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**FILED**  
**JUN 27 2016**

CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY [Signature]  
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS  
MODESTO COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 1490969
	)	
Plaintiff,	)	<b>NOTICE OF MOTION AND</b>
	)	<b>MOTION TO STRIKE THE</b>
vs.	)	<b>TESTIMONY OF BEVERLY</b>
	)	<b>WOODY AS TO WALTER</b>
WALTER WESTLEY WELLS,	)	<b>WELLS AND JOINDER IN</b>
	)	<b>BALJIT ATHWAL'S MOTION</b>
Defendant.	)	<b>TO STRIKE/EXCLUDE THE</b>
	)	<b>TESTIMONY OF BEVERLY</b>
	)	<b>WOODY AS INADMISSIBLE</b>
	)	<b>HEARSAY</b>

**Introduction**

Defendant WALTER WELLS seeks the exclusion of all testimony of Beverly Woody related to what she claimed her son, Robert Lee Woody, told her about the specific activity/involvement of Walter Wells at the Ninth Street, Turlock property as being hearsay.

Broadly, the testimony concerns Ms. Woody's claim that her son, Robert Lee Woody, told her that a police officer in a squad car ordered him to re-enter the Ninth Street, Turlock, property for the purpose of "cleaning up the mess," meaning, dispose of Mr. Korey Kauffman's

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body.

She testified that her son told her he complied with this command because he was afraid not to. Indeed, on direct examination, Ms. Woody specifically said that the reason her son gave for going back into the property to “clean up the mess” was because he was “scared for his life,” that he might end up like Korey. (R.T. 7730). She reiterated the reason on cross-examination, saying, “My son is [sic] scared of the officer.” (R.T. 7925)

**Contention**

Mr. Wells contends that the declarant’s alleged statements—those of Robert Lee Woody as related by Ms. Beverly Woody—are hearsay and inadmissible on the grounds advanced by the prosecutor. They are neither admissions, because Mr. Robert Woody is not a party to this action (*Evidence Code* sec 1220), nor declarations against interest because the statements do not “disserve” Mr. Robert Lee Woody. (*Evidence Code* sec 1230; *People v. Smith* (2005) 135 Cal.App.4<sup>th</sup> 914 [declaration against interest exception only applies where the declarant’s statement, or any portion thereof, is clearly dis-serving of the declarant’s penal or other interest].

Here, if believed, the alleged presence of a Turlock police officer, in a squad car, commanding Mr. Woody under color of authority, to go back and clean up a crime scene, and thereby placing him in fear for his very life, amounts to duress—a defense to assisting in the aftermath of a homicide.” *People v. Ebaniz* (2009) 174 Cal.App.4<sup>th</sup> 743, 757 [any statement, or portion of statement, not specifically dis-serving of the declarant’s interest is inadmissible as a declaration against interest, where an alleged co-conspirator’s statement suggests participation only under duress] The declarant’s statements here are far from “dis-serving;” they are plainly self-serving statements, which if believed, amount to the defense of duress.

**Evidentiary Backdrop**

At the very outset of Beverly Woody’s testimony on the morning of April 18, 2016, a hearsay objection was interposed when the prosecutor asked Ms. Woody what her son told her after execution of a search warrant (R.T. 7711). This objection was framed and joined by the parties and reserved by the court as a motion to strike the testimony. (R.T. 8119)

The deputy district attorney urged that, while concededly hearsay, Ms. Woody’s statement

1 was admissible as an exception, “admissions and statements against interest.” (R.T. 7712, lines  
 2 2-3)<sup>1</sup>

3 Thereafter, the court entertained the prosecutor’s offer of proof:

4 “The offer is that Robert Woody told his mother, after the search warrant was executed at  
 5 the houses, that lawyer, Frank Carson, was having problems with people stealing his  
 6 dad’s stuff, and he was tired of it. Robert Woody told her that the lawyer needed people—  
 or needed help to scare people off.

7 <sup>1</sup> While the prosecutor only relied on the “admissions and declarations against interest” exceptions to the hearsay  
 8 rule in her initial proffer, three additional grounds are urged in their responsive brief to Mr. Atwal’s motion to  
 strike Ms. Woody’s testimony, all of which are addressed here.

**Residual Trustworthiness**

9 The prosecution cites the 1999 Riverside County case of *People v. Duke* 74 Cal.App.4<sup>th</sup> 23, the for the  
 10 proposition that Ms. Woody’s testimony is admissible hearsay under the “residual trustworthiness test.” The  
 authority is inapposite.

11 The *Duke* case, distinguishing *Lily v. Virginia* 527 U.S. 116, addressed a claimed violation of the Confrontation  
 Clause.

