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FILED
SUPERIOR COURT-STOCKTON

2013 JUL -3 PM 3:05

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

10 The People of the State of California)

11 Plaintiff)

12 vs.)

13 PREM BASUTA)
14 KULWINDER KAUR BASUTA)
15 GURMAIL SINGH)

16 Defendant(s))

No.: IF-12-76

LPD Case

DA Case: CR - 2012 - 4023652

DEFENDANTS' NOTICE OF AND MOTION
TO DISMISS (PENAL CODE §995);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT

Local Rule: 2-101 & 2-102

Date: July 8, 2013

Time: 10:30 a.m.

Dept.: 34

LF 01385 ABC

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19 TO: THE PEOPLE OF THE STATE OF CALIFORNIA, AND THE SAN JOAQUIN
20 COUNTY DISTRICT ATTORNEY; ATTENTION: J.C. WEYDERT, ESQ.

21 NOTICE IS HEREBY GIVEN that on July 8, 2013 at 10:30 a.m. or as soon thereafter as the
22 matter may be heard, in Department 34 of the above entitled Court, the Defendants PREM
23 BASUTA, KULWINDER KAUR BASUTA and GURMAIL SINGH will move this Court for an
24 Order to Dismiss this case pursuant to Penal Code § 995.

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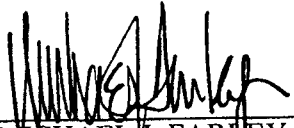
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1 Said motion is based upon the grounds that Defendants are now being prosecuted without
2 reasonable or probable cause, thus violating their Federal Constitutional rights under the Fifth
3 Amendment as applied to this state by the Fourteenth Amendment and his California Constitutional
4 rights under Article 1, section 14. This motion is also based upon this notice, the points and
5 authorities set forth below, the complete files and records in this action along with other evidence,
6 oral and documentary, as may be adduced upon the hearing of this matter.

7 **LAW OFFICE OF MICHAEL J. FARLEY**

8
9 DATED: 7-3-13

10 
11 MICHAEL J. FARLEY (SBN 147584)
12 Attorney for Defendants

13 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

14 I.
15 PRELIMINARY STATEMENT

16 On October 15, 2011, The Salisbury Market, a small family run business (RT 214:24-26)
17 sustained total and catastrophic damage from two fires. No one knows when each fire actually
18 started but fire officials estimated the first fire may have started sometime around 6:30 a.m. (RT
19 162:6-8.) Units from the A shift, Lodi Fire Department, cleared the scene at 7:55 a.m. (RT 144:24-
20 145:6.)

21 The second fire, according to the testimony from fire investigators, may have started
22 sometime between 8:20 a.m. and 8:25 a.m. (RT 148:26-149:5.) Following the second fire, police
23 and fire investigators remained on scene until 6:49 p.m (RT 162:20-24.) Damage from the second
24 fire was catastrophic. Indeed, the Salisbury Market has been closed since that time.

25 As shown below, David Rabara was assigned to investigate the "cause and origin" of the
26 fires. Lodi Police Detective Maynard was assigned to investigate the criminal aspect of the fire.
27 After a purportedly complete and thorough investigation, Det. Maynard formed the following
28 impressions and conclusions:

1. Salisbury's Market was having severe financial difficulties just prior to the two fires. These included failure to be able to pay their prescribed rental amount resulting in a rental reduction, failure to pay the mortgage to Bruce and Linda Salisbury in a timely manner, failure to pay for the Salisbury brand seasoning in a timely manner.

2. Major equipment failures that had a direct effect on where they stored and maintained their produce area. . .

3. . . . as well as financial difficulties that caused the Basutas to place their house for sale at a substantially lower price than what they had purchased it for.

4. Additionally, the Salisbury's Market is in a large business complex and is physically attached to approximately 30 other businesses. If not for the timely arrival of the Lodi Fire Department at the time of the second fire, the physical loss to the entire complex could have been catastrophic, with many of those other businesses being occupied at the time of the second fire. The results could have been loss of human life and, at a minimum, loss of jobs to the workers at the other business.

5. At this time there appears to be sufficient probable cause to indicate that Prem Basuta intentionally started the second fire to the business. The business had been locked up as the first crew of firefighters left the scene. Three people at the store had keys, Kulwinder, Prem, and Gurmail. Prem Basuta was the only subject that disappeared from all witnesses during the time that the second fire was set, and it appears that he did willfully and maliciously set fire to the structure that is commonly referred to as Salisbury's Market.

(Discovery, Case Supplemental Report, pp.23-24)

As will be shown below, the foregoing summary of facts to support a showing of probable cause to charge these Defendants with arson and insurance fraud, is grossly inaccurate. This motion will demonstrate the numerous errors which were made in the course of the investigation which lead to insupportable factual conclusions.

The defendant PREM BASUTA is accused of starting the blaze not because someone saw him start the fire or because he suffered a burn injury attendant to starting a fire or because sniffer dogs detected the odor of an accelerant on his person. He is accused of starting the fire at the Salisbury Market because DEAN MACCHADO, an employee in an adjacent dry-cleaning business, told law enforcement that didn't know where Prem was from roughly 7:55 a.m. until 8:38 or 8:39 a.m., when the fire department appeared for a meeting with a property manager by the name of SUSAN BATTY.

However, DEAN MACCHADO was never asked to keep track of the Defendants. Moreover, he was never asked if he *tried* to keep track of the Defendants. As if those factors weren't enough to fatally impeach the credibility and reliability of his observations, Det. Maynard testified that he thought Mr. MACCHADO acted as if he suffered from Adult Attention Deficiency Disorder.

The lives of three people, PREM and his wife KELLY BASUTA and GARY SINGH, not to mention their families, have been tragically altered on every level, financially, emotionally and physically, on the purported memory a man who police believe suffers from Adult Attention Deficiency Disorder.

At the end of the proceeding, the Court made the expressed its opinion concerning the case and the likely outcome of a jury trial:

Can you imagine arguing this to a jury? Here you're arguing to me, and there's a reasonable suspicion that maybe a crime occurred and maybe they did it. Could you imagine trying to talk to a jury into beyond a reasonable doubt? They'd be looking at you - - they'd be mad, because they'd be sitting here for three or four weeks listening to this stuff. They'd be mad now. But could you imagine that? Ew, be hard to look them straight in the eye.

Hon. Bernard J. Garber, Judge Presiding
Preliminary Examination
Page 423:25-424:4

The information set out below will demonstrate why the Court expressed the foregoing opinion and why this case should be dismissed.

II. PROCEDURAL SUMMARY

The defendants in this case are PREM BASUTA, his wife, KULWINDER BASUTA (“KELLY”) and GURMAIL (“GARY”) SINGH, and they are all represented jointly by MICHAEL J. FARLEY. Appropriate waivers are in place.

J.C. WEYDERT, Esq., represents the People.

On or around May 23, 2012, the People filed their Complaint and charged the Defendants with a total of six (6) separate felonies arising from the fire which occurred October 15, 2011 at The Salisbury Market, located at 2401 W Turner Road # 226, in Lodi, California.

1 The felonies are as follows:

2 Count 1: P.C. § 550(A)(1); Fraudulent Claim for Insurance Payment
3 Count 2: P.C. § 451©); Arson, Structure/Forest/Land;
4 P.C. 451.1(A); Special Allegation, Arson with Aggravating Factors;
5 Count 3: P.C. § 548; Defrauding and Insurer;
6 Count 4: P.C. § 550(B)(1) Insurance Fraud;
7 Count 5: P.C. 550(B)(3); Insurance Fraud;
8 Count 6: P.C. 664/487©); Attempted Grand Theft - Person.

9 Over the course of three days, October 15, 16 and 19, 2012, the Court presided over a
10 preliminary examination during which the People presented a total of three witnesses who testified:
11 (1) Katherine Schuft; (2) Det. Stephen Maynard and (3) and Fire Investigator Ryan Rabarra.

12 The Defendants presented five witnesses: (1) Dr. John Hancock, Ph.D., an economist; (2)
13 Jamie Young, a building planner and designer; (3) Rob Sasaki, a refrigeration maintenance and
14 repair specialist; (4) Bruce Salisbury, the former owner of the business called The Salisbury Market
15 and the person from whom the Defendants purchased the Market and lastly, (5) Susan Batty, the
16 property manager of the business premises where the fire occurred.

17 As will be shown below, the People failed to sustain their burden proof relative to showing
18 that probable cause exists to believe the Defendants individually, or conspired to deliberately start
19 the fire which destroyed the premises commonly referred to as the Salisbury Market, located at 2401
20 W. Turner Road, in Lodi, California.

21 III.
22 FACTUAL SUMMARY

23 A.

24 ARSON INVESTIGATION AND POLICE INVESTIGATION

25 As of October, 2012, David Rabara had been employed for 8 years as fire engineer and fire
26 investigator for the Lodi Fire Department. He is also qualified as a peace officer (RT 93:3-20.) As
27 a fire investigator, his responsibility is to investigate the "cause and origin" of fire. Typically, the
28 police department handles any criminal investigation (RT 94:16-21.) The fire in this case presented

1 Mr. Rabara with his first commercial fire investigation (RT 214:19-23.)

2 The testimony from each investigator relative to this motion is set forth below.

3
4 1.

5 TESTIMONY FROM FIRE INVESTIGATOR RABARA

6 On October 15, 2011, Investigator Rabara ("RABARA") was scheduled to work the B shift
7 which started at 8:00 a.m. (RT 96:1) He arrived at the station sometime between 7:30 and 7:45 a.m.
8 and discovered that the A shift was not in quarters (RT 96:15-16) because they had earlier responded
9 to a fire at the Salisbury Market at approximately 6:30 a.m. (RT 96:3-5.)

