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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO
CENTRAL DIVISION

The People of the State of California,

Plaintiff,

v.

Marcus Delon Wesson,

Defendant

Case No.: F04901785-6

Defendant Wesson's

Penal Code Section 995

Motion to Dismiss Counts 1 to 9

To The Honorable Judge Of The Above-Entitled Court And To The District
Attorney Of Fresno County:

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14 **I. The Scope Of, And Grounds For, This Motion.**

15
16 This current motion shows that before the filing of the information, the magistrate
17 committed Wesson for trial without reasonable and probable cause¹ on counts one to nine
18 of the information, the homicide counts.

19 Far from showing a reasonable suspicion that Marcus Wesson did the homicides in
20 this case, the preliminary examination transcript actually shows that one of the deceased,
21 Sebhrenah April Wesson,² committed an eight-person multiple murder, and then she
22 committed suicide. The preliminary examination transcript does not provide any cause
23 for the Defendant, Marcus Delon Wesson, to be committed to trial.

24 _____
25 ¹ Penal Code section 995, subdivision (a)(2)(B).

26 ² Sebhrenah April Wesson is, hereafter, referred to simply as Sebhrenah. No disrespect
is intended.

1
2
3 **II. Wesson May Soon Have Additional Motions.**
4

5 This section is included because only one date, which has now passed, was set for
6 moving papers (May 11, 2004),³ responding papers (May 18, 2004), and motions–hearing
7 (May 20, 2004).

8 This is the first of multiple motions that Wesson may file attacking the defective
9 information filed in this case, or raising other issues. For planning purposes, the defense
10 believes it should formally advise the court and the prosecution of the range of possible
11 motions.

12 If Wesson does file additional motions, he will, naturally, ask the court to set
13 appropriate dates for moving and responding papers, and hearing dates.

14 If necessary, the defense will also move for continuance of the trial, to prepare
15 these motions, and to have them heard. The defense may also move for continuance of
16 the trial for other reasons as well.

17 The defense is still researching whether additional “995” motions on other aspects
18 of the information should be filed, but has been unable to conclude these motions are
19 meritorious, and then to prepare them, in the time between superior court arraignment
20 and the date set for filing motions, yesterday, May 11, 2004.

21 Wesson cannot determine whether to file a non-statutory motion to dismiss some
22 or all of the counts in the information based on the prosecution’s having made inadequate
23 discovery before the preliminary examination, until the prosecution provides Wesson
24

25 ³ A computer failure prevented Wesson from filing this motion on Tuesday May 11,
26 2004, as this court set. See “Defendant Wesson’s Motion to Continue Date for Filing
Moving Papers; Declaration of Counsel.”

1 substantially all of the discovery that he sought in his pre-prelim Discovery Motion. So
2 far the prosecution has still provided Wesson only a fraction of that material. Among the
3 items still not provided are the witness-interview audios and videos, and the results of
4 scientific tests.

5 The defense has determined that it should defer filing any motions concerning the
6 searches and seizures in this case until the issue of sealing the search warrants is settled.

7 The defense has made an additional, post-prelim, informal discovery request of
8 the prosecution, and has not yet determined whether it will be necessary to file a formal
9 motion to compel discovery.⁴

10 The defense has also not yet determined whether to move for a change of venue.

11 Other motions, not mentioned here, are also possible.

12
13
14 **III. Facts Shown At The Preliminary Hearing Relevant To This Motion,**
15 **And Analysis.**

16
17 *A. Summary*

18
19 The deaths occurred on the day of two simultaneous confrontations at Wesson's
20 home. One confrontation was between two branches of Wesson's extended family. The
21 other was confrontation was between Wesson's family and Fresno Police officers.

22 During the last part of the confrontations, Police Officers observed Wesson
23 entering his home's southeast bedroom. Police evacuated everybody from all other parts
24

25 _____
26 ⁴ At the court's suggestion, the defense and prosecution did confer about discovery, and
the prosecution did make assurances about this.

1 of the house, then exited the front door themselves, and surrounded the home. Wesson
2 remained in the room for over an hour.

