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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,)	NOTICE OF MOTION AND
)	MOTION TO STRIKE THE
vs.)	TESTIMONY OF BEVERLY
)	WOODY AS TO WALTER
WALTER WESTLEY WELLS,)	WELLS, OR DISMISS THE
)	ACTION HEREIN FOR A
Defendant.)	VIOLATION OF DUE PROCESS

Introduction

Defendant Walter Wells, by and through his attorneys of record **RIEN, ADAMS & COX, LLP**, hereby moves the court to strike the testimony of Beverly Woody, or alternatively dismiss the action herein based upon a violation of Due Process.

I.

THE TESTIMONY OF BEVERLY WOODY AS IT RELATES TO WALTER WELLS WAS ELICITED BY THE PROSECUTOR IN BAD FAITH, OR LEFT STANDING AFTER IT BECAME KNOWN, OR SHOULD HAVE BEEN KNOWN, THAT THE INFORMATION RELATED UNDER OATH WAS FALSE

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The Law

It is misconduct for a prosecutor to knowingly present false or inaccurate evidence

The most obvious and egregious form of prosecutorial misconduct is to present false or misleading testimony to a trier of fact. *Napue v. Illinois* (1959) 360 U.S. 264; *United States v. Young* (9th Cir. 1993) 17 Fed.3d 1201; *United States v. Valentine* (2nd Cir. 1987) 820 F.2nd 565; *Business Professions Code* sec 6068(d); *Penal Code* sec 1473(b); *California Rules of Professional Conduct*, Rule 5-200.

Due Process is violated when false evidence is presented to a trier of fact, whether offered intentionally or unintentionally.

“Under well-established principles of due process, prosecutor may not present evidence it knows to be false and must correct any falsity of which it becomes aware... even if the false evidence was not intentionally submitted.” *Giles v. Maryland* (1967) 386 U.S. 66 [Emphasis added]; *Napue v. Illinois* (1959) 360 U.S. 264; *People v. Sakarias* (2000) 22 Cal.4th 596, 633;

It is misconduct, and in this case contempt, for a prosecutor who knows or has reason to know that false or misleading evidence has been presented to a trier of fact to fail to correct the inaccuracy or falsity.

Prosecutors, in general, must correct false or inaccurate testimony. *People v. Morris* (1988) 46 Cal.3d 1, 33-34; and it is no defense to a prosecutor’s misconduct that, after a reasonable opportunity to cure the defect, the prosecutor later concedes the falsity of evidence, or blames the defense for knowing of its falsity. The prosecutor has an affirmative duty to correct false or misleading evidence. *United States v. LaPage* (9th Cir. 2000) 231 F.3d 488, 492; *Banks v. Dretke* (2004) 540 U.S. 668, 675; *Hayes v. Brown* (2005) 399 F.3d 972, 979-982; *California Rules of Professional Responsibility* 5-110 [prosecutor’s duty to promptly notify a tribunal] *California Rules of Professional Responsibility* 5-220; *Brady v. Maryland* (1963) 373 U.S. 83; *People v. Ruthford* (1975) 14 Cal.3d 399;

In addition, on August 25, 2015, while sitting on assignment in this case, Judge Manukian issued a statutory order mandating compliance with *Brady v. Maryland*, supra, the violation of

1 which, unlike a constitutional violation, includes a sanction of contempt. *Brady* requires, inter
 2 alia, disclosure to the defense of any impeaching evidence.

3
 4 ***The Facts***

5 ***Permitting or Failing to Strike False and Misleading Testimony***

6 At the very outset of Beverly Woody’s testimony on the morning of April 18, 2016, a hearsay
 7 objection was interposed when the prosecutor asked Ms. Woody what her son told her after
 8 execution of a search warrant. (R.T. 7711) The prosecutor urged that, while concededly
 9 hearsay, Ms. Woody’s statement was admissible as an exception, “admissions and statements
 10 against interest.” (R.T.7712, lines.2-3)

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

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

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

22 The prosecutor represented that she was getting her information for the offer of proof from
 23 discovery. (R.T. 7714. Lines 16-21)

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

28 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

1 back and clean up the mess,” meaning take care of the body—notable because the prosecutor
2 would later claim the testimony took her by surprise.

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

8 Q [The prosecutor] Okay. Did Robert tell you what happened next after he made that
9 statement to Dee?

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

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

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

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

16 A. Carson took the gun and left.

17 Q. Did he tell you what he did next?

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

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

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

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

23 A. Yeah. Turlock.

24 Q. Turlock Police?

25 A. Un-huh (yes)

26 Q. Had you seen that officer before?

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

28 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

1 question was met with an objection that was overruled. When the witness reiterated that it was
 2 "Yu," the prosecutor prompted, "Q?" (R.T. 7736) The witness immediately adopted the
 3 suggestion, answering: "Q" (R.T. 7736, line 5)

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

11 In a thinly veiled attempt to clarify, the prosecutor asked again which officer was, according
 12 to her son, present at the "Carson" property:

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

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

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

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

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

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

25 The prosecutor fully understood the answer because she asked three successive questions of
 26 the witness, adopting the premise of her answer.

