postpone any further court proceedings until the Defendant can secure outside counsel to
6 present the findings herein in a better format.

7 Additional information at: www.caseandpoint.info

8 Dated this day of August 13, 2024

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11 Robert A. Somerville - Defendant
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