10 According to his testimony, the A shift cleared the first fire at the Salisbury Market at 7:55
11 a.m. (RT 185:2-8) and returned to the Station shortly after 8:00 a.m. At that time, Mr. Rabara had
12 his morning "pass along" and met with Capt. Thalken and other crew members who attended the fire.

13 During their meeting, they discussed the "...water flow alarm at the Salisbury Market which
14 turned into a full structure fire assigned for commercial fire due to what they found when the got on
15 scene and made it into the building. . ." (RT 96:24-28.)

16 The firefighters proceeded to tell Mr. Rabara that there had been a gas fire at the Salisbury
17 Market (RT 151:8-10.) Fire fighters were able to isolate the fire to the kitchen by turning off the
18 gas (RT 98:1-3.)

19 It appeared the first fire was considered purely accidental in nature (RT 151:25-152:1.) No
20 one could even tell what time the fire got started (RT150:22-26) and no one could ascertain to a
21 reasonable degree of certainty how much gas accumulated or ignited (RT:151:16, 179:4-28; RT
22 180:16-20.)

23 Relative to the ignition of the gas ignition, Mr. Rabara made the assumption that the gas must
24 have come in contact with one of the pilot lights that were 18" to 24" inches from the source of the
25 leak (RT 181:22) but he conceded that he did not know if the pilot lights were even lit at 6:30 a.m.
26 (181:26-182:1.)

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1 Firefighters extinguished the blaze when a crew member turned off the gas spigot (RT
2 175:11-14.). However, the heat from the fire caused one of the over head sprinklers inside the
3 kitchen to pop and consequently, the sprinkler system was out of service for the entire structure,
4 including several other ongoing businesses (RT 97:27-98:06.)

5 By 7:55 a.m., work at the scene was complete and the fire crew cleared the scene (RT
6 144:24-145:6, RT 185:2-14.) Damage from the first fire was isolated to the kitchen area (RT 197:12-
7 13.)

8 Although the entire crew was safely back in quarters, Capt. Thalken remained concerned that
9 the alarm and sprinkler system had been deactivated for the entire building (RT 98:21-23.) Indeed,
10 just a few minutes later, while at the station, Battalion Chief Juelch called Mr. Rabara and asked
11 to speak with Capt. Broderick (RT 100:20-21.)

12 Capt. Broderick subsequently instructed Mr. Rabara and his crew to return to the Salisbury
13 Market to meet with the property manager about the alarm and sprinkler system (RT 100:20-101:9.)

14 Accordingly, at approximately 8:35-8:36 a.m., Mr. Rabara and the B Shift departed the
15 station and drove back to 2401 W. Turner Road. They arrived on scene at approximately 8:38-8:39
16 a.m. (RT 163:13-16.) According to Mr. Rabara, they were supposed to meet with the property
17 manager regarding the reactivation of the alarm and sprinkler system (RT 101:2-28.).)

18 To that end, he testified:

19 Q: Okay. Did the fire team A people tell you when you were at
20 the station before leaving - - before leaving - - going back to
21 Salisbury that you need to go back only because the sprinkler - - the
22 sprinkler system had been deactivated and needed to be re-plumbed?

23 A: Our specific reason for going back was a request from the
24 property manager to go confer about the sprinkler system and alarm
25 system and getting them both back in service.

26 Q: Did Detective Maynard say you need to go baby sit the
27 building?

28 A: Not to my knowledge.

1 Q: Is it your understanding that your crew was sent to the
2 Salisbury Market at the request of Susan Batty and for no other
3 reason?

4 A: The primary reason was that; however, I'm sure part of the
5 other reason for Battalion Chief's request was because such a large
6 occupied business had a sprinkler system and alarm system that was
7 out of service.

8 When pressed further to explain their return to the Salisbury Market, Mr. Rabara was asked
9 specifically if he was ordered back to 'babysit' the building:

10 Q: Would you have gone with the Lodi Fire Department - - had
11 gone to that same strip mall to baby sit - - would Lodi Fire
12 Department have gone to that strip mall and waited for the sprinkler
13 system to be re-plumbed even if Susan Batty never posed that
14 request?

15 A: Possibly.

16 Q: Taking the word possibly out and put the word probably in, is
17 it more probable than not the fire department would have returned to
18 that strip mall pending the sprinkler system getting re-plumbed?

19 A: I can't answer yes or not to that.

20 Q: Don't know?

21 A: Because it's - - the supervisor specific.

22 Q: Okay. So you don't know?

23 A: Right.

24 In truth, as far as Mr. Rabara was concerned, there was no sense or urgency to return to the
25 Salisbury Market that morning merely because the sprinkler system was deactivated (RT188:8-12.)
26 However, as Mr. Rabara and the B shift arrived on scene at 8:38 to 8:39 a.m., he observed a woman
27 he later learned was Susan Batty, the property manager. He testified that she was trying to get his
28 attention because she was flagging him down and waiving pretty frantically (101:18-21.)

1 At the time of their initial arrival, Mr. Rabara wasn't sure who was with Ms. Batty because
2 he was focused on the fire. He recalled that the Defendants were on scene but he did not remember
3 if he actually saw the Defendants when he arrived (RT 193:8-13, 242:19-20.)

4 Mr. Rabara drove to where Ms. Batty was pointing and observed steam or smoke coming
5 from the roof. As he opened the door to his rig, he smelled smoke (RT 101:2-28.) He and the crew
6 started to investigate what they thought was a fire inside the building. Then, they immediately began
7 to put on their protective equipment (RT 102:2-7.) Mr. Rabara charged the hoses and other fire
8 fighters began to fight the fire (RT 103:1-4; 107:19-25.)

9 Mr. Rabara remained outside the building until the fire was out (RT 107:4-6.) Fortunately,
10 the second fire was small and the department arrived on scene quickly after it started (RT 193:6-7.)
11 Consequently, five to ten minutes after they arrived, the fire was out (RT 192:21-27.)

12 At that point, Mr. Rabara undertook work to specifically investigate whether the two fires
13 were part of a deliberate pattern of conduct or a rekindle (RT 174:17-26.) The investigation team
14 consisted of Mr. Rabara, Engineer Quaglia and Firefighter Heberle (RT 108:18-24.)

15 Mr. Rabara was the first fire investigator in the building (RT 109:10-12.) As soon as he
16 walked through the doorway, he started looking for smoke stains and smoke patterns on the walls
17 (RT 110:6-9.) He observed a smoke pattern approximately 18 inches from the floor that lead at a
18 60-ish degree of angle into the kitchen area (RT 110:11-13.)

19 He followed the smoke stains and patterns until he located what he considered the point of
20 origin which was actually a debris pile located along a north bathroom wall (RT 115:7-9.)

21 However, even before he got down on his hands and knees and started going through the
22 debris, he spoke to the Defendants and asked what was in the storage room. Mr. Rabara stated that
23 the Defendants told him they stored charcoal and lighter fluid in a card board box in the storage area
24 right by the bathroom wall (RT:219:5-6; 229:25-230:2.)

25 Following that, Mr. Rabara removed ceiling material from the debris pile which had been
26 pulled down during fire suppression so the attic could be checked for fire (RT 118:19-27.) Next, he
27 removed the BBQ charcoal which the Defendants told him was stored there (RT 119:1-7.)

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1 Eventually, he got down all the way to the bare concrete floor where he observed what he
2 described as evidence of hydrocarbon fluids burned on the concrete (RT 119:14-120:2.) Hydrocarbon
3 fluid is the formal name for lighter fluid, gasoline or any kind of ignitable liquid (RT 120:3-7.)

4 On direct examination, Mr. Rabara testified as to his observations:

5 Q: How or what signs - - or how are you reading the burn pattern
6 on the concrete in the area of the point of origin?

7 A: What it appears is the box of charcoal was stored here
8 underneath the clean part of the concrete which we recovered, a piece
9 of cardboard in that spot, that was soaked with lighter fluid and the
10 pattern around it appears as if somebody sprayed ignitable liquid in
11 the area and lit it. (RT 120:8-14.)

12 Put plainly, Mr. Rabara subsequently determined the point of origin of the second fire was
13 in the storage area, precisely where the Defendants told him they stored the BBQ materials, including
14 lighter fluid, in a cardboard box. Once that was done, he called for additional fire investigators (RT
15 110:17-25.) However, discovery of the origin of the fire did not indicate the cause of the fire (RT
16 111:26-112:2.)

17 Mr. Rabara also testified that as part of his investigation, he looked for other causes of the
18 second fire. For instance, he checked for mechanical heat sources and open flame (RT 149:20.) He
19 looked for and found no evidence of any kind of friction, gears, pulleys, small machinery, no
20 electrical outlets in the direct vicinity, i.e., directly at the point of origin (RT 149:22-18-28.)

21 He testified:

22 Q: When did you begin to form an impression that this might
23 have been a deliberate act by the shop owners?

24 A: As we started to - - once I got to the point where I established
25 where the point of origin was and was able to examine the direct area
26 for all those items, accepting open flame devices which I can only ask
27 the tenants about which came later, just judging on the location and
28 the lack of a - - electrical heat or any kind of mechanical heat at that

1 point is when I started to get into intentionally set fire. (RT 199:16-
2 24.)

3 Within just 1-2 hours, Mr. Rabara was of the opinion that the fires were the result of a
4 deliberate act by the Defendants (RT 213:5-15.) However, he could not recall when he shut down
5 the store as a crime scene for the purpose of preserving evidence (RT 241:240:20-241:3.)

6 Mr. Rabara testified that he knew the Defendants operated a large commercial BBQ which
7 was located in the parking lot of the Salisbury Market. He also knew the Defendants stored and kept
8 the mesquite, charcoal and lighter fluid in a card board box in the exact same place which he
9 described as the "point of origin" for the second fire. (RT221:3-13.)