12 Appellants in that case did not contest applicability of the firmly rooted California exception to the hearsay rule  
 of “declaration against interest.” And in its federal analysis, the court said: “When statements are admitted under a  
 13 firmly rooted exception to the hearsay rule or when they contain particularized guarantees of trustworthiness such  
 that adversarial testing would be expected to add little, if anything, to their reliability (the “residual trustworthiness  
 test”), their admission does not violate the confrontation clause.” *Id.* 30

14 In *Duke*, the court found that a male friend of Duke’s co-defendant, Richard Allen Hann, related conversations  
 that fully implicated Mr. Hann in the commission of the homicide, and that Mr. Hann “*did not attempt to shift*  
 15 *blame or deny his involvement in the crimes.*” *Id.* 32 This is the gravamen of the court’s determination that the  
 testimony was reliable.

16 In this case, as demonstrated hereinabove, Mr. Woody’s claimed statements were self-serving, deflative and  
 17 minimizing of responsibility, particularly as they related to Ms. Woody’s claim that her son had feared for his life  
 by the presence and directives of Mr. Wells.

18 Thus, rather than *Duke*, it is actually the federal case of *Lily*—which found a violation of the Confrontation  
 Clause based upon the unreliability of the hearsay statement—that governs here. The court there found: “Thus,  
 [the declarant] had a natural motive to attempt to exculpate himself as much as possible.”

**Operative Facts**

19 By this argument, the prosecution asks the court to consider that Ms. Woody’s recounting of her son’s  
 20 statements are not hearsay at all. Besides contradicting the implicit concession of the prosecutor in offering the  
 evidence in the first place, there is no issue upon which an operative fact depends for its proof.

21 The essential fact sought to be established by Ms. Woody’s testimony is the truth of Mr. Wells’ participation in  
 the aftermath of a homicide. It is the very establishment of this truth that gives rise to the ancillary truth of Mr.  
 22 Woody’s reaction it.

23 Thus, there is no non-hearsay purpose conceivable in the testimony of Ms. Woody. Even if there was, the court  
 would be obligated to disregard the claimed truth of any participation by Mr. Wells in the aftermath of a homicide.

**State of Mind**

24 It is circuitous in the extreme to suggest that Robert Woody’s state of mind was at issue in Beverly Woody’s  
 testimony. The issue was not how or why Robert Woody behaved as he did; it was how, if at all, Mr. Wells may  
 have been involved in the aftermath of a homicide.

25 Setting up Mr. Woody’s reaction to Mr. Wells’ presence as a rationale for the admission of the statement  
 26 implicating Mr. Wells is evidentiary blasphemy.

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“And that, when he was called over to the property at 838 Ninth Street, Dee closed the store, Robert and Dee—this is Robert telling his mother. Robert and Dee went over to the 838 Ninth Street prior to the incident. And when they got there, they—Dee and —Baljit was out of control, that Woody and Dee had to jump in because Baljit was out of control. And Robert tells her that he had to pull Baljit off the guy because he was going berserk. He had to pull Baljit off the guy because the guy was beaten bad.” (R.T. 7712-7713)

The prosecutor then represented that she was relying on information from discovery.  
(R.T.7714. Lines 16-21)

In response to the offer of proof, the court cautioned the prosecutor:

“Ms. Ferreira, I don’t know why you’re putting her on, really, because the layers of hearsay—I mean, she’s already getting confused and we haven’t even gotten very far. And I don’t think this is going to turn out well for you.” (R.T. 7717)

It is notable that the offer of proof did not include anything about Mr. Woody claiming to his mother that a police officer showed up in a squad car at 838 Ninth Street, the alleged scene of the assault on Mr. Kaufman, nor that the same police officer commanded Mr. Woody to “go back and clean up the mess,” meaning take care of the body—notable because the prosecutor would later claim she was surprised by the testimony.

Notwithstanding its absence from the prosecutor’s offer of proof, over the course of the rest of the morning Ms. Woody claimed her son told her that her son “walked in there and Dee, Bobby, was standing over Korey Kauffman’s body, and he was still alive. My son was there. Then my son told Dee that he’s not going to stick around while he does something like that. The kid had—he had enough. He learned enough.” (R.T. 7723-7724)

Q. Okay. Did Robert tell you what happened next after he made that statement to Dee?

A. Yes. My son turned around, started to walk out. When the gun went off, he turned around, and Dee had the gun, a gun.

Q. Did he tell you where—if he was able to see what happened to Korey Kauffman after the gun went off?

A. Yeah. Korey Kaufman fell to the ground. He had a bullet in the back.

Q. Did he tell you where Carson was during the argument?

A. Carson took the gun and left.

Q. Did he tell you what he did next?

A. Yeah. He started to walk out. And there was an officer outside of the —out there on the property, told him to get back in there and help them clean the mess up.

Q. Who was that? Did he say? Did Robert say who that was?

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A. Yeah. It was—think right now He lives around the corner from me. If I see him, I can tell.

