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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY MARIA HORTA
DEPUTY

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

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11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO.: 1490969
12)
13 Plaintiff,) **OPPOSITION TO DEFENDANT'S**
vs.) **MOTIONS TO DISMISS (CAL.**
14) **PEN. CODE SECTION 1385)**
15 WALTER WESTLEY WELLS,) Date: December 19, 2019
Time: 9:00 a.m.
16 Defendant.) Dept: 2
The Honorable Barbara Zuñiga
17 -----o0o-----

18 Comes now the People of the State of California, by and through their attorney, BIRGIT
19 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy
20 District Attorney, and respectfully submits the following opposition to defendant Wells' two
21 motions: 1) Motion to Dismiss All Charges against Walter Wells pursuant to Cal. Pen. Code
22 section 1385 received and filed on November 22, 2019 and 2) Motion to Dismiss in the Interests
23 of Justice pursuant to Cal. Pen. Code section 1385 received November 25, 2019. ¹

24 _____
25 ¹ Defendant received the date of November 22, 2019 in which to have served and filed his motion to dismiss
26 pursuant to Cal. Pen. Code section 1385 and did file one motion on that date. The People object to defendant's
27 second filing submitted on November 25, 2019 and request it be stricken, as it was not submitted with the approval
28 of this Court, the filing violates multiple Rules of Court, Rules of Evidence and fails to cite to any legal authority
except for a citation to Cal. Pen. Code section 1385 on the very last page. (Defense motion, p. 7, line 3-7.)

1 **STATEMENT OF FACTS**

2 On August 15, 2015, defendant, Walter Westley Wells was arrested for the Murder of
3 Korey Kauffman. On August 18, 2015, a Complaint was filed alleging four charges. Count I
4 alleged the charge of Murder of Korey Kauffman while lying in wait against Frank Carson,
5 Baljit Atwal, Daljit Atwal, Georgia DeFilippo, Christina DeFilippo, and Walter Westley Wells.
6 Count II alleged the charge of Conspiracy to Obstruct Justice against Frank Clifford Carson,
7 Baljit Atwal, Daljit Atwal, Robert Lee Woody, Walter Westley Wells, Georgia DeFilippo,
8 Christina DeFilippo, Eduardo Quintanar, and Scott McFarlane. Count III alleged the charge of
9 Accessory against Christina DeFilippo, Scott McFarlane and Eduardo Quintanar. Count IV
10 alleged the charge of Perjury against Frank Carson.

11 Following the preliminary hearing, on April 10, 2017, defendant Walter Wells was held
12 to answer on the charges of Conspiracy to Obstruct Justice and Accessory. On June 28, 2019,
13 Frank Carson, Daljit Atwal and Baljit Atwal were acquitted by a jury of the charges of Murder
14 and Conspiracy to Obstruct Justice. Defendant Wells' trial for the charges of Conspiracy to
15 Obstruct Justice and Accessory is yet to be reset.

16
17 **LAW AND ARGUMENT**

18 **I. DEFENDANT DOES NOT HAVE STANDING TO BRING A MOTION**
19 **PURSUANT TO PENAL CODE SECTION 1385**

20 The People request the Court deny defendant's motion without review given defendant's
21 lack of standing². Penal Code §1385 provides, "The judge or magistrate may, either of his or
22 her own motion or upon the application of the prosecuting attorney, and in furtherance of
23 justice, order an action to be dismissed."

24 The California Supreme Court has specifically held, "A defendant does not have the
25 statutory privilege of moving to dismiss an action, or part of an action, under Penal Code section
26 1385, subdivision (a). (*People v. Hernandez* (2000) 22 Cal.4th 512, 521-522 citing *People v.*

27 _____
28 ² Defendant also concedes this in his motion filed 11/22/19 at page 3 line 6.

1 *Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 136-137 and *People v. Andrade* (1978) 86
2 Cal.App.3d 963, 973-974.) Prior to *Hernandez*, the First District Court of Appeal in *People v.*
3 *Barraza* (1994) 30 Cal.App.4th 114, 121 in a footnote found that Penal Code section 1385 “does
4 not confer any right of relief upon the defendant.”

5 Therefore, the People request the Court deny defendant’s motion forthwith.

6
7 **II. A DISMISSAL PURSUANT TO CAL. PEN. CODE SECTION 1385 REQUIRES**
8 **CONSIDERATION OF THE INTERESTS OF SOCIETY AND THE**
9 **CONSTITUTIONAL RIGHTS OF DEFENDANT**

10 “From the case law, several general principles emerge. Paramount among them is the
11 rule that the language of [Cal. Pen. Code § 1385(a)] ‘in furtherance of justice,’ requires
12 consideration both of the constitutional rights of the defendant, and *the interests of society*
13 *represented by the People*, in determining whether there should be a dismissal.” (*People v.*
14 *Williams*, (1998) 17 Cal.4th 148, 159.) The reasons for the dismissal must be set forth in an
15 order entered upon the minutes. (Cal. Pen. Code, §1385(a), *People v. Bonnetta* (2009) 46
16 Cal.4th 143, 149-151 [requirement of entry is mandatory].)

17 “[I]n view of the fundamental right of the People to prosecute defendants upon
18 probable cause to believe they are guilty [citations], neither judicial convenience, court
19 congestion, nor judicial pique, no matter how warranted, can supply justification for an order of
20 dismissal.’ ” (*People v. Ferguson* (1990) 218 Cal.App.3d 1173, 1183.) A dismissal arbitrarily
21 terminating the right of the People to prosecute a properly alleged offense without any showing
22 of detriment to the defendant is an abuse of discretion. (*People v. Orin* (1975) 13 Cal.3d 937,
23 947; *People v. Uribe* (2011) 199 Cal.App.4th 836, 882.) “A dismissal not in furtherance of
24 justice is an abuse of discretion requiring reversal. [Citation.]” (*People v. Bracey* (1994) 21
25 Cal.App.4th 1532, 1541.)