10 He described the cardboard box that was used to store the lighter fluid and charcoal as
11 "saturated" with lighter fluid. Indeed, his stated during cross examination:

12 Q: Did you ever undertake any particular investigation to find out
13 whether there was a portion of the lighter fluid which was deliberately
14 squirted out and some that may have poured out because the bottle
15 of lighter fluid melted?

16 A: It was a part that I considered because of the - - the heavy
17 saturation of lighter fluid in the box that we recovered and took into
18 evidence.

19 Q: The cardboard box?

20 A: Yes.

21 Q: The cardboard box that was saturated wiht lighter fluid?

22 A: Yes. (RT 223:9-19.)

23 After extensive cross examination, Mr. Rabara provided clarification which was missing
24 from his report and never mentioned during direct examination. In regards to the description of the
25 card board as being saturated with lighter fluid, Mr. Rabara finally conceded that in truth, that the
26 saturation was not just lighter fluid:

27 Q: Did you perform any analysis to figure out just how much
28 time it would take to saturate a 2x3 piece of cardboard with lighter

1 fluid to the pont where, as you say, it's dripping?

2 A: Also have to consider that there had been water sprayed on the
3 fire at that time, *so there was a lot of water involved as well.*

4 Q: Is your testimony now that the card board was dripping with
5 water and lighter fluid?

6 A: Yes.

7 Q: Could you, through analysis, determine the content, the water
8 content of that cardboard in comparison to the lighter fluid of that
9 card board?

10 A: I don't know. (RT: 233:14-28, emphasis added.)

11 Further examination revealed that there were a total of five (5) over head sprinklers hanging
12 down from the ceiling within just a few feet in the storage room where Mr. Rabara testified was
13 the point of origin for the second fire (RT 204:6-9.) However, he never diagramed or even
14 referenced the placement of the sprinklers in any of his reports. As to the impact the sprinklers
15 would have had, Mr. Rabara conceded this much:

16 Q: It could have started - - do you believe that with a properly
17 functioning sprinkler system, the fire would have been suppressed
18 more quickly than - - than your services without the sprinkler
19 system?

20 A: yes.

21 Q: Do you know by how much more quickly?

22 A: No. (RT 206:1-8.)

23 He did not obtain a statement or an interview any purported witnesses (RT 217:17-19.)

24 Mr. Rabara did not perform any tests or conduct any analysis to ascertain how long the lighter
25 fluid had been on the floor RT 219:21-28.) He conceded that he has no formal training or education
26 in any relevant fields of study, i.e., no background in mechanical engineering, electrical engineering,
27 civil engineering or chemical engineering (RT 137:1-19)

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1 Nevertheless, he freely expressed the opinion that the lighter fluid was deliberately poured
2 because of its "directionality" and the extent of it (RT 218:18-24.)

3 He continued:

4 Q: Did you undertake a special effort to try and locate any
5 container that may have survived the fire to see if that was in fact,
6 what was used to store the lighter fluid?

7 A: Yes.

8 Q: Is that mentioned in your report?

9 A: No.

10 Q: Any particular reason you did not itemize that particular
11 aspect of your investigation namely, the attempt to find evidence
12 which was unsuccessful?

13 A: Oversight on my part. (RT 222:4-15.)

14 However, he also stated that it was a mistake on his part for failing to even search for the
15 bottle of lighter fluid:

16 Q: And did you know that the partners, the defendant, stored
17 mesquite and charcoal along with lighter fluid in the area where
18 you've described that pattern on picture 12?

19 A: Yes.

20 Q: Did you ask any of these folks if or how they stored the lighter
21 fluid?

22 A: No.

23 Q: Wasn't it enough concern to that you needed to know, was it
24 a steel can, was it a plastic bottle, was it just stored in a large
25 container without a lid? Did you ask any questions about the storage
26 of the lighter fluid?

27 A: It was an over sight of mine at the time - - at that time. Since
28 I could not find the container, I came to a conclusion it was plastic

1 and it burnt up.

2 Q: Okay. When you say "burnt up", does that mean it melted?

3 A: Yeah.

4 Q: Melted to the point it just evaporated and disappeared, nothing
5 left?

6 A: Well, among the rest of the debris there, it would be hard to
7 discern a melted plastic bottle. (RT:221:10-222:2.)

8 Mr. Rabara never searched for or recovered the container from which the lighter fluid was
9 allegedly poured by Prem Basuta and conceded that failing to do so was an "oversight." In
10 furtherance of that oversight, Mr. Rabara merely assumed that whatever sort of container the lighter
11 fluid was stored in was "burnt up" (RT221:21-23.)

12 2.

13 TESTIMONY FROM DET. MAYNARD

14
15 INVESTIGATION OF FIRE

16 Det. Maynard testified for the People concerning the facts of the fire loss at the Salisbury
17 Market from the perspective of law enforcement. By way of a foundation for his testimony, he
18 testified that he is a detective with the Lodi Police Department, a member of the Fire Investigation
19 Unit and Commander of the Lodi P.D. Bomb Squad. He is cross trained in fire investigation
20 consisting of Fire And Arson Investigation 1A and 1B (RT 26:1-28.)

21 This case is Det. Maynard's third commercial arson investigation and the first one which has
22 actually resulted in a criminal prosecution (RT 28:13-29:7)

23 On the morning of October 15, 2011, he received a call at 8:51 a.m. and was responded to
24 a fire at the Salisbury Market (RT 25:1-5.) He arrived roughly ten to twelve (10-12) minutes later
25 (RT330:2-4.) He confirmed at that time that there were in fact, two separate alarm calls that day
26 for the same location (RT31:6-17.) The first fire is documented in Lodi Fire Department incident
27 report number -4402. The second fire is documented in incident report number -4405 (RT32:7-18.)

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1 According to Det. Maynard's report and testimony, the Bay Alarm Company received what
2 is commonly called a "flow alarm" at 6:27:14 on the morning of October 15, 2011. A flow alarm
3 means water is flowing from an interior sprinkler which, in turn, operates to notify the Bay Alarm
4 Company of a fire at the premises (RT38:19-27.) The Bay Alarm Company subsequently notified
5 the Lodi Fire Department of a fire at the Salisbury Market (RT 38:19-27.)

6 The Lodi Fire Department arrived at the Salisbury Market at approximately 6:30 a.m.
7 Captain Thalken was the on-scene captain at that time (transcript 32:7-14.) The crew that responded
8 to the first fire was referred to as the "A Team." (RT42:4-10.)

9 As it was told to him, Det. Maynard testified that the first fire at Salisbury Market was in
10 the kitchen (RT36:11-15.) Specifically, the fire was coming from a gas line with an open spigot.
11 When fire officials turned off the spigot, the fire went out. The damage from the fire was contained
12 to what is called a bread "proofer" (RT 37:5-23.)

13 Fire officials remained on scene until approximately 7:55 a.m., at which time the fire team
14 returned to their station on Lower Sacramento Road and Elm Street, about a half mile away (RT
15 42:4-10.) As of the time the A Team departed, the fire sprinkler system for the entire building,
16 known as a loop system, was out of commission. Fire fighters had deactivated the entire sprinkler
17 system as part of their suppression efforts from the first fire (RT 41:18-25.)

18 Det. Maynard testified that after the crew returned to the station, the off-going shift briefed
19 the oncoming shift that the sprinkler system was "tagged" out and so they asked the ongoing shift
20 to go up to the building and make sure that everything was secure. As the new shift was on their way
21 to the building, a second alarm came in saying there was another fire (RT 42:21-27.)

22 When Det. Maynard arrived that morning, Lodi Fire Captain Thalken walked Det. Maynard
23 through the premises (transcript 35:2-9.) As he walked, Det. Maynard searched for Mr. Rabarra, the
24 Fire Investigator from the Lodi Fire Department who would jointly investigate the cause of the fire
25 with him. According to Det. Maynard, they were principally responsible for the investigation of the
26 Salisbury Market fires (transcript, 289:4-12.)

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1 B.

2 INTERVIEWS WITH BASUTA DEFENDANTS

3 1. KELLY BASUTA

4 Det. Maynard interviewed defendant KELLY BASUTA first (RT 289:19-21) at 11:29 a.m.
5 (RT 289:13-18.) As part of the process, he looked for but found no signs of suspicious conduct
6 which would red flag her (RT 289:19-290:1.) But just only three hours into the investigation, Det.
7 Maynard formed the impression that the second fire was the result of a deliberate act (RT 288:22-
8 289:3.) By that time, he and Mr. Rabara had begun to dig into the debris pile which the former
9 thought was the point of origin (RT 291:13-16.)

10 Det. Maynard asked Kelly what she did in between the fires and she said they went next door
11 next door to the Woodlake Cleaners and waited there (RT 338:8-16.) In the mind of Det. Maynard,
12 there was no question that she did not re-enter the Salisbury Market after the Lodi Fire Department
13 left the scene at 7:55 a.m. (RT 338: 21-339:03.)

14 In fact, there was never a time when Det. Maynard thought she was lying (RT 340:25-26) and
15 he did not believe she was the one who set the fire (RT341:8-12.)

16 2. PREM BASUTA

17 During the preliminary examination, Det. Maynard testified that he believed defendant
18 PREM BASUTA lied to him about going into the building between 7:55 a.m. and the time the crew
19 arrived to meet Susan Batty, at approximately 8:38-8:39 a.m. To that end, the Court focused on the
20 following excerpt of Det. Maynard's tape recorded statement with defendant PREM BASUTA.

