

THE SUPERIOR COURT, STATE OF CALIFORNIA
For the County of Santa Barbara
Santa Maria Division - Lompoc Region

09/14/2021
Darrel E. Parker, Executive Officer
BY Cavazos, Shirley
Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

RAFAEL VIVANCO, JR
AKA: RAFAEL VIVANCO

DOB: 03/21/2001

Defendant.

DA No. 21-09-482780
Court No. **21CR05908**

FELONY COMPLAINT

AB109 INELIGIBLE

The undersigned is informed and believes that:

COUNT 1

On or about September 11, 2021, in the County of Santa Barbara, the crime of ATTEMPTED WILLFUL, DELIBERATE, PREMEDITATED MURDER, in violation of **PENAL CODE SECTION 664/187(a)**, a Felony, was committed by RAFAEL VIVANCO, JR, who did unlawfully and with malice aforethought attempt to murder JOSEPH MALDONADO, a human being.

It is further alleged that the above offense is a serious felony within the meaning of **Penal Code Section 1192.7(c)(1)**.

It is further alleged that the above offense is a violent felony pursuant to **Penal Code Section 667.5(c)(1)**.

SPEC ALLEG-PERSONAL USE OF A FIREARM

It is further alleged that AS TO COUNTS 1 AND 3 said defendant, RAFAEL VIVANCO, JR, personally used a firearm, to wit: HANDGUN, within the meaning of **Penal Code sections 12022.5(a) (1) and 12022.53(b)**.

SPEC ALLEG-PERSONAL AND INTENTIONAL DISCHARGE OF A FIREARM, GBI

It is further alleged that AS TO COUNT 1 in the commission of the foregoing offense, the defendant RAFAEL VIVANCO, JR, intentionally and personally discharged a firearm, to wit: a handgun, and proximately caused great bodily injury, as defined in Penal Code Section 12022.7, or death, to a person other than an accomplice, to wit: JOSEPH MALDONADO, within the meaning of Section 12022.53(d) of the Penal Code.

SPECIAL ALLEGATION – STREET TERRORISM

It is further alleged AS TO COUNTS 1 THROUGH 4 pursuant to **Penal Code Section 186.22(b)(1)**, that the above offense was committed by RAFAEL VIVANCO, JR for the benefit of or at the direction of or in association with a criminal street gang, to wit: SOUTHSIDE F STREET GANG (LOMPOC) with the specific intent to promote, or further, or assist in criminal conduct by gang members.

"NOTICE: The above offense is a serious felony within the meaning of **Penal Code Section 1192.7(c) (28)**."

SPEC ALLEG - PC667(d)(1),(e)(1) - 2 STRIKE

It is further alleged AS TO COUNTS 1 THROUGH 5 pursuant to **PENAL CODE SECTION 667(d)(1),(e)(1)**, **PENAL CODE SECTION 1170.12(b)(1),(c)(1)**, and **PENAL CODE SECTION 1192.7(c)([1192.7])** that said defendant RAFAEL VIVANCO, JR, suffered the following prior convictions of a serious or violent felony or juvenile adjudication:

<u>CONV/DT</u>	<u>SEC/VIOL</u>	<u>DKT/NO</u>	<u>TYPE/COURT</u>	<u>JURISDICTION</u>
08/06/2019	PC 245(A)(2)	19CR04171	SUPERIOR	LOMPOC

SPEC ALLEG PRIOR SERIOUS FELONY

It is further alleged AS TO COUNTS 1 THROUGH 4 pursuant to **Penal Code section 667(a)(1)** that the defendant, RAFAEL VIVANCO, JR, has suffered the following prior conviction(s) of a serious felony:

<u>CONV/DT</u>	<u>SEC/VIOL</u>	<u>DKT/NO</u>	<u>TYPE/COURT</u>	<u>JURISDICTION</u>
08/06/2019	PC 245(A)(2)	19CR04171	SUPERIOR	LOMPOC

SPEC ALLEGATION – QUALIFYING PRIOR 1170(h) (3)

It is further alleged that AS TO COUNTS 1 THROUGH 5 an executed sentence for a felony pursuant to this subdivision shall be served in state prison pursuant to **Penal Code section 1170(h)(3)** in that the defendant, RAFAEL VIVANCO, JR, has suffered the following prior conviction(s) of a serious felony described in Penal Code section 1192.7 or a violent felony described in Penal Code section 667.5(c) or is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Penal Code section 290) of Title 9 of Part 1.