3 Some family members told police afterwards, but did not tell police at the time,
4 that they heard gunshots. The police, who surrounded the house the whole time Wesson
5 was in that room, never heard any gunshots.

6 When Wesson exited the home, police entered the southeast bedroom and found
7 nine bodies, some still warm and with uncoagulated blood: seven children in a single pile,
8 a teenager, whose body was partly on top and partly to the side of the pile and a 26-year-
9 old, Sebhrenah April Wesson, whose body was partly on top of the pile and the teenager
10 and partly to the side.⁵

11 Wesson, the evidence showed, is a deeply religious man, who conducted intense
12 prayer sessions at home, whose children were home-schooled, and who allegedly had
13 illegal sexual relations (including causing pregnancies) with many of his female children
14 and relatives.⁶ The evidence also showed that for the past decade, Wesson repeatedly
15 talked to his family about killing the children and committing suicide if the government
16 tried to break the family up.

17 Although Wesson is now charged with these murders, the evidence also showed
18 that in fact they were eight murders committed by his daughter Sebhrenah, who then
19 committed suicide.

24 ⁵ Preliminary Hearing Transcript (PHT) page 81, lines 12 to 26, page 82, lines 1 to 7.

25 ⁶ The illegal sexual relations are the subject of the remaining counts of the information,
26 counts ten to twenty-three of the information; they are not challenged in this motion,
but may be in separate motions.

- 1 ▪ The position of Sebhrenah's body showed that she died last, since hers was
2 the topmost and outermost of the bodies.⁷
3
4 ▪ The murder weapon, and an additional knife, were found under
5 Sebhrenah's body, doubtless showing that she fell on them after she killed
6 herself.⁸
7
8 ▪ Sebhrenah was instrumental in collecting the eight murder victims into the
9 murder room.⁹
10
11 ▪ Sebhrenah tried, unsuccessfully, to lure at least one more victim into the
12 murder room.¹⁰
13
14 ▪ Just before Sebhrenah closed the door to the murder-suicide room,
15 Sebhrenah reached into a bag that probably contained the murder-suicide
16 weapon.¹¹ When she did this, Marcus Wesson was still trying to calm
17 things down.¹²
18

19 ⁷ PHT page 81, lines 12 to 26, page 82, lines 1 to 7.

20 ⁸ PHT, page 82, lines 16 to 22 (gun) and page 83, lines 4 to 9 (knife).

21 ⁹ PHT page 329, lines 13 to 14 (Kiani Wesson [Marcus Wesson's daughter, and a
22 household resident], Rosie Solorio [daughter of Marcus Wesson's sister-in-law and a
23 household resident], and Sebhrenah, put the children into the murder room). See also
24 PHT page 245, line 21 (Elizabeth [Marcus Wesson's daughter, not to be confused with
 Wesson's wife of the same name], was also collecting the children).

25 ¹⁰ PHT page 331, lines 13 to 16.

26 ¹¹ PHT page 248, lines 13 to 17, and page 297, lines 21 to 25.

¹² PHT, page 248 lines 18 to 26 (describing Sofina Solorio's actions immediately after
 seeing Sebhrenah reach in the bag with the apparent gun; she talked with Marcus

- 1
- 2 ▪ Unlike Marcus Wesson, who was calm and tried to negotiate that day,¹³
- 3 Sebhrenah was verbally and physically abusive.¹⁴
- 4
- 5 ▪ All the deceased were shot in the same manner, but only Sebhrenah's child
- 6 was shot slightly differently. Most died of gunshots to the right eye, but
- 7 Sebhrenah's child was shot in the left eye.¹⁵
- 8
- 9 ▪ Sebhrenah's fatal wound is consistent with suicide.¹⁶
- 10

11 In short, Sebhrenah, not Marcus, did the murders, and then Sebhrenah killed

12 herself.

13

14

15 *B. Detailed Statement of the Facts Shown at the Preliminary Hearing, and Analysis.*

16

17

18 Wesson), page 249, lines 1 to 6 (describing the conversation), see also lines 7 to 24

19 (continuing to describe Marcus Wesson's actions and conversation).

