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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SAN BERNARDINO – CENTRAL DISTRICT**

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiff,

24 vs.

25 CHARLES “CHASE” MERRITT,

26 Defendant.

Case No.: FVI404194

**DEMURRER TO INFORMATION AND
REQUEST FOR DISMISSAL WITHOUT
LEAVE TO AMEND PURSUANT
TO CALIFORNIA PENAL CODE §§1004,
1008**

Date: August 7, 2015

Time: 8:30 A.M.

Location: S21

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NOTICE IS HEREBY GIVEN that on August 7, 2015, at Department S21 of the Superior Court of San Bernardino, located at at 8:30 a.m., or as soon thereafter as the matter may be heard, Defendant CHARLES “CHASE” MERRITT hereby moves the Court to Issue an Order sustaining a Demurrer to the Information and for Dismissal.

The Demurrer is brought pursuant to Penal Code 1004 subdivisions 2 and 4, to dismiss the charges brought against the Defendant on the following grounds:

1. The People have failed to plead the elements of the charged offenses with sufficient certainty to require the Defendant to be held to answer for the charged offenses; and
2. The People have alleged blatant contradictions that cannot be overlooked.

Defendant submits this Notice, the Memorandum of Points and Authorities, the Declaration of Jimmy Philip Mettias, Esq., and all other relevant documents and rulings in the courts file, in support of this motion.

Dated: July 17, 2015

Jimmy Philip Mettias, Esq.
Attorneys for the Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

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2 I. "Both the demurrer and plea [to the complaint] must be put in, in open Court, either at the
3 time of the arraignment or at such other time as may be allowed to the defendant for that
4 purpose." (Pen. Code, § 1003.)

5
6 II. "The defendant may demur to the accusatory pleading at any time prior to the entry of a
7 plea, when it appears upon the face thereof either:

8 2. That it does not substantially conform to the provisions of Sections 950 and 952,
9 and also Section 951 in case of an indictment or information;

10 4. That the facts stated do not constitute a public offense." (Pen. Code, § 1003.)

11 III. "In charging an offense, each count shall contain, and shall be sufficient if it contains in
12 substance, a statement that the accused has committed some public offense therein specified.
13 Such statement may be made in ordinary and concise language without any technical
14 averments or any allegations of matter not essential to be proved. It may be in the words of
15 the enactment describing the offense or declaring the matter to be a public offense, or in any
16 words sufficient to give the accused notice of the offense of which he is accused. In charging
17 theft it shall be sufficient to allege that the defendant unlawfully took the labor or property of
18 another." (Pen. Code, § 952.)

19 IV. "Due process of law requires that an accused be advised of the charges against him in
20 order that he may have a reasonable opportunity to prepare and present his defense and not be
21 taken by surprise by evidence offered at his trial." (*In re Hess (1955) 45 Cal.2d 171, 175*; See
22 also *People v. Bright (1996) 12 Cal.4th 652* [Complaint must afford notice to the accused of
23 offense charged, so that he or she may have reasonable opportunity to prepare and present
24 defense].)

STATEMENT OF THE CHARGES

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I. PENAL CODE SECTION 187(A) MURDER

The prosecution charged Mr. Merritt with four (4) counts of Murder PC187(a):

COUNT 1; On or about February 4, 2010, in the above named judicial district, the crime of MURDER, in violation of PENAL CODE SECTION 187(a), a felony, was committed by Charles Ray Merritt, who did unlawfully, and with malice aforethought murder Joseph Matao McStay, a human being.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c) and a violent felony within the meaning of Penal Code section 667.5(c)."

"NOTICE: Conviction of this offense will require you to provide specimens and samples pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime." It is further alleged as to count(s) 1, 2, 3, 4 that the offenses charged in counts One, Two, Three, and Four are a special circumstance within the meaning of Penal Code Section 190.2(a)(3).

The same allegations are made in Counts 2, 3 and 4 for each individual victim in this case. The only difference is the name of the victim.

ARGUMENT IN SUPPORT OF DEMURRER

II. COUNTS ONE THROUGH 4 MUST BE DISMISSED WITHOUT LEAVE TO AMEND BECAUSE THE INFORMATION DIRECTLY CONTRADICTS THE PEOPLE’S THEORY OF THE CASE AND THE EVIDENCE SET FORTH AT THE PRELIMINARY HEARING

The Information in Counts One through Four alleges the crimes (PC187(a)) occurred “*in the above named judicial district*”. That above named judicial district is namely San Bernardino County. This is an obvious and blatant contradiction to the evidence presented at the preliminary hearing, statements made by the District Attorney and the District Attorney’s Case Summary and theory of the case.

In every Probable Cause Statement, Case Summary, media interviews and other documents prepared by the District Attorney in this case, they have alleged with certainty that the murders occurred in San Diego County in the city of Fallbrook. This is a glaring inconsistency and further restricts Mr. Merritt’s ability to defend himself against the charges.

The District Attorney’s office has now alleged two very different theories of this case. On one hand they have claimed these murders were committed by Mr. Merritt in the victims home in Fallbrook San Diego County. Despite those repeated and consistent assertions, the Information the People filed in this matter alleges Mr. Merritt committed the murders somewhere in San Bernardino County. Obviously both cannot be true. Here, the People have alleged the location of the offense in complete contradiction with their own previous statements and their entire premise of the case.

Due Process requires a Defendant be apprised of the charges laid out against him. Mr. Merritt is entitled to a logical and coherent Information that is consistent in nature. The current state of the case has the Prosecution alleging the crimes occurred in San Diego County while simultaneously alleging the crimes occurred in San Bernardino County. Both theories cannot be true and thus the court must dismiss this case without leave to amend.

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CONCLUSION

The Information fails to comply with due process in that it fails to advise Defendant of the charges against him so that he has a reasonable opportunity to prepare and present his defense. The Information uses uncertain language that hinders the Defendant’s ability to prepare and present his defense, it makes allegations that are blatantly contrary to the People’s own theory of the case so that Defendant can prepare and present a defense.

Based on the foregoing glaring inconsistencies and lack of specificity the Information must be dismissed without leave to amend.

Dated: July 17, 2015

Jimmy Philip Mettias, Esq.
Attorney for the Defendant

DECLARATION OF JIMMY PHILIP METTIAS, ESQ.

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I, Jimmy Philip Mettias, Esq. declare:

1. That I am the attorney of record for the above named defendant in the above captioned matter; and
2. That said matter is currently calendared for August 7, 2015 in Department 21 of the San Bernardino County Superior Court for Hearing on this Demurrer.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed July 17, 2015 at Victorville, California

Jimmy Philip Mettias, Esq.
Attorney for Defendant