

FILED

2016 JUL -5 AM 10:03

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

Ana Valencia

1 BIRGIT FLADAGER
Stanislaus County District Attorney
2 832 12th Street, Suite 300
Modesto, CA 95354
3 Telephone: (209) 525-5550
4 Attorney for the Plaintiff
5
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10 -----o0o-----

11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO.: 1490969

12 Plaintiff,)

13 vs.)

14 FRANK CLIFFORD CARSON,
BALJIT ATWAL,
15 DALJIT ATWAL,
WALTER WESTLEY WELLS,
16 GEORGIA DEFILIPPO,
CHRISTINA DEFILIPPO,
17 EDUARDO QUINTARA, and
SCOTT MCFARLANE,

) **PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION TO
STRIKE THE TESTIMONY OF
BEVERLY WOODY OR DISMISS
THE ACTION FOR VIOLATION
OF DUE PROCESS**

) Date: July 11, 2016
) Time: 10:00 a.m.
) Dept: 26
) The Honorable Barbara Zúñiga

18 Defendants.)
19)

20 -----o0o-----

21 Comes now the People of the State of California, by and through their attorney, BIRGIT
22 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy
23 District Attorney, and respectfully submits the following points and authorities in response to
24 Defendant Walter Wells' motion to strike the testimony of Beverly Woody or dismiss the action
25 for violation of Due Process.

26 ///

27 ///

1 **INTRODUCTION**

2 On May 23, 2016, the People filed a comprehensive opposition detailing the admissibility
3 of Beverly Woody’s statements. On June 30, 2016, the People filed an opposition to a second
4 motion to strike or exclude her testimony as inadmissible hearsay. The defense has now brought
5 a third motion to strike Mrs. Woody’s testimony, this time on grounds of violating due process.
6 The People once again oppose.

7 **LAW AND ARGUMENT**

8 **I. NO VIOLATION OF DUE PROCESS WHERE DEFENSE COUNSEL HAS BEEN**
9 **AFFORDED EXTENSIVE OPPORTUNITY TO CROSS-EXAMINE WITNESS**

10 In *People v. Harris* (1985) 165 Cal.App.3d 1246, 1264, the Court of Appeal aptly stated,

11 Due process is not a static concept. Determinations of what process is due
12 requires a sensitive appreciation of context and a rejection of mechanical formulas.
13 Half a century ago Justice Cardozo put it thus: “Due Process of law requires that the
14 proceedings shall be fair, **but fairness is a relative, not an absolute concept. It is**
15 **fairness with reference to particular conditions and particular results.”**
16 [Citation.] The courts of this state take a similar approach: “Due process is a
17 flexible concept; the precise procedures necessary to prevent the arbitrary
18 deprivation of a constitutionally protected interest vary ‘with the subject-matter and
19 the necessities of the situation.’” [Citation.]

20 Defense counsel was allowed to question Mrs. Woody *ad nauseam* to ferret out
21 inconsistencies and/or question the veracity of her statements. Defense counsel’s permitted
22 questioning cannot support an argument for a due process violation.

23 **II. MAGISTRATE CAN DETERMINE WITNESS CREDIBILITY**

24 “It is the role of the judge or jury to determine the facts, not that of the attorney.” (*People*
25 *v. Riel* (2000) 22 Cal.4th 1153, 1217, citing *United States ex rel. Wilcox v. Johnson* (3d Cir.1977)
26 555 F.2d 115, 122.)

27 “It is only within this limited framework of responsibility that the magistrate
28 weighs evidence, considers conflicts, and assesses credibility of witnesses. In order
for the magistrate to fulfill this function, it is generally not necessary that he or she
resolve all possible conflicts in the evidence and issues of credibility. Indeed, to the
contrary, as a practical matter, there will rarely be conflicts to resolve. Generally, the
defense role at a preliminary hearing is relatively restrained. Normally, neither defense
witnesses are called nor affirmative defenses actually litigated. For the most part, the
defense limits itself to cross-examination of the prosecution witnesses. Moreover, as
a result of the passage of Proposition 115, the preliminary hearing testimony is often
limited to that of the investigating officer or other law enforcement person who, if

1 qualified, may properly offer hearsay evidence to establish probable cause.”
(*People v. DeJesus* (1995) 38 Cal.App.4th 1, 15; internal citation omitted.)

2 The magistrate is the trier of fact in a preliminary hearing. As such, the magistrate is
3 entitled to form her own opinion regarding the credibility of a particular witness.

