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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

FRANK CLIFFORD CARSON,
BALJIT ATWAL,
DALJIT ATWAL,
WALTER WESTLEY WELLS,
GEORGIA DEFILIPPO,
CHRISTINA DEFILIPPO,
EDUARDO QUINTANAR AND
SCOTT MCFARLANE,

Defendants.

CASE NO.: 1490969

OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE BEVERLY
WOODY'S TESTIMONY AND JOIN
B. ATWALS'S MOTION TO
STRIKE/EXCLUDE THE
TESTIMONY OF BEVERLY
WOODY AS INADMISSIBLE
HEARSAY AS TO DEFENDANT

Date: TBD
Time: 9:30 a.m.
Dept. 26

The Honorable Barbara Zúñiga

Comes now the People of the State of California, by and through their attorney, BIRGIT FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy District Attorney, and respectfully submits the following opposition in response to Defendant Walter Wells' motion to strike Beverly Woody's testimony and join Baljit Atwal's motion to strike/exclude the testimony of Beverly Woody as inadmissible hearsay as to Defendant Wells.

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1 **STATEMENT OF RELEVANT FACTS**

2 Beverly Woody, mother of co-defendant Robert Woody, testified before this court from
3 April 18, 2016 to April 26, 2016, wherein the following evidence was presented:¹

4 Robert Woody, concerned that something might happen to him, reached out to his mother
5 and told her the following: (PX RT 8012:3-6.)

6 After defendant D. Atwal called Robert Woody for help, Robert Woody and his then-
7 girlfriend, Robin Attenhopper went to defendant Carson's property on Ninth Street where Robert
8 Woody met with defendant Carson, defendant B. Atwal and defendant D. Atwal at defendant
9 Carson's property on Ninth Street. (PX RT 7721:4-26; PX RT 7722:11-28; PX RT 7723:1-11; PX
10 RT 7765:24-28.) Robert Woody observed defendant B. Atwal's pickup at defendant Carson's
11 property. (PX RT 7725:12-15; PX RT 7726:8-13.) When he walked further into the property,
12 Robert Woody found defendant D. Atwal and defendant B. Atwal standing over Korey Kauffman,
13 who was still alive. (PX RT 7723:25-28.) Observing Korey Kauffman, Robert Woody told
14 defendants the kid [Korey Kauffman] had enough and turned his back. When he did, Woody heard
15 a gun go off and as he turned back around, he saw defendant D. Atwal holding a gun. (PX RT
16 7724:1-8.)

17 Robert Woody saw Korey Kauffman fall to the ground with a bullet in his back and watched
18 as defendant D. Atwal handed the gun to defendant Carson. Defendant Carson took the gun and
19 left the yard. (PX RT 7724:9-14; PX RT 7727:26-28; PX RT 7728:1.) Robert Woody attempted to
20 leave the property also, but was stopped by an officer and told to get back there and help clean up
21 the mess. (PX RT 7724:15-18.) Robert Woody identified this officer as Defendant Walter Wells.
22 (PX RT 7803:19-20; 7805:24-7806:23; 7930:13-21.)

23 Mrs. Woody testified that Robert Woody spoke to her about three different officers. (PX
24 RT 7750; 7755; 7923: 3-4.) After some initial confusion about the names of the officers involved,
25 Mrs. Woody was able to identify Officer Wells and distinguish him from Officer Q, who was the
26 officer inside the store when Robert Woody returned from Washington and observed the can to
27

28 ¹ At the end of the defendant's legal argument, he includes transcript references on 36 pages. The People include this statement of facts to provide context to the page numbers referenced by counsel.

1 donate to Korey Kauffman's family at the Pop-N-Cork. (PX RT 7735:26-28; PX RT 7736:1-5; PX
2 RT 7803:18-28; PX RT 7804:1-3; PX RT 7822:15-28.)

3 Defendant Wells parked his squad car at the property so that people would think that an
4 officer had already responded, thus preventing them from interfering if they heard any screaming
5 or gunshots (PX RT 7807:13-18; 7931:4-27.)

6 As directed by Defendant Wells, Robert Woody returned to the scene to help with Korey
7 Kauffman's remains. (PX RT 7730:21-26.) Defendant D. Atwal warned Robert Woody that if
8 Woody did not do as he was told, he was going to end up like Korey Kauffman. (PX RT 7730:26-
9 28; PX RT 7731:1-2.)

