

**ENDORSED
FILED**

MAY 03 2022

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

KATHLEEN ANNE SORENSEN,
Defendant.

) Court No: SCR-746050-1
) DA No: PBK-0997284

) **PEOPLE'S OPPOSITION TO**
) **DEFENDANT'S MOTION FOR**
) **JUDICIAL DIVERSION PURSUANT TO**
) **PENAL CODE § 1001.95**

) Hearing: May 11, 2022
) Time: 10:30 A.M.
) Department: 6

INTRODUCTION

The defendant, KATHLEEN ANNE SORENSEN, is charged by way of a misdemeanor complaint, for violation of Penal Code section 148.5(c) False Report Of Crime To Any Employee Of State/Local Agency (COUNT I); and Penal Code section 148.5(a), False Report Of A Criminal Offense (COUNTS II and III). The defendant now moves the Court to grant her misdemeanor diversion under Penal Code section 1001.95. However, in this case diversion is not in the interests of justice. The People respectfully request the Court to deny Defendant's motion. Additionally, the People request the victim be given an opportunity to be heard before the Court rules on the motion.

PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR COURT INITIATED MISDEMEANOR
DIVERSION

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STATEMENT OF FACTS

Statements Made to Petaluma Police Dispatch

On December 7, 2020 at approximately 10:32 a.m., the defendant phoned the Petaluma Police Department ("PPD") and reported the following narrative: A couple, later identified as the victims Eduardo and Sadie Martinez, tried to kidnap her four-year-old son and one-year-old daughter. The couple followed them into and around Michael's craft supply store, and ultimately to her vehicle. While she was in the store, she overheard them making comments about her children such as their eye color, hair color, gender, etc. When she exited the store, she could hear them following close behind and relayed an unintelligible statement about a large white van. As she was buckling her daughter into her vehicle, the couple walked in circles around the car and her son who was seated in a stroller outside the vehicle. She was "too scared to talk to them" so she called out to someone standing behind the couple saying "Excuse me, ma'am, could you help me? The couple then ran away when the woman came over. The defendant described the driver of the white van as being a white male adult with long white or blond hair and wearing round-rimmed glasses. Additionally, she described the couple that followed her around the store as a Hispanic male adult wearing a black hooded sweatshirt with "Black Lives Matter" emblazoned on it and a black "ski-mask"-type face covering, and a white female adult with "reddish" dyed hair wearing a blue face covering with a sports team logo on it.

Statements made to PPD Officer McGovern on December 7, 2020

In summary, the defendant repeated the narrative she told dispatchers but gave a more detailed account. She described the couple as "kind of rough-looking". "They followed me throughout the entire store, every aisle, and went down; got in line right behind me." She stated that while "they were on the phone...they did say 'blonde hair, blue eyes, boy, girl...". She believed the Martinez's had dropped everything they were going to purchase and immediately followed her out of the store after her purchase. When she exited the store, "they were walking in circles around my car first, and then as I was buckling my daughter in, they came up to the stroller, did one circle around the stroller, [and] saw that I was watching them." She made eye contact with an "old man" standing behind the couple, along with a woman whom the defendant

1 presumed was his caretaker, and asked her to help lift her stroller. The driver of the white van (a
2 separate male) got out of the van and made eye contact with her as the Martinez's approached
3 her. She said "I knew what was happening, because there was a white van parked right next to
4 my car with the slider door right closed, so they could just take them and put them in that white
5 van." The defendant had called her husband before the PPD and used a "safe word". When asked
6 she said they watch a lot of "true crime podcasts" and created a safe word in case of any trouble.
7 The defendant told Officer McGovern "I don't care to press charges; I just want to make people
8 aware, so it doesn't happen to someone else, is all." She was calm, giggled at one point, and did
9 not appear to be in any emotional distress.