4 **III. THE TESTIMONY WAS NOT FALSE OR MISLEADING AND DOES NOT**
5 **NECESSITATE EXCLUSION FROM THE RECORD**

6 **An Offer of Proof Need Not State Every Detail of Proposed Testimony**

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

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

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

20 **Unpredictable Does Not Equate with Inadmissible**

21 Defendant Wells alleges that the prosecution violated his due process rights by introducing
22 false testimony, which he claims took the prosecutor by surprise. The argument is not persuasive.

23 “Where there are conflicting extrajudicial statements which are not under oath, neither
24 side can be absolutely sure of what the witness will ultimately state when sworn. In this situation
25 the prosecution properly may deem it advisable to call the witness so that the jurors may be fully
26 informed. If the testimony proves adverse, the opportunity to impeach it should not be denied,
27 and surprise may properly be claimed.” (*People v. Adams* (1968) 259 Cal.App.2d 109, 122.)

1 An attorney rarely possesses omniscience when it comes to witness testimony. It does
2 occasionally come to pass that a witness provides unexpected testimony on the stand. Such an
3 occurrence does not signify that the attorney knowingly misled the court, nor does it automatically
4 deem the proffered statements false or necessitate their exclusion. Further, it does not follow that
5 a due process violation has occurred simply because the provided testimony was unfavorable to
6 the defense. While some of Mrs. Woody's testimony was unexpected, that alone does not shed a
7 false light upon her statements or ring the death knell on their inclusion in the record.

8 **Contradictory Does Not Equate with Falsity**

9 The defense asserts that Mrs. Woody's testimony must be false because it contradicts
10 statements that Robert Woody made to investigators. However, it is well-known that many
11 suspects withhold information when speaking with law enforcement. (See, e.g., *People v.*
12 *McCurdy* (2014) 59 Cal.4th 1063, 1091 ["at trial defendant admitted that during the questioning
13 he initially withheld (facts) from the investigators"].)

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

20 Robert Woody told the truth to his mother out of fear, relaying his involvement and the
21 corresponding threats of his co-conspirators so that she would know what happened in case he
22 turned up missing. Following Corey Kauffman's murder, defendant D. Atwal threatened Robert
23 Woody, "Don't screw up. I am going after you. You are going to be just like Corey and they are
24 never going to find you." Mrs. Woody testified, "He told me all of this in case somehow he came
25 up missing. Knowing what I -- he wanted me to know all this, just in case something happened to
26 him." (PX RT 8012:4-6). Mrs. Woody stated that as a result of her son being involved with all
27 of this, her family has received and still receives threats. (PX RT 7768:8- 7769:1-10.) In fact,
28

1 Robert Woody is currently housed in a secure location due to concerns for his safety.

2 Robert Woody had no cause to believe his own mother would testify as to these facts.
3 Clearly, the statements Robert Woody made to his mother out of fear are more trustworthy than
4 those made to law enforcement as to the culpability of a law enforcement officer whom he feared.

5 **IV. CLARIFYING WITNESS TESTIMONY IS NOT A MISCONDUCT ISSUE**

6 The defense argues that misconduct occurred because Mrs. Woody remembered the name
7 of Defendant Wells after the lunch break, implying that she was coached by the prosecution.
8 However, upon being questioned about her out-of-court interactions, Mrs. Woody staunchly
9 denied having improper communications and did not even know what the prosecutor's name was.
10 (PX RT 7929:4-27- 7930:1-6.)

11 The defense cites the Court pointing out that the witness seemed confused, but left out
12 discussion about Mrs. Woody being nervous and confused about the court process while clear
13 about what her son told her. (PX RT 7717:26-7718:1-5.) When added to the fact that her son is in
14 a secret location for his safety and the threats that her family still receives, it is perfectly
15 understandable that she had a rough beginning to her first day on the stand.

16 Further, Mrs. Woody is in poor health. On the second day of testimony, she stated that she
17 had been feeling poorly the day before due to missing her medications while in court. (PX RT
18 7877: 1-16.) She takes 22 pills per day for assorted health issues (PX RT 7914: 1-7.) However,
19 Mrs. Woody stated that these medications do not affect her memory or ability to recollect
20 information. (PX RT 7877: 17-21.) Mrs. Woody stated that she was feeling much better the
21 second day of testimony, which is evidenced by her ability to clarify some instances of confusion
22 in her earlier testimony that the defense cites in their motion. While she would sometimes forget
23 the names of the officers or the exact law enforcement department that they worked for, Mrs.
24 Woody was always consistent in noting the separate roles that individual officers had.

25 Mrs. Woody stated that she has difficulty remembering names. After some initial
26 confusion about the names of the officers involved, Mrs. Woody was able to identify Officer
27 Wells as the officer present at the Ninth Street property on the night of the murder and distinguish
28

1 him from Officer Q, who was the officer inside the store when Robert Woody returned from
2 Washington and observed the can to donate to Korey Kauffman's family at the Pop-N-Cork. (PX
3 RT 7735:26-28; PX RT 7736:1-5; PX RT 7803:18-28; PX RT 7804:1-3; PX RT 7822:15-28.)