27 MS. FERREIRA: Q. When you said Walter Wells was the one that told him to go back
 28 inside the store, was that correct? A. Yes. The reason why he went back-- " (R.T. 7804, lines 4-
 6 Emphasis added)

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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 tell 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)

II.

THE PROSECUTOR'S EXAMINATION OF BEVERLY WOODY WAS LACKING IN GOOD FAITH AND MUST BE STRIKEN OR THE ACTION HEREIN DISMISSED

The prosecutor's questions were lacking in good faith in the following material respects:

1. Not once during the morning session was there any confusion as to which police officer was present, in a squad car at the scene of the assault, other than Yu or Q. Walter Wells was never mentioned.
2. During the afternoon session, the prosecutor, without apparent reason, prompted Ms. Woody as to whether her son ever mentioned Walter Wells.
 - a. Ms. Woody claimed that her son told her Mr. Wells had been an officer who went back into the store (Pop N Cork). The prosecutor mentioned this premise in three successive questions to the witness, and then abruptly asked, without so much as a hint of confusion on the part of the witness, whether Ms. Woody's son was referring to going back into the store (Pop N Cork) or the Ninth Street, Turlock property (alleged scene of the assault on Mr. Kauffman)
3. The prosecutor knew, or should have known, from her own discovery, investigation and reliable sources that **Ms. Woody's testimony concerning Walter Wells was completely fabricated:**

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a. **The testimony was known to be false** because Walter Wells was never identified as someone who was at or near the Ninth Street property on the night of the assault, according to the statements of the actual declarant, Robert Woody. In fact, Robert Woody specifically excluded Mr. Wells as being present:

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?

ROBERT WOODY: Bobby.

MR. JACOBSON: Was Frank there?

ROBERT WOODY: No.

MR. JACOBSON: Was Scott there?

ROBERT WOODY: No.

MR. JACOBSON: Was Q there?

ROBERT WOODY: No.

MR. JACOBSON: Was Walter there?

ROBERT WOODY: No.

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

ROBERT WOODY: That’s it. And I left...

(Interview with Steve Jacobson, Investigator, Stanislaus County District Attorney’s Office—August 14, 2015, p. 122, lines 13-27)

b. **The testimony should have been known to be false** because there have been ongoing negotiations between the prosecutor’s office and Mr. Robert Woody’s attorneys throughout the 7 month pendency of this preliminary hearing. The purpose of this contact has been, according to the prosecutor’s representations to the court, to secure Mr. Robert Woody’s testimony of Robert Woody, which one would expect would include knowing what, if anything different he might testify to than he previously mentioned in statements. A simple question of the attorneys representing Mr. Woody would have likely revealed that he would testify as to Mr. Wells in conformity with prior statements, and that he had never told his mother what she claimed to have heard from him. In fact, his statements, well known to the prosecutor, included Mr. Woody’s belief that Mr. Wells had no knowledge of the Kaufman matter.

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c. **The testimony was known to be false** because Beverly Woody herself, in prior statements to investigators, not only said nothing of what she claimed in her testimony about Mr. Wells, but specifically inquired of investigators how Mr. Wells was even involved in this 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 had 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 was long after the claimed conversation Ms. Woody had with her son.

d. **The testimony should have been known to be false** because Ms. Woody testified that the only person she ever told about Walter Wells’ alleged involvement with the assault on Korey Kauffman was her son’s lawyer, Mr. Martin Baker. (R.T. 7825, lines 11-25)

Mr. Baker was present during the testimony, identified in court for the record and was sitting right behind the prosecutor. A simple question of Mr. Baker would have revealed the falsity of Ms. Woody’s claim that she had mentioned Mr. Wells’ alleged involvement to him.

e. **The testimony was known to be false** because, as Investigator Jacobson has testified, and the prosecutor conceded in statements to the court, Mr. Wells was not on duty on March 30-31, 2012; he was neither in uniform, nor driving a patrol vehicle. He was not a Turlock Police Officer and never a neighbor of Ms. Woody.

f. **The testimony was further proven to be false** when the district attorney received confirmation from their own handwriting expert—*after cross examination had concluded in April*—that the letter Ms. Woody identified as having been authored by Robert Woody’s girlfriend, Robin Attenhopher, was in fact likely not authored by her. The letter evidence had been offered by the prosecutor as “corroboration of the co-participant, Robert Woody’s, statement that, in fact, Korey Kaufman was

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beaten.” (R.T. 7790, lines 18-27; See the clarity of the court’s demand for an offer of proof at R.T. 7791, lines 9-19, followed by acceptance and a cautionary admonition at line 26). After asking the court to accept her representations concerning the authenticity and authorship of the letter for one purpose (which, in fairness, may have been made in good faith at the time), the prosecutor has since failed to bring the handwriting results to the attention of the court both as evidence that the corroboration of Mr. Woody may have been brought into question and, more importantly, proof of yet another false claim by Beverly Woody, who said she saw the letter being written. (R.T. 7792, line 17 through 7792, line 1)

III.

