

1 **DEAN D. FLIPPO, DISTRICT ATTORNEY**
2 **MONTEREY COUNTY DISTRICT ATTORNEY**
3 DAVID RABOW, DEPUTY DISTRICT ATTORNEY
4 230 CHURCH STREET, BLDG. 2
5 SALINAS, CA 93902
6 TELEPHONE: (831) 755-5070
7 FAX: (831) 796-3389

8 ATTORNEY FOR PLAINTIFF(S)

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF MONTEREY

11 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: SS131514A
12 Plaintiff,)
13 vs.) PEOPLE'S RESPONSE TO
14 JOHN MONROE,) DEFENDANT'S MOTION TO
15 Defendant.) DISMISS (Penal Code 995)
16) Date: September 13, 2013
17) Time: 8:30 a.m.
18) Dept: 3
19)

20 **INTRODUCTION**

21 A preliminary hearing was held on August 16, 2013. The Defendant filed a motion to
22 dismiss pursuant to Penal Code section 995 as to Count 1, Penal Code Section 368(b)(1). The
23 People now respond.

24 **FACTS**

25 The People accept the statement of facts and will add any additional information if necessary.

26 **LAW AND ARGUMENT**

27 **I. The Standard for Legal Sufficiency of a Preliminary Hearing Under Penal Code §995**

28 In determining a motion brought pursuant to Penal Code section 995, neither the superior
court nor the appellate court may reweigh the evidence or substitute its judgment for that of the
committing magistrate as to the weight of the evidence or credibility of witnesses. People v. Block
(1971) 6 Cal. 3d 239, 245. ““And if there is some evidence in support of the information, the court

1 will not inquire into the sufficiency thereof.” Id. Thus, an information should be set aside only
2 when there is a total absence of evidence to support a necessary element of the offense charged.
3 People v. Superior Court (Jurado) (1992) 4 Cal. App. 4th 1217, 1226.

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5 “[A]lthough there must be some showing as to the existence of each element of the charged
6 crime [citation] such a showing may be made by means of circumstantial evidence supportive of
7 reasonable inferences on the part of the magistrate.” Williams v. Superior Court (1969) 71 Cal. 2d
8 1144, 1148. “Every legitimate inference that may be drawn from the evidence must be drawn in
9 favor of the information.” Rideout v. Superior Court (1967) 67 Cal. 2d 471, 474. In short, an
10 information should not be set aside pursuant to Penal Code section 995, if there is some rational
11 ground for assuming the possibility that an offense has been committed and the accused is guilty of
12 it. Id. Further, “reasonable and probable cause may exist although there may be some room for
13 doubt.” People v. Mower (2002) 28 Cal. 4th 457.

15 **II. Penal Code Section 368, Elder Abuse**

16 Defendant argued at the conclusion of the preliminary hearing that the People had not proven
17 that the threat made by the defendant was under circumstances likely to produce great bodily harm.
18 RT page 22-23. The magistrate appears to have made factual findings that “the victim would quite
19 easily feel that his life was in danger at that very moment when the threat was made...” RT Page 27
20 Lines 26-28.

21
22 The People agree with most of the defendant’s analysis but think he simply reaches the wrong
23 conclusion. Penal Code section 368 is one of those statutes that describes multiple different crimes
24 within the same section. A person may commit physical elder abuse thereby inflicting unjustifiable
25 physical pain or mental suffering; a defendant may cause or permit unjustifiable physical pain or
26 mental suffering; while having care or custody cause or permit their person or health to be injured;
27
28

1 while having custody cause or permit the elder to be placed in a situation where their person or
2 health is endangered. That is at least fourteen different acts of the suspect which satisfy the first
3 element of the statute. For each one the act must be under circumstances likely to produce great
4 bodily harm or death. “[L]ikely ... is probable or more likely than not. Likely ... means a
5 substantial danger, i.e., a serious and well founded risk”. *People v. Wilson*, (2006) 138 Cal. App. 4th
6 1197, 1204.

8 Defendant’s reading of the statute would eliminate most situations other than physical abuse
9 which would be an absurd result. “[W]e have held that words in a statute should be construed in
10 their statutory context and that we may reject a literal construction that is contrary to the legislative
11 intent apparent in the statute or that would lead to absurd results or would result in absurd
12 consequences that the Legislature could not have intended.” *People v. Leiva*, (2013) 56 Cal. 4th
13 498, 506 (internal citations and quotations omitted).

15 Since the defendant threatened death to the victim, that unjustifiable mental suffering for the
16 victim was the thought that he would die at the hands of his son. To him, death was likely to happen
17 if he did not involve law enforcement and have his son removed from the home. To him the
18 situation was one that he was likely to suffer great bodily harm or death.

20 Death was not a “mere possibility” as defendant argues. By conceding there was sufficient
21 evidence for Count 2, defendant is agreeing that there was sufficient evidence that:

- 23 1. The defendant intended that his statement be understood as a threat;
- 24 2. The threat was so clear, immediate, unconditional, and specific that it communicated to his
25 father a serious intention and the immediate prospect that the threat would be carried out; and
- 26 3. The threat actually caused Mr. Monroe Sr. to be in sustained fear for his own safety.

27 That is a situation where death or great bodily harm is likely.
28

1 **CONCLUSION**

2 The defense fails to offer any compelling argument to set aside the charge. Defendants'
3 motion should be denied.
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5 Dated: September 9, 2013

Respectfully submitted,

6 **DEAN D. FLIPPO, DISTRICT ATTORNEY**
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9 By: _____
10 David Rabow
11 Deputy District Attorney
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