26 Defendant’s first motion to dismiss dated November 22, 2019 submits that defendant
27 Wells is still being prosecuted despite the acquittal of three of his co-defendants. As previously
28 argued in opposition to defendant’s collateral estoppel motion, the People submit the

1 acknowledgement of the California Supreme Court that because our criminal justice system
2 includes a trial by jury, it is inevitable that some “criminal defendants who are guilty will be
3 found not guilty.” (*People v. Palmer* (2001) 24 Cal. 4th 856, 865.) The Court reasoned despite
4 this being the case, this does not mean that all defendant must receive the same lenient
5 treatment. *Id.*

6 Defendant’s November 22nd motion presents facts regarding defendant’s alleged history
7 with the California Highway Patrol, the length of the preliminary hearing and subsequent trial of
8 defendant’s co-defendants to support defendant’s theory of harassment. In part, it appears
9 amidst a claim of harassment, defendant is claiming a speedy trial issue. However, defendant
10 waived this argument as he waived time for his trial pending the trial of his co-defendants.
11 Following the completion of the trial of his codefendants, defendant has objected to only one
12 continuance of the trial date, for which the Court found good cause.

13 Defendant cites to the case of *People v. Superior Court (Howard)* 1968 69 Cal.2nd 491,
14 in support of his motion stating a judge may dismiss under Cal. Pen. Code section 1385 because
15 he or she believes retrial was brought to harass defendant. In *Howard*, a jury found defendant
16 guilty, yet the Trial Court dismissed the case finding the issues of witness identification was not
17 overcome with the evidence at trial. *Id.* The California Supreme Court upheld the Trial Court’s
18 decision noting that the Trial Judge “who has heard the evidence as in the instant case is in an
19 excellent position to determine whether a retrial would further the interest of justice.” (*Id.* at
20 504.) There is no issue regarding retrial before this Court. Defendant has not been tried and
21 unlike the case of *Howard*, witness identification is not an issue before this court.

22 In *People v. Orin* (1975) 13 Cal.3d 937, cited to by defendant (Defense November 22nd
23 motion p. 4, lines 1-2), the California Supreme Court recognized that the Trial Court may
24 dismiss matters before, during and/or after trial under Cal. Pen. Code section 1385, in the
25 furtherance of justice. However, the Court also found,

26 [A]ppellate courts have shown considerable opposition to the granting of
27 dismissals under section 1385 in instances where the People are thereby
28 prevented from prosecuting defendants for offenses of which there is probable

1 cause to believe they are guilty as charged. Courts have recognized that society,
2 represented by the People, has a legitimate interest in “the fair prosecution of
3 crimes properly alleged.” (*People v. Davis, supra*, 20 Cal.App.3d 890, 898.)
4 (*People v. Orin* (1975) 13 Cal.3d 937, 946–947.) In *Orin*, the California Supreme Court
5 reversed the decision by the Trial Judge to accept defendant’s plea to Count III and dismiss
6 Counts I and II where the Trial Judge provided no specific reasoning for the decision to accept
7 the plea and dismiss the counts and where the Trial Court reduced defendant’s exposure
8 significantly. (*Id.* at 947-951.)

9 Probable cause to hold defendant Walter Westley Wells to answer was found by the
10 Honorable Barbara Zuniga on April 10, 2017. Society and the family of Korey Kauffman have a
11 legitimate interest in the fair prosecution of the defendant Walter Wells’ charges of Conspiracy
12 to Obstruct Justice and Accessory.

13
14 **CONCLUSION**

15 For the reasons stated herein, the People request that the court deny defendant’s motions
16 to dismiss.

17 Dated this 4th day of December, 2019, at Modesto, California.

18 Respectfully submitted,

19 BIRGIT FLADAGER
20 District Attorney



21 Marlisa A. Ferreira
22 Chief Deputy District Attorney

1 DECLARATION OF SERVICE

2 STATE OF CALIFORNIA)

3 COUNTY OF STANISLAUS)

4 I, the undersigned, declare as follows:

5 I was at the time of service of the attached OPPOSITION TO DEFENDANT'S
6 MOTIONS TO DISMISS (CAL PEN. CODE SECTION 1385), I was over the age of eighteen
7 years and not a party to the above-entitled action. I served a copy of the above-entitled
8 document on December 5th, 2019, by delivering a copy thereof to the office of:

9
10 Robert Forkner
11 Attorney at Law
12 Law Office Robert L. Forkner
13 722 13th St
14 Modesto, CA 95354-2414
15 RForkner@forknerlaw.com; rlf@CrimLaw@aol.com
16 Facsimile: (209) 544-1860

17 Frank Carson
18 Attorney at Law
19 811 15th Street
20 Modesto, CA 95354
21 frankccarson@comcast.net
22 Facsimile: (209) 360-2978

23 A copy is also served on Brandi Christensen at Brandi.Christensen@stanct.org; Stephanie
24 Mitchell at stephanie.mitchell@stanct.org; Orlando Rosales at Orlando.Rosales@stanct.org

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

26 Executed this 5th day of December, 2019, at Modesto, California.

27
28 
Declarant

25 People v. Wells
26 1490969
27 12/19/19
28