21 In the transcript set forth below, M = Det. Maynard, P = Prem Basuta and K = Kelly Basuta:

22 M: What time did you get here?

23 P: Uh...he call us around 6:30; maybe 7:00, 7:10. Something
24 like that.

25 M: So you got here about 7, 7:30?

26 P: No. 7:10, 7, 7:10. I don't know.

27 M: Ok. ok. And then, uh um..So what did you guys do when
28 you got here? What was your actions.

1 P: I just go to the... go with the people you know ask them
2 what happened?
3 M: Ok.
4 P: They explaining to me some kind of fire (unclear...)its uh...
5 M: What people was this?
6 P: The fire people.
7 M: The fire department? Ok. Ok. And then, uh, so you talked
8 to the fire department.
9 P: They showed me uh, the proof box that was burning...
10 M: Hm hmm...
11 P: And uh, you know, all the water... That's it. Not..Not very
12 long.
13 M; Ok
14 P: I guess then, we come over here...they said we are leaving
15 at this time ... shift change...
16 M: Okay.
17 P: So other people can come and...(unclear...). And they leave
18 then ...you know...we are waiting for those people that...these
19 people...uh...the laundry people ...
20 M: Ok. The dry cleaners...
21 P: Yeah....
22 M: Ok.
23 P: So we just come with them in here talking with them...
24 M: So you were just waiting...
25 P: Yeah. Then, uh...uh, the lady, I guess...the property
26 management lady..she show up...
27 M: And what's her name?
28 P: Her name is uh...(To Kelly:) What's her name? The

1 property manager lady's name?
2 Kelly: Susan.
3 P: Susan...yeah.
4 M: Ok. Do you know her last name?
5 P: No.
6 M: Ok.
7 P: I don't afterwards. She's the one I always deal with.
8 M: Ok.
9 P: And she got here. I guess she found a plumber or a gas
10 guy...
11 M: Okay...
12 P: ...to turn back on something. I don't know.
13 M: Ok...
14 P: So we are here for few minutes and then go up there. You
15 know...The plumber is there and the gas guy is there...
16 The Susan is there. Then...you know, we heard a noise like
17 somebody shooting inside. Something like that.
18 M: Ok. Did you hear the noise yourself?
19 P: No, not me. I was a little you know...
20 M: Oh, okay. So you heard that from somebody else. Who told
21 you that?
22 P: The fire...fire guy. He's talking to Susan.
23 M: Oh, ok. Ok. alright. And then, um...so what did...what
24 happened at that point?
25 P: She's uh...Dialing to the fire department. Then right after...
26 M: Okay...okay. Now was fire department already here or did
27 they get called out?
28 P: No. I don't know. She's...I haven't saw her on the phone.

1 She's talking to them.

2 M: Oh, ok. Alright...and then, um. Ok. So then the fire
3 department shows up... Did you ever go into the building?

4 P: No...not after that. No.

5 M: Ok. So you didn't go in inside at all...ok. Alright.

6 **P: Before I did yeah. Yes.** (Emphasis added.)

7 M: Ok.

8 M: And... Let me see...you guys were having the vents cleaned
9 last night? Right?

10 P: Yes.

11 M: How often do you guys do that?

12 P: Oh...once a year...

13 *(End interview regarding Defendants actions regarding entry into*
14 *and exit from building.)*

15 After the interview was concluded, Det. Maynard formed the impression that defendant
16 PREM BASUTA did not re-enter the store after 7:55 a.m., when the Fire Department left the first
17 fire scene departed. Indeed, he initially thought all three defendant were just victims of the fire (RT
18 386:25-27.)

19 However, Det. Maynard went on vacation before Christmas in 2012 and did not return until
20 approximately January 17, 2012. (RT 385:1-11.) When he listened to the tapes in January, Det.
21 Maynard"realized" that defendant PREM BASUTA had, in fact, re-entered the Salisbury Market
22 after 7:55 a.m. (RT 12-362:3.)

23 Q: Did your review of this case after vacation include a re-
24 examination of his audio statement, the one we just listened to?

25 A: Yes, sir.

26 Was it during that re-examination, re-listening to Prem's statement
27 that your formed a different impression as to what he did in between
28 the time the fire department left fire one and the time the fire

1 department arrived at fire two?

2 A: No.

3 Q: Was there a time when you formed an impression that the
4 statements you wrote on page four, all the owners say that they did
5 not re-enter the store, was there a time when that statement was no
6 longer true in your mind?

7 A: Yes.

8 Q: When.

9 A: When I re-reviewed the audio tape. I already had an
10 impression - - to elaborate on our first question, I had an impression
11 that Prem was the one that set the fire - -

12 Q: What was that based upon:

13 A: It was based on he was the only one that disappeared during
14 the time frame when the fire started, and he had said he had been
15 waiting over at Woodlake Cleaners during the time frame when the
16 fire started. (RT:362-6-28.)

17 The critical language that made the difference in Det. Maynard's mind that day in January,
18 2012, was as follows:

19 M: Oh, ok. Alright...and then, um. Ok. So then the fire
20 department shows up... Did you ever go into the building?

21 P: No...not after that. No.

22 M: Ok. So you didn't go in inside at all...ok. Alright.

23 **P: *Before I did yeah. Yes.*** (Emphasis added.)

24 M: Ok.

25 In other words, Det. Maynard re-evaluated the interview and concluded the defendant PREM
26 BASUTA lied about what he did in between 7:55 a.m. and when the Lodi Fire Department returned.
27 In Det. Maynard's opinion, PREM BASUTA did, in fact, reenter the Salisbury Market and start the
28 fire after 8:00 a.m.

1 He corroborated his post-vacation audio analysis with a statement from the owner of the dry
2 cleaning business next door, DEAN MACCHADO, who reportedly owns the dry cleaning store next
3 door, Westlake Cleaners. Specifically, DEAN MACHADDO told Det. Maynard that PREM
4 BASUTA disappeared during the time frame when the second fire started (RT 362: 21-28.)

5 Upon closer analysis of the transcribed statement with PREM BASUTA, the exact text of
6 the back-and-forth interview between them clearly demonstrates that defendant BASUTA told the
7 Detective he did not re-enter the store after the fire department arrived that second time. Also, he
8 quite clearly told Det. Maynard that he entered the building *before* the fire department left the scene
9 at 7:55 a.m.

10 When asked about the reliability of the statement PREM BASUTA made, i.e., "Yes, before
11 I did," Det. Maynard testified:

12 Q: Okay. As you sit here today, listening to that statement, do
13 you believe you could have undertaken a better effort to clarify
14 whether or not Prem went back into the building in between the two
15 fires?

16 A: Listening to it now, absolutely.

17 Q: Do you think that uncertainty is one, as you sit here today, you
18 would undertake extra effort to clarify knowing today. - - knowing
19 what you know now?

20 A: I would do many things different in the past knowing what I
21 know today.

22 Q: I'll keep company in company there with you. But as to this
23 fire - -

24 A: Right.

25 Q: - - would you attempt to clarify what Prem meant when he
26 said "no" there was a pause and "yes, before I did"?

27 A: In that circumstance, absolutely. And I'll tell you why. I had
28 intended to have more thorough interviews with them. I didn't realize

1 that was going to be my one shot at interviewing anybody there on
2 scene. So, yes, I would have been a lot more lengthy in my interview
3 and lot more in-depth on the questioning that I did ask. At that point
4 I was trying to get an initial interview.

5 Q: Okay. Do you apply different standards of investigation
6 depending upon whether you have one shot of a witness or not?

7 A: Not normally, but I'm trying to get as much done. I'm the
8 sole person out there wearing a lot of different hats, and so I was
9 trying to get as much done that I could. (RT353:17-354:15)

10 As is patently clear from his own testimony, a critical question he asked PREM BASUTA
11 elicited an answer that even Det. Maynard realized was vague and in need of clarification. The first
12 question was:

13 M: Oh, ok. Alright...and then, um. Ok. So then the fire
14 department shows up... Did you ever go into the building?

15 P: No...not after that. No.

16 Det. Maynard's reply to PREM BASUTA's response was not to ask another question.
17 Instead, Det. Maynard made his own spontaneous utterance:

18 M: Ok. So you didn't go in inside at all...ok. Alright.

19 Hearing what Det. Maynard said, i.e., *So you didn't go inside at all...okay. Alright.*
20 Defendant PREM BASUTA was quick to make the correction:

21 **P: Before I did yeah. Yes.** (Emphasis added.)

22 M: Ok.

23 Rather than remain quiet and let Det. Maynard's inaccurate spontaneous utterance stand,
24 PREM BASUTA corrected him and said, "Before I did." He wasn't asked a question prior to that
25 statement. Det. Maynard made his own statement to which PREM BASUTA made the correction:
26 *Before I did.* (Emphasis added.)

27 As to the information Det. Maynard obtained from Dean Macchado, the owner of Woodlake
28 Cleaners, he testified as follows:

1 Q: What evidence do you have that Prem was unaccounted for?

2 A: The fact that he told me he remained at Woodlake Cleaners
3 waiting for Susan Batty to arrive with Kelly during the entire time and
4 did not leave Woodlake Cleaners until Susan Batty arrived; however,
5 that's not the case according to the owner of Woodlake Cleaners and
6 the employee of Woodlake Cleaners. All of them said he
7 disappeared. Dean Macchado who is the owner of Woodlake
8 Cleaners said - - you got to know Dean. He's kind of ADD. He
9 bounces all over the place. He said that he was out and about all over
10 the place and did not see Prem not only not in his store but nowhere
11 else to be seen around the place.

12 (*)

13 Q: As far as the evidence is concerned, Kelly and Gary - - Kelly
14 and Gary are accounted for during the time in question?

15 A: Yes. Kelly, people saw her out on the phone. Gary told me he
16 was sitting in the car in front of the store and that was confirmed by
17 Dean Macchado. He walked through there several times and saw
18 Gary sitting there.

19 (*)

20 Q: Are you placing greatest reliance on Prem's unaccountability
21 on Dean?

22 A: No. On his own statements he never went back in, then he
23 said he did go back in. Gary saying that no body went back into the
24 store. It's the totality of it. (RT405:6-406:20.)