20 ¹³ See, e.g., PHT page 31, lines 9 to 10 (he was calm "the whole time."), and, e.g., page

21 249, lines 1 to 6 (one of several attempts to negotiate).

22 ¹⁴ Verbally abusive: see, e.g., PHT page 179, lines 20 to 24, page 180, lines 4 to 6, page

23 184, lines 21 to 26 continuing on page 185, lines 1 to 2, page 290, lines 10 to 13.

24 Fighting: page 291, lines 2 to 7, page 293, lines 9 to 12 (physical fight even after

25 police arrive).

26 ¹⁵ PHT, page 85 lines 15 to 24, page 86 lines 2 to 9. (All shot in right eye, except

Marshey); Exhibit 1 to 9, death certificate of Marshey St. Christopher Wesson,

showing the mother was Sebhrenah.

¹⁶ PHT page 84, lines 17 to 26, page 85, lines 1 to 3 (bullet that entered Sebhrenah's

right eye, causing death, had an upward trajectory).

1 Some fifteen people¹⁷ descended on the Wesson home, 761 West Hammond,
2 Fresno¹⁸, at about 2:00 p.m.¹⁹ on March 12, 2004.²⁰ They were friends and relatives²¹ of
3 Ruby Wesson²² and her sister,²³ Sofina Solorio, also known as Sofie Solorio.²⁴

4 They came to support Ruby and Sofina.²⁵ Ruby and Sofina were there to demand
5 custody of their two seven-year-old children.²⁶ Ruby's daughter was Aviv Dominique
6 Wesson, and Sofina's son was Jonathan St. Charles Wesson.²⁷

7 Jonathan and Aviv had lived in the Wesson household since birth.²⁸ Sebhrenah,
8 Marcus's daughter, was also a resident of the Wesson household.²⁹

9 _____
10 ¹⁷ See, e.g., PHT page 174 lines 10 to 13; page 286, lines 7 to 9.

11 ¹⁸ See, e.g., PHT page 17, lines 9 to 14 (describing police arrival).

12 ¹⁹ The time is estimated, based on when police received a phone call from the scene,
13 about 2:20 P.M. (PHT page 16, lines 10 to 11), and the statement at PHT page 218,
14 lines 4 to 7, that the plan was to call the police 20 minutes after arrival.

15 ²⁰ See, e.g., PHT page 16, lines 10 to 11.

16 ²¹ See, e.g., PHT page 286 (they were friends and relatives). (Several of these friends
17 and relatives are identified by name and relationship, at various places throughout the
18 PHT.)

19 ²² Her true name is unknown. Ruby Wesson is at PHT page 17, line 21. The name Ruby
20 Garcia is found at PHT page 126, line 1. On the death certificate of her daughter, Aviv
21 Dominique (Exhibits 1 to 9), her name is also listed as Ruby Ortiz, and Ruby Belia
22 Louise Sanchez. Hereafter she is simply called Ruby. No disrespect is intended.

23 ²³ PHT page 126, lines 19 to 23.

24 ²⁴ PHT page 17, line 21; page 142, lines 10 to 14, page 240, lines 15 to 18. She is
25 referred to, hereafter, generally as Sofina.

26 ²⁵ See, e.g., PHT page 151, lines 2 to 9.

27 ²⁶ See, e.g., PHT page 151, lines 2 to 9.

28 ²⁷ The full names are taken from the Death Certificates, Exhibits 1 to 9. Hereafter, they
29 are called, respectively, Aviv and Jonathan. No disrespect is intended.

30 ²⁸ See, e.g., PHT page 142, lines 15 to 17 (Ruby becomes pregnant by Marcus Wesson),
31 and page 147, lines 16 to 18 (Ruby leaves the household, and leaves Aviv behind);
32 page 235, lines 11 to 23 (Marcus Wesson is Jonathan's father; Sofina leaves Jonathan
33 behind when she departs the Wesson household).