10 Defendant B. Atwal and Robert Woody removed Korey Kauffman's body from the scene
11 and transported it to the Pop-N-Cork. Defendant D. Atwal closed the store and stood watch as
12 defendant B. Atwal and Robert Woody placed Korey Kauffman's remains in a hole they had dug.
13 (PX RT 7731:9-15; PX RT 7732:4-10; PX RT 7760:27-28; PX RT 7761:1-7; PX RT 7735:1-3.)

14 Defendant D. Atwal told Robert Woody to keep his mouth shut and not to tell anyone (PX
15 RT 7735:4-7.) From about 1:30 a.m. to approximately 4:30 or 5:00 a.m., defendants D. Atwal and
16 B. Atwal kept Robert Woody at the Pop-N-Cork to ensure that Robert Woody did not talk and
17 "screw it up." (PX RT 7735:19-25; PX RT 7761:22-26.) Following Korey Kauffman's murder,
18 defendant D. Atwal continued to threaten Robert Woody, "Don't screw up. I am going after you.
19 You are going to be just like Korey and they are never going to find you." Defendant D. Atwal also
20 threatened the lives of Robert Woody's mother, father, and son. (PX RT 7802:3-24; 7803:1-5; PX
21 RT 7803: 6-9.)

22 After the burial of Korey Kauffman's remains, Defendant Carson told Robert Woody that
23 he would be his lawyer and get Robert Woody out of trouble. (PX RT 7741:13-28- 7742:1-2.)

24 At the conclusion direct examination testimony, defense counsel engaged in four days of
25 extensive cross-examination of Mrs. Woody.² (Apr. 19, 2016 (PX RT 7874-8020); Apr. 21, 2016
26

27 ² Defense counsel's colloquy and cross-examination bordered on harassment starting while Mrs. Woody was on the
28 stand during direct examination where defense counsel argued Mrs. Woody could not read and continued with defense
counsel's questioning regarding the Woody family tree and whether certain family members were "slow." (PX RT
7789:18-19; PX RT 7990: 11-28; PX RT 7991:1-28; PX RT 7992:1-28; PX RT 7993: 1-28; 7994:1-26.)

1 (PX RT 8021-8172); Apr. 25, 2016 (PX RT 8173-8206); and April 26, 2016 (PX RT 8207-8350).)

2 **LAW AND ARGUMENT**

3 **I.**

4 **OFFER OF PROOF**

5 The defense complains that the prosecutor’s offer of proof did not contain anything about
6 police officers at the scene of the crime. The complaint is without merit.

7 “The purpose of an offer of proof is to bring the court’s attention to the *nature* of the
8 proffered evidence so that the issue of admissibility can be determined.” (*People v. George* (1959)
9 169 Cal.App.2d 740, 745, citing Witkin, California Evidence, § 713; italics added; see also *Woods*
10 *v. Woods* (1964) 129 N.W.2d 519 [offer of proof need not state with precision every detail of
11 proposed testimony of witnesses...].) Note that each and every statement that the witness may
12 testify to need not be provided to the court, only the nature of the evidence.

13 Here, the nature of the evidence was a communication that Robert Woody made to his
14 mother about Korey Kauffman’s murder after the Woody residence was searched. In her offer of
15 proof, the prosecutor brought to the court’s attention the fact that Mrs. Woody’s testimony would
16 be as to statements told to her by her son, Robert Woody. The prosecutor need not have stated
17 every detail of Mrs. Woody’s proposed testimony.

18 **II.**

19 **TRUSTWORTHINESS**

20 **Residual Trustworthiness Test**

21 In *People v. Duke* (1999) 74 Cal.App.4th 23, 28, the Fourth District Court of Appeal
22 recognized the United States Supreme Court’s test referred to in the decision of *Lilly v. Virginia*
23 (1999) 527 U.S. 116, 136:

24 “When a court can be confident—as in the context of hearsay falling within a firmly
25 rooted exception—that “the declarant’s truthfulness is so clear from the surrounding
26 circumstances that the test of cross-examination would be of marginal utility,” the Sixth
27 Amendment’s residual “trustworthiness” test allows the admission of the declarant’s
28 statements.”

In *Duke*, defendant Duke’s co-defendant Hann “tearfully” told his friend the morning after
the murder that he and co-defendant had beaten up someone for money after a set up by defendant’s

1 prostitute girlfriend, that they were only able to obtain \$40 and a watch, and that they killed the
2 victim so he would be unable to identify them. (*Id.* at p. 27-28.) Prior to trial, defendant Duke
3 objected to his co-defendant's statements, arguing the co-defendant's statements were not a
4 declaration against interest and the statements violated the Confrontation Clause. (*Id.* at p. 551.)

