


1 LAW OFFICES OF THE ALTERNATE DEFENDER  
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9 *Attorneys for Antolin Garcia Torres*

FILED

2014 JUN 13 P 2:00

David H. Yamaguchi, Clerk of the Superior Court  
County of Santa Clara  
By:   
Deputy Clerk

**Stefanie Aguilar**

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SANTA CLARA

12 People of the State of California,

13 Plaintiff,

14 vs.

15 Antolin Garcia Torres,

16 Defendant

Case No.: 213515

Application for Order Sealing Expert Witness  
Declaration in Support of Opposition to  
Motion to Unseal Grand Jury Transcript  
Pursuant to Cal. Rule of Court 2.551

Date: June 27, 2014

Time: 9:00 am

Dept.: 28

Time Est.: 20 minutes


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21 **NOTICE IS HEREBY GIVEN** that on the 27<sup>th</sup> day of June, 2014, in Department 28 of  
22 the above-entitled court, Mr. Garcia Torres will request that this Court order that the defense  
23 expert's declaration and the exhibits attached thereto be filed under seal pursuant to California  
24 Rules of Court, Rule 2.551.

25 It is anticipated that this Motion/Application will be based on this Notice, the attached  
26 Memorandum of Points and Authorities, and the attached Declaration of Counsel.

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Dated: 6/13/2014

Respectfully submitted,



Brian Matthews  
Deputy Alternate Defender

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23 Issue Presented

24 The declaration the defense seeks to file under seal supports its opposition to the  
25 unsealing of the Grand Jury transcripts. The declaration discusses the extensive media coverage  
26 the case has generated, discussed aspects of the transcripts, and offers an opinion regarding the  
27 likely impact the unsealing of the transcripts would have on Mr. Garcia Torres' right to a fair  
28 trial. A court may permit a party to file a record under seal upon a showing of good cause and

1 consideration of the information asked to be sealed, the nature of the harm that will accompany  
2 its release, and any countervailing considerations that may apply. Given that this Court has yet to  
3 decide whether or not to unseal the transcripts, should it permit a declaration that discusses those  
4 transcripts to be filed under seal, at least until it decides whether or not to release the transcripts?

5 Points and Authorities

6  
7 Argument

8 **I. This Court should order that the declaration be filed under seal**

9 The California Rules of Court permit a party to file a record under seal in certain  
10 circumstances. (Cal. Rules of Court, Rule 2.551) A party seeking to file a record in such a  
11 manner must also file a motion or application seeking the court's permission to file under seal.

12 (*Id.*) The motion must be accompanied by a declaration stating facts sufficient to justify sealing.

13 In addition to the motion, the party must lodge the record with the court in an envelope  
14 labeled "Conditionally Under Seal." (*Id.*) Pending determination of the motion, the record will be  
15 lodged with the court under seal pending resolution of the motion. (*Id.*) If the court denies the  
16 motion to file under seal, the clerk should return the record to the party seeking sealing unless he  
17 is notified in writing that the record should be filed. (*Id.*)

18 When determining whether or not to permit a record to be filed under seal, a court should  
19 identify the specific information to be sealed, identify the nature of the harm that may be caused  
20 by refusing to seal the record, and finally account for any countervailing considerations. (*H.B.*  
21 *Fuller Co. v. Doe* (2007) 151 Cal.App.4<sup>th</sup> 879) The declaration addresses the media coverage of  
22 the case to date, describes aspects of the Grand Jury transcripts, and offers an analysis regarding  
23 the need to seal the transcripts. Releasing it will cause a similar harm as would unsealing the  
24 Grand Jury transcripts themselves. In short, it would engender further coverage and make it  
25 reasonably likely that Mr. Garcia Torres would be unable to receive a fair trial. Allowing it to  
26 be filed under seal is necessary to protect Mr. Garcia Torres right to a fair trial, due process, and a  
27 reliable penalty determination under the 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Amendments to the United States  
28 Constitution and their California corollaries. The interest of the Mercury News is articulated in

1 their moving papers on the Motion to Unseal the Grand Jury transcripts and, as the defense  
2 argues in its opposition, is insufficient to overcome the prejudice.

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4 Conclusion

5 This Court should allow the defense to file the declaration of Dr. Edward Bronson under  
6 seal in order to protect Mr. Garcia Torres' rights to a fair trial, due process and a reliable penalty  
7 determination.

8 Date: June 13, 2014

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11 Respectfully submitted,

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15 Brian Matthews  
16 Deputy Alternate Defender  
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) Motion to Unseal Grand Jury Transcript  
) Pursuant to Cal. Rule of Court 2.551


) Declaration of Counsel

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20 I, Brian Matthews, hereby declare the following under penalty of perjury:

- 21 1. I am an attorney with the Alternate Public Defender's Office for Santa Clara County;
- 22 2. I have been assigned to represent the accused in the above-entitled case;
- 23 3. We retained Dr. Edward J. Bronson to draft a declaration in support of the defense  
24 Opposition to Motion to Unseal the Grand Jury Transcripts;
- 25 4. We promised to provide Dr. Bronson's declaration to counsel for the party that  
26 moved to unseal the transcripts, the Mercury News, by June 13, 2014;
- 27 5. Dr. Bronson's declaration discusses the media coverage the case has garnered thus  
28 far, mentions aspects of the Grand Jury transcripts, and offers analysis and opinion  
regarding the necessity of maintaining the transcripts under seal;

- 1 6. Release of Dr. Bronson's declaration and supporting exhibits would prejudice Mr.
- 2 Garcia Torres' right to a fair trial, due process and a reliable penalty determination
- 3 because it includes information from the sealed Grand Jury transcripts and would
- 4 likely cause further prejudicial publicity;
- 5 7. Based on the foregoing, the defense asks that this Court permit it to file Dr. Bronson's
- 6 declaration and supporting exhibits under seal;
- 7 8. Further, the defense asks that this Court permit it to lodge the declaration and exhibits
- 8 with the court conditionally under seal pursuant to Rule of Court 2.551;
- 9 9. Further, the defense asks that this Court order that no party to this action, specifically
- 10 the Mercury News, the District Attorney and the defense attorneys, reveal the
- 11 contents of the declaration and supporting exhibits until this Court has ruled on this
- 12 Application and the Motion to Unseal the Grand Jury Transcripts.


13 Dated: June 13, 2014

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16 Brian Matthews  
17 Deputy Alternate Defender  
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Proof of Service

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21 I am a citizen of the United States and employed in Santa Clara County. I am over the  
22 age of eighteen years and not a party to this action. My business address is 701 Miller Street, San  
23 Jose, CA 95110.

24 On June 13, 2014 I served the within *Application for Order Sealing Expert Witness*  
25 *Declaration in Support of Opposition to Unseal Grand Jury Transcript Pursuant to Cal. Rule of*  
26 *Court 2.551* on the following parties to this motion by U.S. Mail (media) and by leaving a copy  
27 with the clerk at the Hall of Justice for placement in the District Attorney service box (Plaintiff):  
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James M. Chadwick  
Sheppard, Mullin, Richter & Hampton LLP  
379 Lytton Avenue  
Palo Alto, CA 94301

David Boyd  
Deputy District Attorney  
70 West Hedding Street  
San Jose, CA 95110

I declare under penalty of perjury that the foregoing is true and correct. Executed on this  
13<sup>th</sup> day of June 2014 at San Jose, California.