1 This sudden arrival of people was a surprise to Marcus Wesson,³⁰ and, therefore,
2 probably, also a surprise to the entire Wesson household.

3 On arrival, Sofina saw Marcus Wesson, and his sister-in-law's daughter Rosie
4 Solorio,³¹ and his daughters, Elizabeth Breani Kina Wesson,³² and Sebhrenah.³³

5 Sofina went inside the house, and saw Jonathan in a bedroom.³⁴ Sofina grabbed
6 Jonathan and began to exit the bedroom.³⁵ Rosie screamed, grabbed Jonathan away from
7 Sofina, and took him to the southeast bedroom.³⁶ This is the bedroom where the
8 murders-suicide eventually occurred. Sofina then gained access, herself, to the southeast
9 bedroom.³⁷

10 Sebhrenah was in that bedroom at that time.³⁸

11 Once Rosie got in, arguing and fighting ensued; the scene becomes chaotic.³⁹

12 Sofina saw five or six of the children in the room initially, with Elizabeth Jr.
13 helping to gather the other children.⁴⁰

15 ²⁹ See, e.g., PHT page 314, lines 17 to 23. Sebhrenah's Death Certificate (Exs. 1 to 9),
16 item 31, shows her father was Marcus Wesson.

17 ³⁰ PHT page 214, lines 23 to 26.

18 ³¹ Rosie Solorio is a name used interchangeably with Rosa Solorio. PHT page 240, lines
19 19 to 22. Hereafter, she is called, simply, "Rosie." No disrespect is intended.

20 ³² The full name is in the Death Certificate, Exs. 1 to 9. The Death Certificate, items 31
21 to 33 show her father is Marcus Wesson. Item 26 shows her mother is Marcus
22 Wesson's wife, who is also named Elizabeth Wesson. Hereafter, for ease of
23 understanding, this daughter is called "Elizabeth Jr." No disrespect is intended.

24 ³³ PHT page 242, lines 3 to 4, and line 9.

25 ³⁴ PHT page 243, lines 5 to 8.

26 ³⁵ PHT page 243, lines 19 to 20.

³⁶ PHT page 243, lines 25 to 26, page 244, lines 1 to 13.

³⁷ PHT page 244, lines 14 to 16.

³⁸ PHT 248, lines 2 to 4.

³⁹ PHT page 244, lines 21 to 25.

1 Sofina was not able to get Jonathan back,⁴¹ and Rosie pushed Sofina out of the
2 bedroom.⁴²

3 The door shut, and Sofina ran back and pushed it open.⁴³

4 When she did that, she saw Sebhrenah “in a portion of the room digging in a
5 leather bag that may have been the same leather bag that Marcus Wesson keeps his
6 firearms.”⁴⁴

7 At this time, Marcus Wesson was still at the front door, and Sofina talked to him:
8 “[H]e still wanted her and the girls to try to talk things over I [Officer Ochoa, the
9 testifying officer] believe he [Marcus Wesson] was going to tell her that she [Sofina] was
10 able to have her child back and they were having some type of conversation at that
11 point.”⁴⁵

12 Sofina then saw talk between Rosie Solorio and Kiani Wesson, with Marcus
13 Wesson. “The girls said ‘Dad, should we?’ And Marcus says ‘no.’ ”⁴⁶ There was
14 nothing else said or done to explain this exchange. Certainly, however, that was not an
15 order to kill. If it had anything to do with killing, it was the opposite
16
17
18

19
20 ⁴⁰ PHT page 245, *passim*. The transcript is unclear exactly how many children were
21 seen. The victim-names of Jeva, Sedona, and Illabelle are not mentioned on that page,
but perhaps not all the children seen are named.

22 ⁴¹ PHT page 246, lines 10 to 12.

23 ⁴² PHT page 246, lines 21 to 22.

24 ⁴³ PHT page 248, lines 9 to 10.

25 ⁴⁴ PHT page 248. The quote is lines 14 – 17 [sic].

26 ⁴⁵ PHT page 248, lines 20 to 26, page 249, lines 1 to 6. The quote is from page 249,
lines 3 to 6.