5 By contrast, the *Lilly* declarant made the statements while in custody, under supervision of
6 government authorities, in response to officers' leading questions. "Thus, [the declarant] had a
7 natural motive to attempt to exculpate himself as much as possible." (*Lilly v. Virginia, supra*, 527
8 U.S. at p. ___ [119 S.Ct. at p. 1901]. The Appeal Court also noted that it was obvious that the
9 declarant was under the influence of alcohol when he made his statements. (*People v. Duke*, (1999)
10 74 Cal. App. 4th 23, 30, 87 Cal. Rptr. 2d 547.)

11 The *Duke* Court held that although the "declaration against interest" was not a "firmly
12 rooted exception to the hearsay rule", the residual trustworthiness test was. (*Id.* at p. 30.) The Court
13 of Appeal distinguished the *Lilly* court's decision, finding the statements in *Duke* were inherently
14 trustworthy as co-defendant made the statements close to the time of the crime, co-defendant had
15 no motive to lie, co-defendant was not even a suspect at the time, and co-defendant's statements
16 were not a result of leading questioning by law enforcement. (*Id.* at p. 30-31.)

17 The defense asserts that *Lilly* should be applied rather than *Duke*. This assertion fails as the
18 *Duke* facts closely resemble the case at bar, whereas the declarant in *Lilly* is questioned while in
19 custody and intoxicated. The intimate setting in *Duke* involved a casual conversation with a friend
20 shortly after the crime and prior to his arrest. Further, co-defendant Hann did not attempt to shift
21 blame or deny his involvement in the crimes. Similarly, co-defendant Robert Woody approached
22 his mother in their living room prior to his arrest and broke down in tears as he told her everything.
23 (PX RT 7849:22-26.)

24 **Statements Not Self-Serving For Duress Defense**

25 The defense argues that the statements made to Mrs. Woody were self-serving and
26 minimized responsibility, particularly in stating that Robert Woody was in fear of his life. Mrs.
27 Woody testified that Robert Woody obeyed Defendant Wells' command to stay and assist in
28 cleaning up after the murder, because he was scared or frightened (PX RT 7730: 18-23.) However,

1 it was the ongoing fear for his life that prompted him to tell his mother what happened. Mrs. Woody
2 stated that her son was not afraid of being arrested since it was an officer telling him to clean the
3 mess up after the murder. (PX RT 7930:24-28.)

4 Rather, it was his fear of ending up like Korey Kauffman. Following Korey Kauffman's
5 murder, defendant D. Atwal threatened Robert Woody saying, "Don't screw up. I am going after
6 you. You are going to be just like Korey and they are never going to find you." Defendant D. Atwal
7 also threatened the lives of Robert Woody's mother, father and son. (PX RT 7802:3-24; 7803:1-5;
8 PX RT 7803: 6-9.) Mrs. Woody stated, "He told me all of this in case somehow he came up missing.
9 Knowing what I -- he wanted me to know all this, just in case something happened to him." (PX
10 RT 8012:4-6).

11 Mrs. Woody stated that as a result of her son being involved with all of this, her family has
12 received and still receives threats. (PX RT 7768:8- 7769:1-10.) Robert Woody relayed to his mother
13 the fears he had due his involvement, including the corresponding threats of his co-conspirators.
14 He wanted her to know what happened in case he turned up missing. Robert Woody had no cause
15 to believe his own mother would testify as to these facts.

16 As in *Duke*, the statements relayed to Mrs. Woody do not attempt to shift blame or deny
17 Robert Woody's involvement in the crimes. On cross-examination, Mrs. Woody testified that she
18 fully expects her son to go to prison for his wrongdoing, "My son is going to go to prison probably.
19 I'm not saying he's not, because he was involved." (PX RT 7878: 12-13.) Mrs. Woody's testimony
20 does not deny his wrongdoing, but seeks to repair the holes in his story wrought in fear of becoming
21 a victim himself.

22 Robert Woody initially lied to authorities, because he was promised by D. Atwal that he
23 would be given a lawyer. (PX RT 7880: 23-26.) Robert Woody was led to believe that if he told
24 authorities that the Atwals were not involved in the murder, D. Atwal would provide him with a
25 lawyer for his defense (PX RT 7741:27- 7742:1-2; 7881: 1-13.) D. Atwal, his sister, and another
26 woman went to the Woody home after Robert Woody was arrested. (PX RT 7774:21- 7775:15-26.)
27 They had a lawyer on the phone and told Mrs. Woody that if she told the lawyer that the Atwals
28 were innocent, they would help her son. (PX RT 7780: 6-12.)