25 The post-vacation interpretation Det. Maynard assigned to the foregoing aspect of his
26 interview with PREM BASUTA is neither fair nor reasonable and so lacking in probative value that
27 it ought to be disregarded.

28 ///

1 The observation by the investigating officer that a purported witness acted like he has ADD,
2 by any measure, diminishes to the reliability of the witness statement to the point where that
3 evidence, also, is so lacking in probative value, that it, too, should be disregarded. Det. Maynard
4 conceded it was possible that defendant PREM BASUTA could have walked somewhere to get away
5 from everything Dean Macchado but, in his opinion, that possibility runs contrary to his own
6 statement:

7 Q: Could you -- is it -- did you rule out that Prem simply walked
8 away somewhere to get away from everything that Dean didn't know
9 of?

10 A: It's a possibility but that goes against what his statement is to
11 me on tape. (RT 407:1-5.)

12 C.

13 DEFENDANTS' PURCHASE OF AND PAYMENTS FOR THE SALISBURY MARKET

14 No dispute exists that BRUCE SALISBURY (individually referred to as "SALISBURY")
15 sold his store, The Salisbury Market, to the Defendants in 2005. There is no dispute that the store
16 sustained catastrophic fire damage on October 15, 2011.

17 According to the Case Supplemental Report filed by Det. Maynard, page 18 of discovery,
18 he went to the Salisbury residence twelve (12) days after the fire and on October 27, 2011, and
19 interviewed Linda Salisbury, his wife, only.

20 In his report, Det. Maynard wrote:

21 I met with Linda Salisbury. She said they had sold the "Salisbury
22 Market" name to the Basutas and Singh in 2005. She said that the
23 price had been for about \$250,000 dollars. Linda said that this was
a loan that they were carrying themselves. She said that the payment
was roughly \$2,200 dollars per month. . .

24 No dispute exists as to the accuracy of the foregoing.

25 However, Det. Maynard's interview with Linda Salisbury continued as follows:

26 . . . and that the *Basutas and Singh* were consistently late every month.
27 Instead of the payment coming in at the beginning of every month it
28 was coming in on average more than halfway through the month. She
said that the payment is due on the 1st of the month and considered
late if not paid by the 10th of the month. Linda said that the last

1 payment that they had received was on about 09-15-11.

2 Linda told me that in addition to the mortgage payments owed the
3 Basutas and Singh also owe them, her and Bruce, for "Salisbury
4 Brand Seasoning". Linda told me that she and her husband still make
5 the seasoning that made their store so well known and that it was still
6 sold in the store. I asked Linda how much was owed for seasoning.
7 She said that it was just over \$2000. I gave Linda my business card
8 and asked her to call me if there was anything else she thought of that
9 could have a bearing on this case. (Emphasis added.)

7 During the preliminary examination, Det. Maynard testified that Linda Salisbury told him
8 that she was familiar with the sale of the Salisbury Market and the Defendants' payment history to
9 the Salisburys (RT:262:8-18.) In truth, no such effort was made and there was no evidence presented
10 at the preliminary examination that Det. Maynard tried to establish a foundation for Linda Salisbury
11 to answer questions concerning a payment history.

12 Instead, Det. Maynard testified that Linda Salisbury told him the Defendants were
13 consistently late and that her husband was continuously calling them asking for payments (RT
14 262:22-24.) She was the only witness to make that statement and she was wrong.

15 Bruce Salisbury testified on behalf of the Defendants at the preliminary examination. His
16 testimony at the preliminary examination revealed that Linda Salisbury's statement was, wittingly
17 or unwittingly, grossly inaccurate; almost nothing she said to Det. Maynard was true or accurate.

18 Bruce testified that he was the founder of the Salisbury Market (RT 367:17-18.) He sold the
19 store to the Defendants in May, 2005 for approximately \$450,000 dollars (RT 367:25-368:3.) The
20 sale involved a down payment in the amount of \$250,000 dollars, and the balance was financed and
21 secured (RT 368:4-14.)

22 The Basuta defendants pledged five (5) acres of real property they owned in Rancho Murietta
23 and gave Mr. Salisbury a first deed of trust against title. Thus, by agreeing to collateralize the
24 balance of the purchase price with prime real estate, Bruce Salisbury was the first secured party with
25 a lien on the five acres. If the Defendants failed in business and defaulted on their promise to pay
26 him, Salisbury would become the lawful owner of 5 acres in Rancho Murietta. (Transcript, 369:1-18.)

27 But that wasn't all. Bruce Salisbury was made further secure in the sale of his business by
28 taking a deed of trust against title to the personal residence owned by GARY SINGH. Meaning, by

1 the time the sale was complete, Salisbury, according to his own testimony, had "...plenty of security
2 in the two pieces of property...held for collateral." (RT 369:28-370:10.) In fact, he testified that he
3 was actually over-collateralized (RT 370:28-371:2.)

4 Salisbury testified that the Defendants' monthly payments to him were about two thousand
5 four hundred (\$2,400) dollars, just for the business because he was not the landlord (RT 371:3-12.)
6 He further testified as follow:

7 Q: Between May 2005 and October 2011 were my clients timely
8 on their payments?

9 A: Yes, they were - - they were never behind, maybe just a few
10 days but they were never later than - - I think it was due on the 5th and
11 late on the 10th or something like that. And there was a couple of
12 times they went to the 14th or 15th but never - - always within the -
13 never past the 15th.

14 Q: Okay. Was there ever a time when you felt they were in
15 breach of their agreement to buy your business?

16 A: No.

17 Q: Did - - was there ever a time when you warned them that if
18 they didn't pay, you would refer the promissory - - the note for
19 enforcement action to collect?

20 A: No. I did not ever apply any late fees or anything like that, no.

21 (RT 371:3-372:3)

22 When the Defendants bought the business, Mr. Salisbury was ably represented by counsel
23 and they felt there was plenty of collateral in the two pieces of property to protect against a default
24 (RT 369:28-370:3.)

25 As to the seasoning Linda referenced with Det. Maynard, Mr. Salisbury testified:

26 Q: Was there an agreement between you and my clients regarding
27 the sale of Salisbury Seasoning?

28 A: Yes.

1 Q: What was that agreement?

2 A: Just that I would sell them the -- I'm trying to think. I'm trying
3 to think. It was an agreement -- anyhow, I sold them the seasoning
4 and then they -- would pay for it --

5 Q: Okay.

6 *

7 Q: As of October 2011, do -- did you think they were in arrears
8 on their seasoning account?

9 A: They had gotten behind on one -- one delivery, but in -- their
10 defense, the price had gone up and I really hadn't figured out the
11 exact price of it. I mean, that's -- it had gone up, and I was waiting
12 for the price and -- laboratory make it for me to my specs.

13 (*)

14 Q: Was there some kind of just miscommunication concerning
15 the price per pound which ultimately caused an account arrearage to
16 develop briefly?

17 A: Yeah. It had gone up. And then Kelly was basically
18 questioning the price going up, you know.

19 Q: Okay.

20 A: Stuff -- then I was in the process of -- re- -- redoing the bill
21 for her to give -- to redo it at a new price.

22 Q: You were just rectifying an existing invoice?

23 A: Right. Right.

24 Q: Do you remember when that little billing thing occurred?

25 A: I would say -- let's see, it was in September that I think I
26 delivered it, and then it was probably due first of October or so.

27 Q: Okay. As of October 15th, did you have any concern for the
28 financial standing of Salisbury Market?

1 Q: No. No. I felt that they were, you know - they had made their
2 payment and stuff. I know business was tough. I know the economy
3 was bad. But other than that, no. (Transcript 372:18-374:14.)

4 Based upon the foregoing, Det. Maynard misstated evidence to show the Defendants were
5 in the midst of at least one financial crises because couldn't pay the Bruce Salisbury for the sale of
6 the business or for that special seasoning rub. The seller himself, Bruce Salisbury, considered the
7 payments from the Defendants timely.

8 Det. Maynard's belief that the payments were late can not overcome the simple truth that the
9 Defendants were on time and in sound financial condition.

10 D.

11 BUSINESS INSURANCE

12 Like any good business, The Salisbury Market was fully insured. Indeed, the Defendants are
13 charged with multiple counts of Insurance Fraud. During the preliminary examination, the
14 following dialog occurred between the Court and counsel for the People:

15 The Court: How much insurance was there on this store?

16 Mr. Weydert: I believe there was a \$750,000 for the - -

17 The Court: Is that what it is? I really don't know what you believe
18 but what the evidence says?

19 Mr. Weydert: One million-dollar policy, Your Honor.

20 The Court: One million and who - - who put in the claim for the
21 insurance?

22 Mr. Weydert: It was Kelly Basuta.

23 Mr. Farley: No.

24 The Court: The other two defendants didn't sign that?

25 Mr. Weydert: No, Your Honor. The only signature on the Sworn
26 Proof of Loss that was submitted to Argonaut was the one signed by
27 Kelly Basuta on behalf of the business. (RT 424:16-424:5)

28 ///

1 The evidence presented by the People demonstrated The Salisbury Market was insured by
2 Argonaut Great Central Insurance Company ("Argo") under policy number 912376905. But in
3 truth, the applicable insurance coverage was not one million dollars.

4 The People called Katherine Schuft as their first witness. She testified that she worked as an
5 investigator for GlobalOptions and her company was hired by Argo, the actual insurer, to investigate
6 this matter as a suspicious claim. However, she was not an employee of Argo. (RT 8:1-11)

7 The insurance coverage provided by the Argo policy was not just a simple lump sum payment
8 to the insured in the event of a covered risk of loss. To the contrary, the Argo policy provided for
9 only two types of coverage which would materially benefit the Defendants in the event of a
10 catastrophic loss such as a fire: (1) Business Personal Property Coverage and (2) Business Income
11 and Extra Expense. Those coverage amounts were as follows:

<u>COVERAGE</u>	<u>LIMITS</u>	<u>DEDUCTIBLE</u>
Business Personal Property	\$1,050,000	\$1,000
Business Income & Extra Expense	Actual Loss Sustained	12 months

15 As will be shown below, the People failed to sustain their burden of proof that the
16 Defendants committed the crime which is commonly referred to as insurance fraud.