DEFENDANT WELLS HAS BEEN DENIED THE RIGHT TO CONFRONT AND CROSS-EXAMINE AN ACCUSER IN THAT THE TESTIMONY OF ROBERT WOODY HAS BEEN, TO DATE, WITHHELD

Beverly Woody’s testimony concerning what she was told by her son is a stark illustration of the dangers inherent in denying a defendant the right to confront and cross-examine an accuser.

Here, the danger is exacerbated because Mr. Robert Woody actually told investigators that he knew Mr. Wells, a Highway Patrol Officer who he characterized as “legit,” a patron of the Pop N Cork, and someone he did not believe knew anything about the disappearance or death of Korey Kaufman.

Meanwhile, the prosecutor has gone to extraordinary lengths over the past 8 months to avoid having Mr. Woody testify or to present his promised testimony by way of Proposition 115 hearsay.¹ As late as the week of June 20, 2016, the prosecutor denied ever representing that she would be calling Mr. Woody to testify or putting on the remainder of his statements.

¹ The court has been exceptionally deferential to the prosecution’s approach to presenting its case. Unfortunately, the district attorney elected to consume months in peripheral proofs and litigation before even producing evidence of a death in a murder prosecution. Had that decision been among the first, with the testimony of Robert Woody following closely thereafter, proceedings could have concluded in less than 30 days. Yet, the prosecution, now some 8 months later, persists in avoiding calling him to testify.

1 The record reflects a different story. The court has been induced to curtail the defense right to
2 cross-examine prosecution witnesses who have testified to circumscribed portions of Mr.
3 Woody's statements pursuant to Proposition 115, following repeated assurances, express and
4 implied, that Mr. Woody would be testifying. (See e.g. February 3, 2016, R.T. 4491, 4492;
5 February 5, 2016, R.T. 4899; February 9, 2016, R.T. 5032-5034)

6 On February 9th, the court urged the prosecution to "tighten up your case;" this in reference to
7 anticipating that testimony might be elicited twice—once pursuant to Prop 115 and again by the
8 statement or testimony of Mr. Woody. "My understanding is that Mr. Woody is going to be
9 testifying as some point in time. Unless that's changed. You're putting in his testimony right
10 now through this investigator." (R.T. 5038, lines 1-4).

11 The court added a cautionary note that the prosecution may be inviting a denial of due
12 process. (R.T. 5038-5041). ***"How you're going to prevent me, under what – without violating
13 their due process right to cross-examine, to preclude them from exploring that interview with
14 Mr. Woody."*** R.T. 5039, lines 2-5.

15 Again, on February 23rd, the court—never having never been disabused of the belief that Mr.
16 Woody's statements would be received one way or another—inquired of the prosecutor: ***"I
17 have a question, ma'am. If Mr. Woody is going to be testifying at some point in time, it
18 strikes me that—why are we spending time on this? Just curious."*** (R.T. 5335, lines 10-12)
19 To which the prosecutor perpetuated the court's sound belief by representing that the
20 documents she sought to introduce were for the purpose of corroborating "...what Mr. Woody
21 says. And part of the elements (sic) that I need to prove is corroboration of a co-participant."
22 (R.T. 5335, lines 16-18).

Conclusion

23 The prosecutor has, at worst, elicited known false testimony from Ms. Woody; and at best,
24 *permitted* false testimony to be introduced before the court, without moving to strike the
25 testimony once it became apparent, based upon all of the enumerated facts set forth herein, that
26 it was false and fabricated in every material respect.

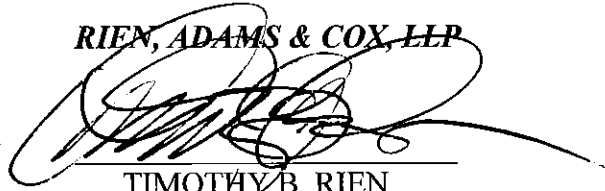
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While the prosecutor claimed that she had no intention of misleading the court or fashioning Ms. Woody's testimony in any way (R.T. 7818), the sequence of testimonial events set forth above suggests otherwise.

However, even assuming the truth of such a position, with so many facts known to the prosecutor militating against the verity of Ms. Beverly Woody's testimony, the prosecutor was under an ethical and legal and constitutional duty to bring the concern to the attention of the court.

For each and all of the foregoing reasons, Defendant, WALTER WELLS, respectfully requests that the court strike the foregoing testimony of Beverly Woody, as it relates to Walter Wells, or, alternatively, dismiss the action herein.

Dated: June 27, 2016.

RIEN, ADAMS & COX, LLP

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