1 Even though she knew that her son faced prison time, Mrs. Woody consistently encouraged
2 her son to tell the truth. (PX RT 7846:4-5; 7860:27; 7938:6-8; 7880:15.)

3 **III.**

4 **ADMISSION OF A PARTY**

5 The defense argues that the admission of a party exception to the hearsay rule does apply in
6 this instance because Robert Woody is not a party in the action. The argument is not persuasive.
7 Robert Woody was arrested prior to his co-conspirators; therefore, he was charged under a different
8 case number.

9 However, as the People have demonstrated throughout this preliminary hearing, Robert
10 Woody conspired with the other defendants to obstruct justice and killed Corey Kauffman. Penal
11 Code section 954 would permit joinder of the accusatory pleadings charging Robert Woody and
12 Frank Carson et al. as the offenses were “connected together in their commission.” (Pen. Code, §
13 954.) Accordingly, statements made by Robert Woody and testified to by his mother are admissible
14 as admissions of a party.

15 **IV.**

16 **DECLARATION AGAINST INTEREST**

17 The defense cites *People v. Ebaniz* (2009) 174 Cal.App.4th 743 in support of his argument
18 that the statements are not admissible as declarations against interest because Mr. Woody was under
19 duress. However, **review of *People v. Ebaniz* was denied and on September 23, 2009, the
20 appellate court ordered the case not be published. Accordingly, the case is not citable and
21 provides no support for the defendant’s argument.**

22 The People’s research has uncovered no case that holds that duress negates a declaration
23 against interest. Tellingly, nowhere in annotated Evidence Code section 1230 is the word “duress”
24 found.

25 **V.**

26 **OPERATIVE FACT**

27 The defense argues that there is no issue upon which an operative fact depends for its proof
28 here. This is incorrect. “A declarant’s statement may become relevant on some issue in a case

1 merely because the words were spoken or written, and irrespective of the truth or falsity of any
2 assertions contained in the statement. If a fact in controversy is whether certain words were spoken
3 or written and not whether the words were true, evidence that these words were spoken or written
4 is admissible as nonhearsay.” (*People v. Fields* (1998) 61 Cal.App.4th 1063; citations omitted; see,
5 e.g., *People v. Dell* (1991) 32 Cal.App.3d 248, 258 [statements by prostitutes to undercover vice
6 officers were operative facts and not hearsay].)

7 Thus, the statements made by Robert Woody are admissible as operative facts because they
8 demonstrate an issue in the case: *Robert Woody’s fear for his life*. Robert Woody wanted his
9 mother to know what might have happened to him should he disappear, since he had been told that
10 if he did not participate in the clean-up, he would end up like Korey Kauffman. (PX RT 7730:26-
11 28; PX RT 7731:1-2.)

12 VI.

13 STATE OF MIND

14 Statements of the declarant’s then-existing state of mind, emotion, or physical sensation are
15 not inadmissible hearsay if offered to prove the declarant’s state of mind, emotion, or physical
16 sensation at any other time when that is an issue in the action. (Evid. Code, § 1250(a)(1).)

17 The defense argues that the statements that Mrs. Woody testified were made to her by her
18 son are inadmissible under the hearsay exception for state of mind because the issue is not Robert
19 Woody’s state of mind, but how Walter Wells was involved in the aftermath of the murder. (Def.’s
20 Motion, p. 3, fn. 1, see “State of Mind”.) The defense’s argument is not persuasive.

21 The issue is who conspired to obstruct justice and in so doing killed Korey
22 Kauffman. Robert Woody’s statements to his mother prove his fearful state of mind at the time of
23 his participation in the conspiracy, because he had been directed by uniformed Officer Wells to
24 remain at the scene and to aid in the disposal of Korey Kauffman’s body. (PX RT 7724:15-18;
25 7803:19-20; 7805:24-7806:23; 7930:13-21.) This fear explains why Robert Woody continued to
26 assist in the crime. This explanation also implicates Walter Wells’ involvement in the homicide.
27 Robert Woody is a percipient witness, and the placement of Walter Wells at the scene comes in
28 through his admission statement. In inculcating himself, Robert Woody also inculcates Walter