⁴⁶ PHT 249, lines 13 to 26, page 250, lines 1 to 5. The quote is page 249, line 23.

1 Serafino Wesson, a son of Marcus Wesson, then entered the house, which caused a
2 further round of confusion and conversation.⁴⁷

3 Sofina exited the house, and did not reenter.⁴⁸

4 Sofina then walked down the driveway, to Marcus Wesson's bus, to talk; she also
5 got a phone call.⁴⁹ The length of time this took was not stated.

6 When Sofina's attention returned to the house, she did not see Marcus Wesson.⁵⁰
7 It was about this time that Wesson, who had been at the doorway of the house the entire
8 time so far,⁵¹ then went into the house, into the southeast bedroom.⁵²

9 Sofina ran to the house—entrance, and saw Elizabeth Wesson (not Elizabeth, Jr.,
10 who died that day, but the Elizabeth who is Marcus Wesson's wife), Kiani Wesson, Rosie
11 Solorio, and Serafino all walking out calmly, but with a look of horror, or a blank look,
12 on their faces.⁵³

13 Serafino said, "I think Dad killed – Dad shot Lizzie [Elizabeth Jr.] and
14 Sebhrenah."⁵⁴ (While the magistrate admitted that statement as being spontaneous,⁵⁵ by
15 its terms, it reflects only what Serafino thought, not what he knew. If the police
16 interviewed Serafino afterward, the results of that interview were not introduced at the
17

18 ⁴⁷ PHT pages 250, lines 7 to 8. The correct spelling is uncertain. That this is Marcus's
19 son emerges at PHT page 255, lines 18 to 19, when Serafino refers to Marcus Wesson
as "Dad."

20 ⁴⁸ PHT page 252, lines 12 to 19.

21 ⁴⁹ PHT page 253, lines 1 to 6.

22 ⁵⁰ PHT page 253, lines 20 to 25.

23 ⁵¹ See, e.g., PHT page 27, lines 12 to 16, page 33, lines 25 to 26, and pages 186 and 187.

24 ⁵² PHT page 35, lines 14 to 16.

25 ⁵³ PHT page 159, lines 19 to 26, page 160, lines 1 to 3 (walking out calmly, girls had a
look or horror, Serafino had a blank look), page 254, lines 9 to 24.

26 ⁵⁴ PHT page 255, lines 18 to 19.

⁵⁵ PHT page 255, line 17.

1 prelim. As already noted, Serafino's statement also does not square with the physical
2 evidence, which shows that Sebhrenah had committed suicide.⁵⁶)

3
4 Wesson remained in the Southeast bedroom for over an hour and twenty
5 minutes,⁵⁷ while the police officers assembled a negotiating team and a SWAT team.⁵⁸

6 Eventually, however, Wesson walked out on his own, and surrendered
7 peacefully.⁵⁹

8 Officers then entered the house and discovered several bodies (eventually, nine) in
9 the southeast bedroom. There was uncoagulated blood, and several bodies were still
10 warm.⁶⁰

11 No admissions or confessions by Marcus Wesson were introduced at the
12 Preliminary Hearing. His version, if he gave one, of what happened in the southeast
13 bedroom, whether anybody was even alive when he entered it, was not introduced at the
14 prelim.

15
16 There was evidence at the Preliminary Hearing that Marcus Wesson, over the last
17 decade, talked repeatedly to his family about killing the children, and committing suicide,
18
19
20

21
22 ⁵⁶ PHT page 35.

23 ⁵⁷ See, e.g., PHT page 62, lines 2 to 3 (Wesson came out an hour twenty minutes after
24 the arrival of Officer Escareno, who, on arrival, was told that Wesson was already
inside; PHT page 60, lines 5 to 7.).

25 ⁵⁸ PHT page 40, lines 17 to 18.

26 ⁵⁹ PHT page 62, lines 21 to 22.

⁶⁰ PHT page 64, lines 13 to 26, page 65, *passim*, page 66, lines 1 to 5.