4 The defense argues that the prosecutor was improperly redirecting the witness in clarifying
5 whether she was referring to the Ninth Street property or the Pop-N-Cork. (Def.'s Motion, p. 6,
6 lines 4-6.) Redirect examination's "principal purposes are to explain or rebut adverse testimony
7 or inferences developed on cross-examination, and to rehabilitate a witness whose credibility has
8 been impeached." (3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 256, p. 328,
9 cited by *People v. Cleveland* (2004) 32 Cal. 4th 704, 746, 86 P.3d 302, 330.) By asking Mrs.
10 Woody to clarify the location she was referring to, the prosecutor fulfilled her duty to resolve any
11 confusion or ambiguity that may have arisen in the testimony to preserve an accurate record.

12 The defense alleges bad faith by the prosecution by claiming that Mrs. Woody falsely
13 identified Robin Attenhopher's handwriting. However, a non-expert may state their *opinion*
14 whether the writing is the handwriting of the supposed writer based upon their personal
15 knowledge of the writer's handwriting (Cal. Evid. Code §1416.) Mrs. Woody testified that she
16 saw Robin writing a letter and when an officer later showed her a letter, she told him that she
17 recognized "Robin's handwriting and the letter that I seen her write." (PX RT 7795:20- 7796:1-
18 14.) Mrs. Woody is not a handwriting expert, but she may properly state her opinion about the
19 identity of the author, based upon her personal knowledge of her daughter-in-law's handwriting.
20 Stating her belief as to handwriting's author is not improper or reason to strike her testimony.

21 **V. FINDING OF PROBABLE CAUSE MAY BE BASED UPON OFFICER'S TESTIMONY**
22 **RELATING STATEMENTS MADE BY DECLARANT OUT OF COURT**

23 The defense complains that Robert Woody should testify. However, Proposition 115
24 amended Penal Code section 872, subdivision (b), to provide that a probable cause determination
25 at a preliminary hearing may be based on hearsay statements related by a police officer with
26 certain qualifications and experience. (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1070.)
27 Penal Code section 872, subdivision (b), provides, in relevant part, that "[n]otwithstanding [the
28

1 hearsay rule], the finding of probable cause may be based in whole or in part upon the sworn
2 testimony of a law enforcement officer or honorably retired law enforcement officer relating the
3 statements of declarants made out of court offered for the truth of the matter asserted.”

4 The constitutionality of section 872(b) has been upheld as to both the state and federal
5 constitutions. (*Whitman, supra.*) Robert Woody is not required to testify at the preliminary
6 hearing.

7 **CONCLUSION**

8 For the foregoing reasons and the reasons stated in previous oppositions, the People
9 respectfully request the court deny defendant’s motion to strike the testimony of Beverly Woody,
10 or dismiss the action for violation of due process.

11 Dated this 1~~st~~ day of July, 2016, at Modesto, California.

12 Respectfully submitted,

13 BIRGIT FLADAGER
14 District Attorney

15 

16 Marlisa A. Ferreira
17 Chief Deputy District Attorney

18 MAE/UC/EDG

1 **PROOF OF SERVICE BY ELECTRONIC MAIL**

2 STATE OF CALIFORNIA)

3 COUNTY OF STANISLAUS)

4 I, the undersigned, declare as follows:


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

7 That I served a copy of the Exhibit to the People's **Opposition to Defendant's Motion**
8 **to Strike Testimony of Beverly Woody or Dismiss Action for Violation of Due Process** on
9 July 5th, 2016 pursuant to Cal. Civ. Proc. Code § 1010.6(a)(6) by electronically sending a
10 copy thereof to the offices of:

- 11 Jesse Garcia at JesseJGARCIA@aol.com,
- 12 Timothy Rien at rienlaw@sbcglobal.net,
- 13 Martha Carlton-Magana at carltnm@hotmail.com,
- 14 Preciliano Martinez at attymartinezp@yahoo.com,
- 15 Hans Hjertonsson at Hans.hjertonsson@gmail.com,
- 16 Alonzo Gradford at gradfordlaw@gmail.com,
- 17 Lawrence Niermeyer at ltniermeyer@aol.com,
- 18 Robert Lee Forkner at RLFCrimLaw@aol.com,
- 19 Bruce Perry at brucerperry@msn.com and
- 20 Stephanie Mitchell at stephanie.mitchell@stanct.org.

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

22 Executed this 5th day of July 2016, at Modesto, California.

23 
24 _____
25 Declarant

26 Case No. 1490969
27 People v. Carson et al.