17 E.

18 COMMERCIAL LEASE RENTAL REDUCTIONS

19 The building and real property at 2401 W. Turner Road, in Lodi, where this fire happened,
20 is owned by The Sang Leong Trust. The property management company hired by the Sang Leong
21 Trust to manage the building was Property Services, located at 1201 West Main Street, in Ripon, CA
22 (RT 307:15-309:16.) Susan Batty is the property manager for the premises.

23 On October 15, 2011, Det. Maynard interviewed Susan Batty. According to his report, Batty
24 stated she was responsible for collecting rent (Case Supplemental Report, Discovery, page 16) She
25 also volunteered that the Defendants had asked for rental reductions to which the property owner had
26 agreed.

27 ///

1 On October 21, 2011, according to his report, Batty sent Det. Maynard an e-mail which
2 contained confidential financial information regarding Salisbury Market. According to Batty's
3 gratuitous production of business records, reported sales at the Salisbury Market were consistently
4 declining by approximately \$10,000 per month from the totals of the same months in the previous
5 year.

6 Also, according to Det. Maynard's report, rent for the market space *should have been* at nine
7 thousand two hundred seventy four (\$9,274.19) dollars and 19/100 per the scheduled lease.
8 However, rent had been reduced for the 2nd time as of September 1, 2011 to five thousand eight
9 hundred seventy six (\$5,876.09) dollars and 09/100.

10 Surprisingly, Det. Maynard never subpoenaed Susan Batty's records. He never asked her to
11 produce anything and never sought the opinion of someone qualified to speak to the issue of
12 commercial rental rates in the area of the Salisbury Market. Instead, he relied on non-subpoenaed
13 records and the opinion of a property manager regarding rental rates without even attempting to
14 ascertain their reliability.

15 Nevertheless, Batty's spontaneous production of otherwise privileged and confidential
16 financial information clearly caused or, at the very least, contributed to cause the impression that the
17 Defendants were in the midst of a financial difficulty and could not pay their building rent.

18 Put more plainly, the Defendants' successful renegotiation of their commercial lease to
19 reduce their rent, according to the People, now provides circumstantial evidence from which to infer
20 that they were in the midst of financial difficulties and couldn't pay their rent.

21 Susan Batty testified during the preliminary examination and told the Court she works for
22 a company called Property Services in Ripon, California. Property Services has an agreement with
23 the owner of the property at 2401 W. Turner Road, in Lodi, by the name of Sang Leong Trust to
24 manage the property (RT: 30910-20.)

25 As to their rental obligations, Ms. Batty testified as follows:

26 Q: As of October 2011, were -- was the Salisbury Market current
27 with their rental payments?

28 A: Yes.

1 Q: Had they asked for a rental reduction?

2 A: Yes.

3 Q: Did, to the best of your knowledge, the - - the Sang Leong
4 Trust agree to that reduction?

5 A: Yes. (RT 320:3-10.)

6 As to the timeliness of their rental obligations, Ms. Batty testified:

7 Q: Up until October 2011, can you remember if they were ever
8 delinquent on their rent?

9 A: No.

10 Q: No you can't remember or no - -

11 A: I don't believe they were ever delinquent.

12 Q: Ever?

13 A: Not in the last five years. (RT 18-24.)

14 Based upon the foregoing, there is no evidence that the Defendants couldn't pay their
15 landlord. The fact that they successfully negotiated a rental reduction does not, under these
16 circumstances, support the allegation that they couldn't pay their rent or deliberately committed the
17 crime of arson and insurance fraud. Indeed, there wasn't even one single witness who testified in
18 support of Det. Maynard's impression that the Defendants could not pay or were ever late on their
19 rental obligation.

20 F.

21 PURPORTED EQUIPMENT FAILURES

22 On November 3, 2011, according to page 20 of his Case Supplemental Report, Det. Maynard
23 received a call from Joe Anema, a retired Stockton fireman. According to the his report:

24 Anema used to shop at Salisbury's Market on a regular basis buying
25 most of his daily fresh vegetables there. Anema said that the week
26 before the fires he went into the store to pickup some produce. The
27 entire produce section was dark and he found the produce in the
28 refrigerator coolers where sodas were normally kept. When he asked
the owners (Kelly and Prem) what was up he was told that their entire
refrigeration unit was broken and it would be \$75,000 to \$95,000
dollars to get it repaired.

1 During the preliminary examination, Det. Maynard testified that he spoke with Joe Anema,
2 a retired Stockton fire fighter (RT 264:9-28.) Anema reportedly told Det. Maynard that he was a
3 regular shopper at the Salisbury Market (RT 265:2-4.) He also testified that Anema told him that
4 in the week before the fire, he shopped at the Salisbury Market as he normally does. The produce,
5 soda and water refrigerator was empty (RT:2659-15.)

6 According to Det. Maynard, Anema said that defendants KELLY and PREM BASUTA told
7 him that the entire refrigeration unit had crashed and it was going to take somewhere between
8 estimate o\$75,000 to \$90,000 dollars to get them replaced or repaired (RT:265:19-25.)

9 Based upon the foregoing, the People argued that capital equipment failures and breakdowns
10 exacerbated the Defendant's financial hardship and just added more motive to burn the store. After
11 all, a retired fire man from Stockton told the investigating detective that one of the Defendants told
12 him just a week before October 15th, that their entire refrigeration system crashed and they couldn't
13 afford to repair or replace it.

14 Robert Sasaki testified during the preliminary examination on behalf of the Defendants. He
15 told the Court he was the owner of Western Refrigeration, the company that took care of the
16 refrigeration equipment at the Salisbury Market even before the Defendants bought the business from
17 Bruce Salisbury (RT 296:7-26.) He further testified that he had performed a service call to the
18 Salisbury Market within a month prior to October 2011 (RT 298:12-15.)

19 Mr. Sasaki testified that was able to confirm from looking at the equipment that he was the
20 only person who performed service work on the units (RT 298:20-23.) While he did not install the
21 equipment at the Salisbury Market he, individually, was responsible for all its maintenance and
22 upgrades (RT 298:20-25.)

23 As to the *costs* of new equipment, Mr. Sasaki testified that he had training in repair and sales
24 of new equipment when he was an equipment salesperson (RT 300:14-18.) Brand new refrigeration
25 units would cost from \$2,000 - \$20,000 dollars to replace the existing equipment at the Market (RT
26 300:25-301:6.) When asked directly, the witness, who is an unbiased, self-employed refrigeration
27 sales and maintenance expert, stated he had never heard of any refrigeration units which cost
28 \$75,000-\$90,000 dollars (RT 301:12-18.)

1 Based upon the informed and experienced testimony from Mr. Sasaki, it is abundantly clear
2 that Mr. Anema was grossly mistaken about what he thought he heard. Put plainly, even if the
3 refrigeration units were broken, a complete replacement project wouldn't cost the amount he told
4 Det. Maynard.

5 G.

6 SALE OF BASUTA RESIDENCE

7 The People presented no evidence, whatsoever, of a trustee sale of the Defendants' residence.
8 Moreover, there was no competent evidence of any short sale or other forced sale of the Defendants'
9 home.

10 H.

11 REMOVAL OF COMPUTER & PURPORTED VIDEO SURVEILLANCE

12 Mr. Rabara testified that he observed video surveillance cameras hanging down from the
13 ceiling during his investigation. (RT 242:10-12.) However, he didn't get around to asking the
14 Defendants anything about the video that day. To that end, he believed (RT 241:24-28) and Det.
15 Maynard concurred that Det. Maynard's primary function during the first three hours of investigation
16 was to mainly interview the Basutas and other people involved, including questions about the video
17 surveillance system (RT 332:15-23.)

18 Det. Maynard saw cameras on the ceiling and asked the Defendants if they had a surveillance
19 system. Kelly told him yes (RT 386:6-10.) As he inspected the fire scene, he wanted to see what,
20 if anything was on the computer hard drive but he was not terribly concerned with doing so. In his
21 words, Det. Maynard "... just wanted to take a look at the video that was on there." (RT 386:21-22.)

22 The Salisbury Market was under the control of the Lodi Fire Department and Lodi Police
23 Department until approximately 6:49 p.m. Meaning, it was a crime scene until the premises were
24 released.

25 At some point that day, Kelly Basuta asked and Mr. Rabara allowed her to remove the
26 computer and the hard drive to which the video surveillance was allegedly linked (RT 241:18-26.)
27 Meaning, according to Mr. Rabara, none of the Defendants concealed their removal of the video
28 surveillance. They asked permission to do so and obtained authorization to take the computer from

1 the chief fire investigator on scene, Mr. Rabara. Not only that, Mr. Rabara actually video taped
2 Kelly as she took the money and computer out of the store.

3 Meanwhile, as stated above, and apparently unbeknownst to Mr. Rabara, Det. Maynard
4 reportedly told KELLY BASUTA that he wanted to see what was on the video. No one stopped
5 defendant Kelly Basuta from walking out with the computer because she had authorization from the
6 on-scene fire inspector. For that matter, by the time the building was released back at almost 7:00
7 p.m. that evening, no one noticed the computer was missing.

8 From later that day, October 15, 2011, until the following Thursday, October 21, 2012, Det.
9 Maynard was unavailable because he was attending a criminal matter out of town. During that time,
10 no one contacted the Defendants, no one called them or demanded that they return the computer.