1 if the police ever came to break up the family.⁶¹ Marcus Wesson did own at least one
2 gun.⁶²

3
4 But there was evidence at the Preliminary Hearing that Marcus Wesson never
5 really intended to carry this out.

6 Wesson's daughter Gypsy Wesson⁶³ said that she never thought this plan would go
7 through, because law enforcement has contacted them in the past, and nobody died.⁶⁴

8 Gypsy, although a daughter, would apparently have no reason to lie or shade
9 things in Marcus Wesson's favor. She is one of the alleged victims in the sex-offense
10 counts,⁶⁵ and she ran away from home around July 2003, less than a year earlier.⁶⁶

11
12 There was also evidence at the Preliminary Hearing that Marcus Wesson was quite
13 serious about letting the mothers, Ruby and Sofina, take custody of their children.

14 Marcus Wesson had previously said that if people like Ruby and Sofina left the home,
15 their children must stay until they were seven years old.⁶⁷ Both children were now older
16 than seven, so now would be the time for them to go.

17
18
19 ⁶¹ The prosecution never got tired of introducing this evidence. Sample pages include,
20 e.g., PHT pages 93, 94, 100, 106, 107, 108, 143, 160, 161, 162, 196, 206, 304, 305

21 ⁶² PHT 264, lines 24 to 26, page 265, lines 1 to 10.

22 ⁶³ The relationship is stated at PHT page 89, lines 15 to 19. Hereafter she is referred to
23 simply as Gypsy. No disrespect is intended.

24 ⁶⁴ PHT 108, lines 12 to 20 ("She never thought this plan would go through, because law
25 enforcement has contacted them in the past and nobody died.")

26 ⁶⁵ Count 22. Her statements that gave rise to that count are at PHT pages 95 to 98 and
102 to 106.

⁶⁶ PHT 99, lines 3 to 8

⁶⁷ PHT page 213, lines 14 to 19.

1 The Preliminary Hearing Transcript shows that Marcus Wesson was agreeing to
2 that, and he was trying to have this worked out.⁶⁸ He just did not want it to happen in this
3 manner.⁶⁹

4 It is understandable that people with whom children have lived since birth would
5 not want to suddenly give them up, even to their mothers. Of course, it is also
6 understandable that the children's mothers would want them back. And wrenching
7 children out of the household and family they have known all their lives can cause deep
8 emotional trauma.

9 It makes perfect sense, therefore, that Marcus Wesson would want to calm both
10 groups down, and have them talk together to see if this could be worked out.

11
12
13 When did the nine people die? It must have been quite recent, because at least
14 much blood was uncoagulated, and at least some bodies were still warm. (There was no
15 scientific evidence introduced about the time of death.)

16 Yet, the police heard no gunshots the entire time.

17 Did these nine people die when there was a great noisy commotion inside the
18 house, when muffled gunshots would be less likely to be heard? If so, Marcus Wesson is
19 obviously innocent because he was in the doorway the whole time.

20 Or did they die when Marcus Wesson was in the southeast bedroom, nobody else
21 is in any other room, police have surrounded the house, and are aware that he may have a
22 gun, so that nine gunshots, even muffled ones, are surely going to attract police attention?
23 That seems so unlikely that it is essentially impossible.

24
25
26 ⁶⁸ See, e.g., PHT page 27, lines 3 to

⁶⁹ See, e.g., PHT page 317, lines 2 to 5.

1 Although no police officer heard gunshots, Ruby, Sofina, Brandy (a sister to them
2 both), and Kiani, all said they heard sounds that they thought may have been gunshots, so
3 their statements must be evaluated.
4

5 What Kiani heard is analyzed first. Kiani said that after that after she heard this
6 sound, everybody started screaming, and that influenced her in deciding this was a
7 gunshot.⁷⁰ Kiani was inside the house, but she was also uncertain of the time frame.
8 Significantly, this was about the time that Sebhrenah appeared at the door of the
9 Southeast bedroom, and called out to Kiani to come in.⁷¹ If, indeed, Kiani did hear a
10 shot, surely that was a shot fired by Sebhrenah!
11