Q. Do you know what agency that officer worked for?

A. Yeah. Turlock.

Q. Turlock Police?

A. Un-huh (yes)

Q. Had you seen that officer before?

A. Yeah. All the time. (R.T. 7724)

Ms. Woody then tried to remember the name of the Turlock Police officer:

“Officer Yu (phonetic) told him, get in there and clean up.” (R.T. 7729, line 25)

“Yu – I can’t pronounce his name. Yu – I can’t pronounce his name right.” (R.T. 7729, line 28- 7730, line 1)

Q. Do you know how do you spell his name?

A. No, I don’t know.

Q. Can you say it for me one more time?

A. Officer Yu – Officer Yu – Lou – Yu. (R.T. 7730, line 2-5)

After the claimed removal of the body from the Ninth Street property to the Pop N Cork, the prosecutor asked whether a police officer showed up. (R.T. 7736) The leading nature of the question met with an objection that was overruled. When the witness reiterated that it was “Yu,” the prosecutor prompted, “Q?” (R.T. 7736) The witness immediately adopted the suggestion, answering: “Q” (R.T. 7736, line 5)

The significance of this exchange might not have been clear to the court at the time but from the prosecution’s discovery in this case, the reference is both clear and important. Officer Eduardo Quintanar, a co-defendant in this case, is frequently referred to throughout discovery as, “Q.” It is likewise significant that Ms. Woody claimed the involved officer lived next to her. As the court now knows from the testimony of Investigator Jacobson (and the prosecutor knew from discovery), it is co-defendant Officer McFarland who lives close to Ms. Woody, not Mr. Wells. Finally, none of the above-mentioned officers have been, or were, members of the Turlock Police Department. All three were Highway Patrol Officers.

In a feigned attempt to clarify, the prosecutor asked again which officer was, according to her son, present at the “Carson” property:

THE COURT: She actually talked about two different officers, ma’am.

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MS. FERREIRA: Q. The one on Ninth Street.

MS. WOODY: It was Officer Yu. Q was one of them. (R.T. 7751, lines 15-18)

The lack of clarity as to whether Officer Yu or Officer Q was at the alleged scene of the assault on Mr. Kauffman is reflected in the exchange between the prosecutor, the court, Mr. Garcia, Mr. Forkner and Mr. Martinez (See R.T. 7752). But at no time, during the course of her morning examination, did Ms. Woody mention Mr. Wells' name.

Following the noon break, the prosecutor, while eliciting other completely unrelated information from Ms. Woody, inexplicably asked: Q. Okay. Did Robert ever tell you anything about Walter Wells? (R.T. 7803)

Mrs. Woody testified in response to that question that Walter Wells was the officer who told her son to go back in the store. (R.T. 7803, line 19-23, Emphasis added)

The prosecutor fully understood the answer because she asked three successive questions of the witness, adopting the premise of her answer, to wit: returning to the store.

MS. FERREIRA: Q. When you said Walter Wells was the one that told him to go back inside the store, was that correct?

A. Yes. The reason why he went back-- " (R.T. 7804, lines 4-6 Emphasis added)

MS. FERREIRA: Did Robert tell you why Walter Wells asked him to go back into the store?" (R.T. 7804, lines 11-12 Emphasis added)

MS. FERREIRA: Did Robert teil you what was going on that Walter Wells told him to go back inside the store.

A. I guess he owed Dec. (R.T. 7804, lines 15-16, 20 Emphasis added)

Then, ignoring the court's earlier clarification that Ms. Woody seemed to be speaking of two different officers, the prosecutor sought to redirect Ms. Woody's testimony by asking whether she was speaking about the property on Ninth Street or the Pop N Cork. (R.T. 7805, lines 4-5)

The court overruled an objection to the leading nature of the question, and the witness immediately began to explain that Walter Wells was the officer at the Ninth Street property in Turlock who ordered her son to go back and "clean up the mess." (R.T. 7805-7807)

Ms. Woody had not made that claim in her earlier testimony, in prior statements to investigators, to her son's attorney; nor, for that matter, and importantly, did her son ever say it.

***The Grave Danger Here of Permitting the Admission of Hearsay Evidence***

The long-recognized vice of permitting admission of hearsay evidence is that its

1 trustworthiness cannot be tested by cross-examination. Here, the prosecutor was fully cognizant  
 2 of Mr. Robert Lee Woody's contrary statement to investigators—a statement contained within  
 3 the discovery relied upon by the prosecutor in her offer of proof—wherein he specifically said  
 4 Mr. Wells was not involved in any way:

5 MR. JACOBSON: Who was on Frank's property? Let's just kind of cut to the chase.  
 Who was on Frank's property that night when you showed up?