11 On October 26, 2012, Det. Maynard obtained a search warrant and seized the computer,
12 including the hard drive, from the Basuta defendants at their home. According to his testimony at
13 the preliminary examination, Det. Maynard subsequently delivered the computer and hard drive to
14 Detective Rafiq of the Yolo County District Attorney's office

15 He recited from his reports as follows:

16 Q: Could you take a look at your page 21 of the case
17 supplemental report?

18 A: Sure.

19 Q: You have that in front of you?

20 A: Yes, Okay.

21 Q: Direct your attention to the date, second paragraph from the
22 bottom on February 14th, 2012. You see that?

23 A: Which one? Say that one more time.

24 February 14, 2012. Go ahead.

25 Q: Second paragraph from the bottom.

26 A: Okay.

27 Q: Would you read that paragraph aloud, please.

28 A: Sure:

1 Says "On 2-14-12 Detective Rafiq returned to Yolo County
2 DA's office. Martin had completed the analysis fo the mirrored hard
3 drive. He could find no indication of tampering with the hard drive
4 and said no video surveillance images had been recorded since May
5 9, 2011 with the exception of one new video image that had been
6 uploaded since October 25th or on October 25, 2011. This confirmed
7 there was no video surveillance of the time frame when the second
8 fire was set in the Salisbury Market. (RT 387:24-388:17.)
9

10 As shown above, there was no video surveillance on the computer hard drive and there was
11 no evidence that anybody deleted or otherwise tampered with the hard drive to destroy the
12 surveillance evidence.

13 IV.

14 LAW & ARGUMENT

15 Penal Code § 995(a) states, in pertinent part:

16 (a) Subject to subdivision (b) of Section 995a, the indictment or
17 information shall be set aside by the court in which the defendant is
18 arraigned , upon his or her motion, in either of the following cases:

19 *

(2) If it is an information:

20 (B) That the Defendant has been committed without
reasonable or probable cause.

21 Both the Federal Constitution through the Fifth and Fourteenth Amendments and the
22 California Constitution through Article I, section 14, and Penal Code § 995(a)(2)(B) require that an
23 information be supported by probable or reasonable cause in order to be lawful.

24 In proceedings under P.C. § 995, it is the magistrate who is the finder of fact; the superior
25 court sits merely as a reviewing court. It must draw every legitimate inference in favor of the
26 information, and it cannot substitute its judgment as to the credibility or weight of the evidence for
27 that of the magistrate. *People v. Superior Court* (1999, 2nd District) 73 Cal.App. 4th 1123.

28 ///

1 The purpose of the motion to set aside an accusatory pleading is to review the sufficiency of
2 the indictment or information on the basis of the record made before the grand jury in the one case
3 or the magistrate at the preliminary hearing in the other; the motion does not contemplate the
4 introduction of evidence at the hearing on the motion. *People v. Sherwin* (App. 3 Dist. 2000) 82
5 Cal.App. 4th 1404.

6 Penal Code § 995 requires that an information or charge be set aside where the defendant has
7 been committed without reasonable or probable cause. The Court may draw only reasonable
8 inferences from the evidence presented at the preliminary examination (*Williams -v- Superior Court*
9 (1969) 71 Cal.2d 1144.)

10 Inferences which derive their substance from guess work, speculation or conjecture are not
11 reasonable (*Birt -v- Superior Court* (1973) 34 Cal.App.3d 934.) A reasonable inference may not be
12 based upon suspicion alone, or on imagination, speculation, supposition, surmise, conjecture or
13 guess work (*People -v- Morris* (1988) 46 Cal.3d., 1, 21.) A finding of fact must be an inference
14 drawn from evidence rather than mere speculation as to probabilities without evidence (Ibid.)

15 Finally, only *logical* and reasonable inferences can be drawn from circumstantial evidence
16 to prove a fact (CALCRIM 223.)

17 A.

18 ISSUES PRESENTED

19 Does the evidence cited above give rise to a logical and reasonable inference that the
20 Defendants committed any of the offenses set forth in section II, PROCEDURAL SUMMARY:

21	Count 1:	P.C. § 550(A)(1);	Fraudulent Claim for Insurance Payment
22	Count 2:	P.C. § 451©);	Arson, Structure/Forest/Land;
23		P.C. 451.1(A);	Special Allegation, Arson with Aggravating Factors;
24	Count 3:	P.C. § 548;	Defrauding and Insurer;
25	Count 4:	P.C. § 550(B)(1)	Insurance Fraud;
26	Count 5:	P.C. 550(B)(3);	Insurance Fraud;
27	Count 6:	P.C. 664/487©);	Attempted Grand Theft - Person.

28 ///

1 Clearly, the answer is no. Defendants disproved all the truthfulness of the evidence Det.
2 Maynard collected and Mr. Rabara's opinion lacked physical evidence in support. No logical or
3 reasonable inferences can be drawn in the absence of true and correct circumstantial evidence.,

4 B.

5 No Reasonable Inference of any Fact Arises from the Circumstantial
6 Evidence Presented by the People at the Preliminary Examination

7 Can you imagine arguing this to a jury? Here you're arguing to me, and there's a
8 reasonable suspicion that maybe a crime occurred and maybe they did it. Could you
9 imagine trying to talk to a jury into beyond a reasonable doubt? They'd be looking
10 at you - - they'd be mad, because they'd be sitting here for three or four weeks
11 listening to this stuff. They'd be mad now. But could you imagine that? Ew, be hard
12 to look them straight in the eye.

13 Hon. Bernard J. Garber, Judge Presiding
14 Preliminary Examination; page

15 The Court acknowledged that all of the evidence presented by the People was circumstantial,
16 and only circumstantial (RT 419:13-16.) While that is not necessarily fatal to the prosecution, the
17 fact that most, if not all, of the circumstantial evidence was expressly refuted by witnesses for the
18 Defendants, is fatal to the case.

19 No logical and reasonable inference of criminality can be inferred from evidence which has
20 been contradicted and shown to be completely false.

21 I.

22 Evidence of a Partially Burned Cardboard Box Does Not Give Rise to a
23 Logical and Reasonable Inference The Defendants Started the Second Fire

24 This Salisbury Market fire was Mr. Rabara's first commercial fire investigation. Although
25 he was not present for the first fire, he was informed and testified that the Lodi Fire Department
26 concluded the first fire was purely accidental. In fact, even as of this date, nothing has been shown
27 to dispute the accidental nature of the blaze.

28 When the fire crew left the scene, all the utilities were running to the premises but the fire
and sprinkler system had been de-activated. Det. Maynard testified that when the Lodi Fire
Department departed the scene at 7:55 a.m., the on-coming shift was scheduled to return to the

1 Salisbury Market to "baby sit" the premises. However, Mr. Rabara told the Court that he wasn't
2 aware of any plan to babysit a building.

3 Mr. Rabara testified that Capt. Broderick expressed concern after 8:00 a.m. with the risk of
4 another fire at 2401 W. Turner Road without a properly functioning sprinkler system. Coincidentally,
5 at around that same time, Susan Batty, the property manager, called the Battalion Chief and
6 demanded somebody come out to meet her. Meaning, it is clear that the only reason the Fire
7 Department returned to the Salisbury Market was because Susan Batty called and demanded the fire
8 department to come back.

9 Det. Maynard may have reported the Fire Department's plan to babysit the building because
10 in truth, he, too, was concerned that the decision to leave the scene at 7:55 a.m. without a sprinkler
11 system was a gross dereliction of duty, at least to all of the other tenants at the strip mall where the
12 fire happened. To heighten the risk of the dangerous condition at the building, the Fire Department
13 failed to disconnect the utilities, including gas and electricity.

14 While his motive to misrepresent the purported plan to babysit the Salisbury Market to baby
15 sit may be for the benefit of the Fire Department and its mistakes, the fact remains: the building was
16 left in an extremely dangerous condition. What happened next was exactly what Det. Maynard and
17 Capt. Broderick were concerned with: a second fire occurred.

18 Even after being instructed to return to the Salisbury Market, Mr. Rabara did not believe
19 there was anything to worry about. He left the station at approximately 8:35-8:36 a.m. and arrived
20 just 3-4 minutes later. When he arrived, the fire already in progress. Due solely to the call by Susan
21 Batty, the Lodi Fire Department was on scene for the second fire almost immediately.

22 Mr. Rabara confirmed the second fire was small and completely out in just 10 minutes. He
23 was the first investigator inside to look for the cause and origin of the fire. He asked the Defendants,
24 who remained on site from the first fire, what was in the storage area in the back of the store. The
25 answer was clear and distinct: the defendants stored BBQ charcoal, mesquite and lighter fluid in a
26 cardboard box. Once he confirmed what the Defendants told him, Mr. Rabara also observed other
27 card board boxes in the storage area.

28 ///

1 All throughout his answers to direct questions by the prosecutor, Mr. Rabara repeatedly
2 referred to the card board box as being "saturated" with lighter fluid. Indeed, all the discovery
3 reports consistently refer to the card board box as "saturated" with lighter fluid.

4 Wittingly or not, Mr. Rabara conspicuously omitted reference to the fact the card board was
5 also saturated with water. He failed to describe the water content of the box and that, in turn,
6 wrongly and unfairly enhanced and the legitimacy of his own investigation and the legitimacy of his
7 conclusions relative to cause and origin of the second fire.

8 The failure to refer to the water saturation is an egregious distortion of evidence. Instead of
9 having a readily ignitable piece of paper that is deliberately saturated with an accelerant, the evidence
10 is really just a box that used to store BBQ materials including lighter fluid, and is now dripping with
11 water from the over head fire sprinklers. There wasn't any analysis to determine the ration of water
12 content to lighter fluid content.

13 Mr. Rabara testified that he tried to find the empty lighter fluid container but was
14 unsuccessful. It was another "oversight" that Mr. Rabara neglected to mention that unsuccessful
15 search for evidence in his report.