12 Ruby said that she heard six shots, when she was at the back of the bus on the
13 driveway.⁷² But she did not mention these shots during her first interview with police,
14 only during her second interview.⁷³ Moreover, she was, by her own admission,
15 screaming, and, it appears, hysterical, at the time.⁷⁴ Ruby's excitable state of mind is also
16 shown by the bizarre happening just minutes earlier, when her own mother, Rosemary
17 Solorio, punched her in the stomach!⁷⁵

18 Brandy Sanchez, a sister to Sofina and Ruby,⁷⁶ was also present during the
19 incident. She also said that after Serafino, Kiani, and Rosie left the house, while she,
20

21 ⁷⁰ PHT 331, lines 13 to 16.

22 ⁷¹ PHT page 333, lines 18 to 23.

23 ⁷² PHT page 171, lines 1 to 2, page 199, lines 23 to 26, page 200, lines 1 to 11.

24 ⁷³ PHT page 171, lines 6 to 12, and page 172 lines 11 to 15.

25 ⁷⁴ PHT Page 161, line 26.

26 ⁷⁵ PHT page 216, lines 4 to 10.

⁷⁶ PHT page 203, lines 10 to 13.

1 Brandy, was running back by the end of the bus in the driveway, she heard two muffled
2 or very low pops in rapid succession, one right after the other.⁷⁷

3 The bus, where Ruby and Brandy allegedly heard shots, was a distance away from
4 the house. But the time frame they give for hearing these sounds seems like the very time
5 that officer, Nelson, was actually inside the house, calling out to Wesson in the Southeast
6 bedroom.⁷⁸ Nelson remained in the house for two or three minutes, but he did not hear
7 any sounds or noises coming from the southeast bedroom.⁷⁹

8 Perhaps Ruby and Brandy heard these sounds later, when Officer Nelson went
9 around the side of the house, and pulled out nailed-boards from the picket fence, so
10 officers could view the house better. When pulled, those boards make a loud creaking
11 sound!⁸⁰

12 Whatever Ruby and Brandy heard at that distance from the house, they could not
13 have been gunshots, since the police officers stationed around the house and listening, did
14 not hear them.

15
16 Sofina also reported, later, that she heard what she believed were two gunshots,
17 one right after the other, when she was outside screaming.⁸¹ But she said she was next to
18 a police sergeant at the time.⁸² Yet, as noted, no police officer reported hearing any
19 gunshots.

22 ⁷⁷ PHT 223, lines 3 to 6.

23 ⁷⁸ See, e.g., PHT page 36, lines 9 to 26, page 37, *passim*, page 38, lines 1 to 10.

24 ⁷⁹ PHT page 48, lines 17 to 26, page 49, lines 1 to 9, and lines 21 to 22.

25 ⁸⁰ PHT page 42, lines 10 to 26, page 43, lines 1 to 5.

26 ⁸¹ PHT 302, lines 12 to 25, page 303 lines 1 to 6.

⁸² PHT page 303 lines 1 to 6.

1 And no police officer reported that any of these four, or anybody else, came up to
2 them at the time and said they were hearing, or had just heard, gunshots.

3
4 In short, it is impossible that gunshots were heard by two people distant from the
5 house but not heard by trained listeners inside or right outside the house. It sounds
6 equally impossible that gunshots were heard by a person standing next to a police
7 sergeant, but they are not reported to the sergeant, and the sergeant himself doesn't seem
8 to hear them. Did Kiani hear a shot that nobody else did? Only if that shot was the last
9 one, the one of Sebhrenah, committing suicide.

10
11
12 **IV. The Law.**

13
14 The basic law is well settled. The famous *Rideout* standard is still the basic law.

15
16 An information will not be set aside or a prosecution thereon prohibited if
17 there is some rational ground for assuming the possibility that an offense
18 has been committed and the accused is guilty of it.⁸³

19
20 In considering the motion, *Rideout* teaches,

21
22 A reviewing court may not substitute its judgment as to the weight of the
23 evidence for that of the magistrate, and, if there is some evidence to support
24 the information, the court will not inquire into its sufficiency. [Citations

25
26 _____
⁸³ *Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474.