<u>CONV/DT</u>	<u>SEC/VIOL</u>	<u>DKT/NO</u>	<u>TYPE/COURT</u>	<u>JURISDICTION</u>
08/06/2019	PC 245(A)(2)	19CR04171	SUPERIOR	LOMPOC

“NOTICE: Pursuant to Penal Code section 1170(f), notwithstanding any other provisions of this section, for purposes of subdivision (h) of section 1170, any allegation that a defendant is ineligible for a state prison sentence to be served in the county jail due to a prior or current conviction, or sentence enhancement, or because he or she is required to register as a sex offender, or because the legislature specifically excluded the offense, shall not be subject to dismissal pursuant to §1385 PC.”

SPEC ALLEG – FELONY EXCLUDED FROM LOCAL CUSTODY

It is further alleged that AS TO COUNTS 1 THROUGH 5 the above offense is an offense for which the defendant RAFAEL VIVANCO, JR, is excluded from a state prison sentence to be served in the county jail pursuant to **Penal Code section 1170(h)**.

“NOTICE: Pursuant to **Penal Code section 1170(f)**, notwithstanding any other provisions of this section, for purposes of subdivision (h) of section 1170, any allegation that a defendant is ineligible for a state prison sentence to be served in the county jail due to a prior or current conviction, or sentence enhancement, or because he or she is required to register as a sex offender, or because the legislature specifically excluded the offense, shall not be subject to dismissal pursuant to §1385 PC”.

SPEC ALLEG – SERIOUS/VIOLENT/REGISTERABLE SEX OFFENSE FELONY

It is further alleged that AS TO COUNTS 1 THROUGH 5 the above offense is a serious felony within the meaning of Penal Code section 1192.7(c) and/or a violent felony described in subdivision(s) of Penal Code section 667.5 and/or an offense requiring registration under the provisions Penal Code sections 290 et seq, pursuant to Penal Code section 1170(h), that the defendant is ineligible for a state prison sentence to be served in the county jail.

“NOTICE: Pursuant to Penal Code section 1170(f), notwithstanding any other provisions of this section, for purposes of subdivision (h) of section 1170, any allegation that a defendant is ineligible for a state prison sentence to be served in the county jail due to a prior or current conviction, or sentence enhancement, or because he or she is required to register as a sex offender, or because the legislature specifically excluded the offense, shall not be subject to dismissal pursuant to §1385 PC.”

COUNT 2

On or about September 11, 2021, in the County of Santa Barbara, the crime of ASSAULT WITH A SEMIAUTOMATIC FIREARM, in violation of **PENAL CODE SECTION 245(b)**, a Felony, was committed by RAFAEL VIVANCO, JR, who did willfully, unlawfully and personally, commit an assault upon JOSEPH MALDONADO with a semiautomatic firearm.

It is further alleged that the above offense is a serious felony within the meaning of **Penal Code Section 1192.7(c)(8)**.

It is further alleged that the defendant, used a firearm within the meaning of **Penal Code Section 12022.5(a) and (d)**.

SPECIAL ALLEG - GREAT BODILY INJURY

It is further alleged that AS TO COUNT 2 in the commission of the above offense the said defendant, RAFAEL VIVANCO, JR, personally inflicted great bodily injury on JOSEPH MALDONADO, not an accomplice to the above offense, within the meaning of **Penal Code Section 12022.7(a)** and also causing the above offense to become a serious felony within the meaning of Penal Code Section 1192.7(c)(8).