6 ROBERT WOODY: Bobby.

7 MR. JACOBSON: Was Frank there?

8 ROBERT WOODY: No.

9 MR. JACOBSON: Was Scott there?

10 ROBERT WOODY: No.

11 MR. JACOBSON: Was Q there?

12 ROBERT WOODY: No.

13 **MR. JACOBSON: Was Walter there?**

14 **ROBERT WOODY: No.**

15 MR. JACOBSON: D was there. You and D arrive. Bobby is there, Korey is there. Who  
 16 else?

17 ROBERT WOODY: That's it. And I left...

18 (Interview with Steve Jacobson, Investigator, Stanislaus County District  
 19 Attorney's Office—August 14, 2015, p. 122, lines 13-27. Emphasis  
 20 added)

21 It is no secret that Mr. Woody's attorneys, Bruce Perry and Martin Baker, have been  
 22 present—one or the other or both—most days of the preliminary hearing. Given the  
 23 prosecutor's representations to the court over the past seven (7) months that plea negotiations  
 24 have been underway with Mr. Woody's attorneys, it is reasonable to assume that they have  
 25 been asked, or could have been asked, whether Mr. Woody had ever told his mother something  
 26 different than he told prosecution investigators.

27 In addition, Ms. Woody testified that she had told only one person about her son's claim that  
 28 Mr. Wells was involved in this case—her son's attorney, Mr. Baker, who was identified in  
 court. (R.T. 7825) Mr. Baker, who holds no privilege as to Ms. Beverly Woody, would testify  
 that her testimonial claim is false.

Mr. Baker's frequent presence in the courtroom, including the day Ms. Woody testified,  
 would have made confirmation of the false statement simple. It would seem that the

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prosecutor’s impulse should have been irresistibly stirred to know the truth or falsity of this testimony because she was in possession of a prior statement by Ms. Beverly Woody to her own investigator disclaiming any knowledge of how Mr. Wells might be involved in the case.

On August 19, 2015—five (5) days after the arrest of all defendants, including Mr. Wells—in a family discussion with Investigator Jacobson, and in the context of photographs that appeared on television following the arrest, Ms. Beverly Woody said, “How does Walter actually get involved? Was he there, too?” (B. Woody taped statement, 8-19-15, page73, lines 26-27) This statement is in evidence, and was made long after the alleged conversation with her son.

Beverly Woody’s claim that her son told her of Mr. Wells’ involvement at the Ninth Street property is patently false, and the prosecutor had every reason to know it. The most generous assessment of how the testimony came to be is that it caught the prosecutor by surprise in the afternoon session of April 18<sup>th</sup>.

Significantly, after adducing the questioned testimony, the prosecutor quite properly refrained from revisiting the subject on re-direct examination. Whether the prosecutor acted improperly in presenting the false testimony, or acted improperly in failing to inform the court and move to strike that portion of her testimony, once it’s falsity became, or should have become, known is the subject of a separate due process motion, as well as a separate motion filed by Mr. Forkner addressing prosecutorial misconduct.

***The Hearsay Objection***

The testimony of Beverly Woody as it relates the activities/involvement of WALTER WELLS is hearsay, and inadmissible on any ground constituting an exception to the hearsay rule, including but not limited to “admissions” and/or “declaration against penal or other adverse interest.”

Defendant, WALTER WELLS, hereby incorporates by reference each and every factual averment and legal authority as set forth in Defendant, BALJIT ATHWAL’S, *Motion To Strike/Exclude Testimony of Beverly Woody as Inadmissible Hearsay As to Defendant*, and moves to strike the following specific and/or derivative testimony related to the claimed activities/involvement of MR. WELLS:



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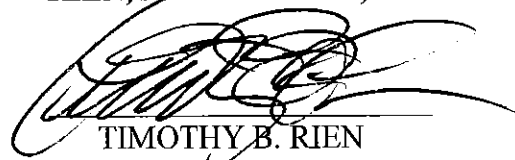
7724, 16-28; 7725, 1-2; 7729, 22-28; 7730, 1-28; 7735, 26-28; 7736, 1-24; 7747, 6-28; 7748, 1-28; 7749, 1-4; 7751, 5-26; 7752, 1-28; 7753, 1-12; 7754, 16-28; 7755, 1-28; 7803, 14-28; 7804, 1-28; 7805, 4-28; 7806, 1-24; 7807, 6-19; 7822, 11-14; 7825, 11-22; 7919, 24-28; 7920, 1-29; 7921, 1-17; 7923, 26-28; 7924, 1; 7925, 5-15; 7928, 25-28; 7929, 1- 7932, 8; 7937, 2-12; 7937, 26-7938, 14; 7939, 4-15; 8111, 8-19; 8112, 1-17;

**Conclusion**

For each and all of the foregoing reasons, Defendant, WALTER WELLS, respectfully requests that the court strike the foregoing hearsay testimony, as it relates to Walter Wells.

Dated: June 27 2016.

**RIEN, ADAMS & COX, LLP**



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