1 omitted] Every legitimate inference that may be drawn from the evidence
2 must be drawn in favor of the information.⁸⁴
3

4 But the inferences the court draws from the record must be reasonable. Just as the
5 court cannot rely on guesswork, speculation, or conjecture, *Birt v. Superior Court* (1973)
6 34 Cal.App.3d 934, 938, so too, surely, the court cannot rely on the inherently
7 impossible.

8 In *Birt*, the female defendant's fingerprint was found on a movable object, a
9 cigarette lighter, located in a rented truck that was abandoned at a burglary scene after
10 two males fled. The court said this was not sufficient to hold the defendant to answer to
11 burglary.

12 In our case the evidence is even weaker than in *Birt*. In our case, if the nine
13 people were murdered while Wesson was at the front door, then Wesson is obviously
14 innocent. He could not have fired the gun. He was being listened to the whole time by
15 police officers, and he was not heard to have ordered the murders. Nor did he aid or abet
16 them in any way; on the contrary he tried to settle the matter peacefully.

17 Nor is it possible that the fatal shots were fired after he entered the southeast
18 bedroom. There was only silence at that time. No police officer heard any gunshots. If
19 indeed Ruby, Sofina, Brandy, or Kiani did hear sounds, they could not have been
20 gunshots. Not when the trained listeners heard nothing.

21 There is no rational basis to believe that Wesson murdered these nine people. His
22 daughter Sebhrenah murdered eight people, and then she killed herself.
23
24
25

26 ⁸⁴ *Rideout v. Superior Court*, *supra* 67 Cal.2d at 474.

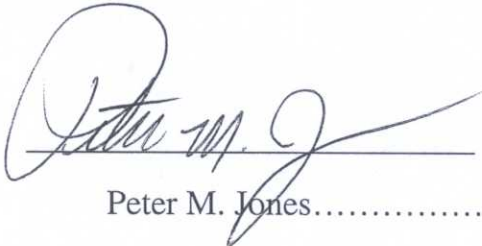
1 **V. Conclusion.**

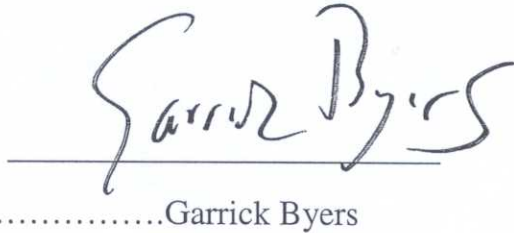
2
3 Counts One to Nine must be dismissed.

4
5
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7 Respectfully Submitted,

8
9 5/12/04

10 Date

11
12
13 
14 Peter M. Jones.....

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16 
17Garrick Byers

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Attorneys for Marcus Wesson

AFFIDAVIT OF PROOF OF SERVICE
(2009, 2015.5 C.C.P.)

State of California)
)
County of Fresno)

Comes now the undersigned, who hereby declares as follows:

I am a citizen of the United States of America and am employed in the county aforesaid. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is Public Defender's Office, County of Fresno, 2220 Tulare Street, Suite 300, Fresno, California 93721.

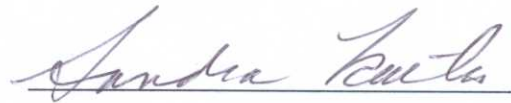
On the 12th day of May, 2004, I served a copy of the attached "Defendant Wesson's Penal Code Section 995 Motion to Dismiss Counts 1 to 9" on the following party:

Fresno County District Attorney
Fresno County District Attorney's Office
2220 Tulare Street, Suite 1000
Fresno, California 93721

by delivering and depositing a true copy thereof with a representative of the Fresno County District Attorney's Office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 12, 2004.



RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____

RECEIPT OF A COPY OF THE FOREGOING DOCUMENT IS ACKNOWLEDGED.

DATE: _____

BY: _____