1 Wells; so although the defense argues that these are two separate issues, they are, in fact,
2 inextricably entwined.

3 **VII.**

4 **STATEMENT TO INVESTIGATORS**

5 The defense further asserts that Robert Woody’s statement to investigators that Walter
6 Wells was not involved in some way demonstrates that Mrs. Woody’s testimony lacks
7 trustworthiness. However, it is well-known that many suspects withhold information when
8 speaking with law enforcement. (See, e.g., *People v. McCurdy* (2014) 59 Cal.4th 1063, 1091 [“at
9 trial defendant admitted that during the questioning he initially withheld (facts) from the
10 investigators”].) Clearly, the statements Robert Woody made to his mother out of fear are more
11 trustworthy than those made to law enforcement as to the culpability of a law enforcement officer
12 whom Robert Woody feared.

13 **VIII.**

14 **ALLEGED FAILURE TO CALL MARTIN BAKER TO TESTIFY**

15 The defense further complains that the prosecutor was not “irresistibly stirred” to
16 immediately call defense counsel for Robert Woody, Martin Baker—who was present in court when
17 Mrs. Woody testified—to testify that Mrs. Woody had not told him that Robert Woody had said
18 Walter Wells was present on the night of the murder. (Def.’s Motion, p. 7, line 15 to p. 8, line 3.)

19 The prosecutor was not aware during Mrs. Woody’s testimony of what Mrs. Woody had or
20 had not told Martin Baker. Apparently, this is something that, for reasons unknown, Mr. Baker later
21 discussed with counsel for his own client’s codefendants.

22 Mr. Rien claims that Martin Baker “would testify” that Mrs. Woody’s testimony is
23 false. (Def.’s Motion, p. 7, lines 22-23.) However, even though, as Mr. Rien points out, there is
24 no attorney-client privilege between Martin Baker and Mrs. Woody, Martin Baker has a duty of
25 loyalty to his client. Becoming a witness in his client’s case, particularly in order to discredit his
26 client’s mother, would seem to be in conflict with that duty. (See, e.g., California Rules of
27 Professional Conduct, Rule 5-210; ABA Rule 3.7.)

28 Finally, Mr. Rien asserts that the prosecutor must have, in plea negotiations, asked Robert

1 Woody if he had told his mother something different than he had told investigators. Clearly, this is
2 not a question that one would expect to be at the forefront of any plea negotiation and neither was
3 it here. Further, as previously explained, when making statements to law enforcement officers,
4 suspects often withhold information.

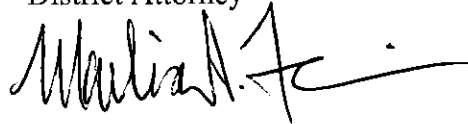
5 **CONCLUSION**

6 For the foregoing reasons the People respectfully request the Court find the Beverly
7 Woody's testimony was properly admitted and deny Defendant Walter Wells' motion to
8 exclude/strike the testimony of Beverly Woody.

9 Dated this 30 day of June 2016, at Modesto, California.

10 Respectfully submitted,

11 BIRGIT FLADAGER
12 District Attorney

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14 Marlisa A. Ferreira
15 Chief Deputy District Attorney

16 MAE:BC/KDG
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PROOF OF SERVICE BY ELECTRONIC MAIL

STATE OF CALIFORNIA)

COUNTY OF STANISLAUS)

I, the undersigned, declare as follows:

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

That I served a copy of the **Opposition to Defendant Walter Well's Motion to Strike/Exclude Testimony of Beverly Woody as Inadmissible Hearsay as to Defendant Walter Wells** on June 30th, 2016 pursuant to Cal. Civ. Proc. Code § 1010.6(a)(6) by electronically sending a copy thereof to the offices of:

Jesse Garcia at JesseJGARCIA@aol.com,
Timothy Rien at rienlaw@sbcglobal.net,
Martha Carlton-Magana at carltnm@hotmail.com,
Preciliano Martinez at attymartinezp@yahoo.com,
Hans Hjertonsson at Hans.hjertonsson@gmail.com,
Alonzo Gradford at gradfordlaw@gmail.com,
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Robert Lee Forkner at RLFCrimLaw@aol.com,
Bruce Perry at brucerperry@msn.com and
Stephanie Mitchell at stephanie.mitchell@stanct.org.

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

Executed this 30th day of June 2016, at Modesto, California.



Declarant

Case No. 1490969
People v. Carson et al.