It is further alleged that the above offense is a violent felony within the meaning of **Penal Code Section 667.5(c)(8)**.

COUNT 3

On or about September 11, 2021, in the County of Santa Barbara, the crime of ATTEMPTED WILLFUL, DELIBERATE, PREMEDITATED MURDER, in violation of **PENAL CODE SECTION 664/187(a)**, a Felony, was committed by RAFAEL VIVANCO, JR, who did unlawfully and with malice aforethought attempt to murder JAMES JONES, a human being.

It is further alleged that the above offense is a serious felony within the meaning of **Penal Code Section 1192.7(c)(1)**.

It is further alleged that the above offense is a violent felony pursuant to **Penal Code Section 667.5(c)(1)**.

SPEC ALLEG-PERSONAL AND INTENTIONAL DISCHARGE OF A FIREARM, GBI

It is further alleged that AS TO COUNT 3 in the commission of the foregoing offense, the defendant RAFAEL VIVANCO, JR, intentionally and personally discharged a firearm, to wit: a handgun, and proximately caused great bodily injury, as defined in Penal Code Section 12022.7, or death, to a person other than an accomplice, to wit: JAMES JONES , within the meaning of Section 12022.53(d) of the Penal Code.

COUNT 4

On or about September 11, 2021, in the County of Santa Barbara, the crime of ASSAULT WITH A SEMIAUTOMATIC FIREARM, in violation of **PENAL CODE SECTION 245(b)**, a Felony, was committed by RAFAEL VIVANCO, JR, who did willfully, unlawfully and personally, commit an assault upon JAMES JONES with a semiautomatic firearm.

It is further alleged that the above offense is a serious felony within the meaning of **Penal Code Section 1192.7(c)(8)**.

It if further alleged that the defendant, used a firearm within the meaning of **Penal Code Section 12022.5(a) and (d)**.

SPECIAL ALLEG - GREAT BODILY INJURY

It is further alleged that AS TO COUNT 4 in the commission of the above offense the said defendant, RAFAEL VIVANCO, JR, personally inflicted great bodily injury on JAMES JONES, not an accomplice to the above offense, within the meaning of **Penal Code Section 12022.7(a)** and also causing the above offense to become a serious felony within the meaning of Penal Code Section 1192.7(c)(8).

It is further alleged that the above offense is a violent felony within the meaning of **Penal Code Section 667.5(c)(8)**.

COUNT 5

On or about September 11, 2021, in the County of Santa Barbara, the crime of POSSESSION OF FIREARM BY A FELON, in violation of **PENAL CODE SECTION 29800(a)(1)**, a Felony, was committed by RAFAEL VIVANCO, JR, who did unlawfully own, possess and have custody and control of a firearm, to wit: HANDGUN.

It is further alleged that the defendant is prohibited from owning or possessing a firearm pursuant to sections 29800 and 29900 of the Penal Code and sections 8100 and 8103 of the Welfare and Institutions Code, having been previously convicted of the following offense(s):

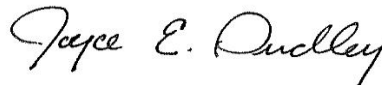
<u>CONV/DT</u>	<u>SEC/VIOL</u>	<u>DKT/NO</u>	<u>TYPE/COURT</u>	<u>JURISDICTION</u>
08/06/2019	PC 245(A)(2)	19CR04171	SUPERIOR	LOMPOC

* * * * *

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT CONSISTS OF 5 COUNT(S).

Executed at Lompoc, California, on September 14, 2021.



ALEXANDER HARRISON
DEPUTY DISTRICT ATTORNEY

Agency: LOPD

<u>DEFENDANT NAME</u>	<u>SEX</u>	<u>RACE</u>	<u>HGT</u>	<u>WGT</u>	<u>EYES</u>	<u>HAIR</u>	<u>DRIVER'S LICENSE</u>	<u>STS</u>	<u>COURT DATE</u>
Rafael Vivanco, JR	M	H	508	150	BRO	BLK	Y6212715	IC	09/14/2021

jd