16 Under cross examination, he explained that he made the "assumption" the container was
17 plastic. Further, he made the "assumption" the container was completely destroyed, evaporated,
18 nothing left, burnt up, in a ten minute fire. He also said it would have been too hard to find the bottle
19 of lighter fluid in the debris following the fire.

20 Mr. Rabara's disdain for the difficult aspects associated of his duty to investigate the fire is
21 a glaring example of how poorly this fire investigation was conducted. The job of a fire investigator
22 is to find evidence, not shy away from a task because of its difficulty or messiness.

23 In truth, the existence of a container of lighter fluid was never proven; by direct evidence or
24 circumstantial evidence. The cardboard box that stored the lighter fluid was used to store lighter
25 fluid for an extended time. Mr. Rabara conceded he never asked the Defendants if the storage box
26 was previously soaked with lighter fluid just as a matter of spillage that may have occurred during
27 years of usage.

28 ///

1 Also, Mr. Rabara said he saw numerous other card board boxes in plain view in the storage
2 room, ready for disposal. Yet, he didn't bother to check if any of those boxes had so much as a
3 single drop of lighter fluid poured onto its surface. The only box that was wet, with a purported
4 combination of lighter fluid *and* water, was the very same box the Defendants used to store the BBQ
5 materials.

6 Mr. Rabara also testified that he formed the impression that the Defendants poured the lighter
7 fluid onto the box because of the "directionality" of the stain on the concrete floor. However, there
8 was no testimony, other than his non-expert opinion, that the direction of the stain on the concrete
9 floor showed the lighter fluid was poured deliberately.

10 For this Court to find that probable cause exists to believe that these Defendants committed
11 the crime of arson, evidence must exist that would logically and reasonably give rise to an inference
12 of fact relative to that offense. No such circumstantial evidence was presented.

13 What is well documented is that Det. Maynard testified that the Lodi Fire Department
14 planned all along to return to the Salisbury Market and would remain on scene until the fire sprinkler
15 was back on line. In truth, that was never going to happen. If Susan Batty hadn't called and
16 demanded the Fire Department to return, Mr. Rabara and the day crew would not have returned at
17 8:39 a.m.

18 What is also well documented is that both Mr. Rabara and Det. Maynard reported and
19 testified that a card board box was saturated with lighter fluid. In truth, the cardboard was saturated
20 with water and lighter fluid but only Mr. Rabara disclosed the truth concerning the water content of
21 the saturation.

22 The "cause and origin" investigation conducted by Mr. Rabara does not provide this Court
23 with circumstantial evidence which logically and reasonably gives rise to an inference of a fact or
24 facts related to any of the offenses charged here. At best, Mr. Rabara's opinion that the Defendants
25 committed the crime of arson is the product of pure
26 "...suspicion...imagination...speculation...supposition ...surmise...conjecture and guess work."

27 ///

28 ///

2.

The Investigation into the Defendants' Financial Standing does not Provide
the Circumstantial Evidence which Gives Rise to a Reasonable and Logical
Inference that the Defendants Committed Insurance Fraud or Committed Arson

The Peoples's main contention is that the Defendants were suffering financial set back after set back. Their financial problems were the motivation for their decision to burn the Salisbury Market. However, as shown above, the Defendants directly disproved all circumstantial evidence presented by Det. Maynard concerning their financial standing.

When Det. Maynard interviewed Linda Salisbury, he didn't attempt to establish a foundation for her personal knowledge of the Defendants' payment history for the purchase of the business from her husband, Bruce. She reportedly told Det. Maynard the Defendants were consistently late and owed money on a certain seasoning account. Her statements were completely untrue.

Mr. Salisbury appeared and testified during the preliminary examination to the complete opposite of what his wife said. He stated under penalty of perjury that the Defendants were timely with their payments. He never charged a late fee, and he believed the Defendants were never in breach of their agreement to buy the Market.

He also testified that if the Defendants did, in fact, breach their agreement to buy the Salisbury Market, he would seek recourse against two separate parcels of real property which secured the balance of the sales price the Defendants owed him. In the real world of business, according to Mr. Salisbury, as long as the Defendants' payments to him were paid by the 15th of each month, the payment was timely.

Det. Maynard's assertion that payments tendered after the 5th day of each month were late, is not circumstantial evidence from which to infer a logical and reasonable fact related to any of the offenses charged. According to his testimony, the Defendants' payments were late. However, according to the actual creditor, Bruce Salisbury, the payments were timely. There was no balance due and owing on October 1, 2011. The Defendants didn't try and re-negotiate their sales agreement with Mr. Salisbury or ask for a reduced monthly payment.

///

1 The only person who told Det. Maynard the payments were late was Linda Salisbury. But if
2 he had first established a foundation as to whether she had personal knowledge of the payments, he
3 would have more likely than not, skipped the interview until Mr. Salisbury was available.

4 The investigation concerning the rental payments to the landlord was also disproved. Susan
5 Batty, the landlord's property manager, testified the Defendants were never late in paying their rent
6 in 5 years. The fact that the landlord agreed to a rental reduction isn't a sign of financial distress on
7 the part of the Defendants. The reduction is proof that the rent was too high and the landlord agreed
8 to reduce the rent in order to keep the tenants in possession.

9 3.

10 The Testimony Concerning Capital Equipment Failures

11 Was Pure Conjecture & Not Circumstantial Evidence

12 Det. Maynard testified that a retired fire fighter from Stockton told him, and Det. Maynard
13 testified that one or more of the Defendants once said they had equipment problems that would cost
14 \$75,000 to \$90,000 dollars to repair. The Defendants disproved that fact entirely.

15 Rob Sasaki testified that he, and only he maintained the equipment at the Salisbury Market.
16 He further testified that he last serviced the equipment on site just a week or two before the fire.
17 There were no refrigeration problems at that time.

18 Additionally, he testified that does not even know of refrigeration equipment which would
19 cost up to ninety thousand (\$90,000) dollars brand new. The statement by Mr. Anema was proven
20 to be outright wrong.

21 In response to Mr. Sasaki, the People began to argue that all of the refrigeration units were
22 old and needed to be replaced; not just the one Mr. Anema spoke about with Det. Maynard.
23 Meaning, the prosecution enlarged the scope of the purported equipment problems well beyond Mr.
24 Anema's statement.

25 The proof went from one unit to all the refrigeration units in the store. However, there wasn't
26 even a single witness to testify that the all the equipment was. in fact, suffering fatigue due to age.

27 ///

28 ///

1 On the basis of the foregoing, it is clear there was no circumstantial evidence that the
2 refrigeration units were all on the verge of failure. That being the case, there was no circumstantial
3 evidence from which to logically and reasonably infer any element of the offenses charged.

4 4.

5 The Defendant Prem Basuta Did not Lie During his Recorded Statement

6 According to Det. Maynard, Dean Macchado did not know where Prem Basuta was during
7 the time between the two fires. That lack of accountability forms the basis for his culpability in this
8 case.

9 If the unaccountability of PREM BASUTA implicates him in this fire, then it stands to reason
10 that the full accountability of defendants KELLY BASUTA and GURMAIL SINGH exonerates
11 them, completely, and they should be dismissed.

12 However, that being said, Prem did not lie during his recorded statement. Det. Maynard
13 agreed that his interview with Prem Basuta lacked clarity. That, in Det. Maynard's mind, was a
14 mistake he committed. As a matter of fundamental fairness, it is unreasonable to adopt Det.
15 Maynard's post-vacation interpretation of his interview with PREM BASUTA.

16 5.

17 THE REMOVAL OF THE COMPUTER WAS WITH THE FULL
18 KNOWLEDGE AND CONSENT OF FIRE INVESTIGATOR
19 RABARA AND THERE IS NO EVIDENCE THAT THE
20 DEFENDANTS DESTROYED VIDEO SURVEILLANCE

21 No question exists that Mr. Rabara expressly authorized Kelly Basuta to remove the
22 computer video from the Salisbury Market. Indeed, he video taped her doing so because she also
23 remove a large sum of cash which was in the store at the same time. No one noticed the computer
24 was missing at all that day and the entire store was a crime scene until almost 7:00 p.m.

25 If fault attaches to the removal of the computer, then fault should fairly attach to the fire
26 investigator for authorizing the Defendant to take the computer.

27 ///

28 ///

1 But setting aside the question of whether the computer should have been taken, the
2 indisputable truth is that a police forensic investigation confirmed that there was no evidence
3 tampering with the computer. The last video surveillance recorded was in May, 2011.

4 V.

5 CONCLUSION

6 There is no direct or circumstantial evidence that lighter fluid was ever poured from a
7 container by any of the Defendants. There is no direct or circumstantial evidence that Prem Basuta,
8 or any other defendant, poured lighter fluid from a container.

9 There is no direct or circumstantial evidence of evidence tampering with a computer - - a
10 computer that Kelly Basuta was expressly authorized to remove from the premises by the lead fire
11 investigator.


12 There is no direct or circumstantial evidence of financial problems which, in turn, could have
13 provided motive for the Defendants to commit insurance fraud and arson. There are, however,
14 witnesses who testified under oath and vouched for the timely payment history of the Defendants
15 relative to their rental obligations, and their payments to Bruce Salisbury.

16 There is no direct or circumstantial evidence of equipment failures, either one unit or all of
17 the units in the store. Rob Sasaki, the refrigeration expert who serviced the equipment, squarely
18 refuted any contention that the Defendants were experiencing wholesale capital equipment failure.

19 What evidence is left at this juncture is wholly inadequate to sustain the People's burden of
20 proof. Therefore, this motion must be granted.

21
22 LAW OFFICE OF MICHAEL J. FARLEY

23
24 July 3, 2013

25 
MICHAEL J. FARLEY, ESQ.
Attorney for Defendants