10 **The Defendant's Instagram Video on December 14, 2020**

11 On December 14, 2020 PPD became aware of a viral video posted to Instagram where the
12 defendant detailed how her children had been the targets of attempted kidnap. The video
13 received millions of views in less than twenty-four hours (topping at 4 million views), and the
14 defendant's "influencer account" gained tens of thousands of followers since the posting. She
15 was in a vehicle while recording herself. She stated in the video she was the target of an
16 attempted kidnap, she wasn't ready to talk about it but felt compelled to do so to raise awareness
17 as to what signs to look for, and to encourage partners to be more aware of their surroundings
18 and what is going on around them. She said again the couple weren't "clean-cut individuals."
19 She "attributed her discomfort to judging a book by its cover" and noted "that is the second thing
20 I will change from this experience forward." She reiterated to her followers of her interest in
21 "crime junkie podcasts". She added in her video that the couple was discussing her children's
22 facial features and that "the boy will be easier because he is not wearing a mask, so the woman
23 must not really care about him that much." She also added that the couple "had taken two steps
24 toward the stroller, then two steps back, then two steps forward, then two steps back"; and that in
25 the "hair of a second" where she would not see all of the stroller...[she reached out toward the
26 camera with her right hand as if to demonstrate someone trying to grab the stroller.] She then
27 stated the couple got in the van, shut the door, and drove off quickly.
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1 **The defendant's appearance on KTVU Fox 2 in San Francisco**

2 On December 14, 2020, the defendant appeared on KTVU Fox 2 in San Francisco and
3 was interviewed by crime reporter Henry Lee concerning the incident. The Fox 2 segment
4 summarized the account she uploaded to Instagram and included interview clips of her
5 commenting on the suspicious couple stepping toward and back from her stroller: "Very
6 awkward, there is no other explanation as to why they were doing that, besides they were
7 building up the courage." The report noted the male member of the couple reached out to grab
8 the stroller, but the suspicious couple left when the defendant asked for help nearby.

9 **Statements made to PPD Detective Joerger on December 14, 2020.**

10 During follow up interview on December 14 with Detective Joerger and PPD Officer
11 McGovern, the defendant maintained her story. When she was shown a photo of the Martinez
12 couple, she said "I'm one hundred percent sure that's them." Detective Joerger told the defendant
13 she wanted her to be sure if the couple in the pictures was whom she was talking about, whether
14 they reached for her stroller, and if she thought they were trying to kidnap her children, because
15 the pictures would be made public. Officers were particularly interested in why the defendant did
16 not report the attempted grabbing of the stroller on December 7, 2020. The defendant responded,
17 "That part, without a shadow of a doubt, that is what was happening. There is no...there is
18 absolutely no rhyme or reason to someone taking steps forward and reaching. That is without a
19 shadow of a doubt. I can see how the timing of following in, I can see how that could have been
20 misinterpreted." Detective Joerger remarked about the substantial public media interest in the
21 case. The defendant responded "One hundred percent, they reached for my children; stroller, one
22 hundred percent. They were saying things that they shouldn't have been saying about my kids.
23 One hundred percent they circled my car, towards the end...that is...of...like, I will testify that is
24 what happened." She said the one thing she was not sure of was the involvement of the white
25 van, as it would have been "nonincidental".

26 **Statements made to PPD Lieutenant Crosby on December 17, 2020.**

27 Lieutenant Crosby obtained video surveillance footage from both Michael's and Kohl's
28 stores and found several inconsistencies. On December 17, Lieutenant Crosby began to discuss

1 the problem of "inconsistencies" in the case with the defendant. The defendant responded with:
2 "Lieutenant, I do understand that, when I first came to the station, I know that I did say that I
3 wasn't trying to have anyone arrested, and that's because I know that all of this is in fact...unless
4 you guys are able to locate footage, unless you're able to locate witnesses, I understand this is,
5 just in all truth of the fact, it is speculation, and I've been wracking my brain over and over
6 again, trying to accurately recall everything I saw and felt and heard, I will honestly tell you I
7 heard things being said, I will honestly tell you that I saw things being done, I felt that that was
8 what was happening in that moment. And I see where the inconsistencies...because I think when
9 you go through something traumatic like this, you...it will be inevitable that there will be some
10 sort of inconsistencies there." She added later on "I never wanted to go to court with this because
11 I knew it wasn't viable"; "What I saw and felt was very real to me, and that is why I shared it."

12 **Video Surveillance Footage Findings**

13 Based on video surveillance footage from both Michael's and Kohl's stores, the
14 defendant arrived at Michael's and no one was in the parking lot around her. She originally said
15 the couple followed her into the store and later tried to kidnap her children. When questioned by
16 Detective Joerger, she tried to claim she mistook the man she had seen in the parking lot for
17 Eduardo Martinez, but the video does not depict anyone doing what the defendant described. The
18 Martinez's arrived in the Michael's lot two minutes before the defendant and entered the store
19 several minutes before her. The white van the defendant referenced did not park adjacent to her
20 vehicle but was at least one parking space away. When the defendant left the store, she was not
21 followed by anyone. The Martinez's exited the store and were seen walking together on camera
22 about 30 seconds behind the defendant and went directly to their car. The Martinez's placed their
23 purchases in the car and told officers in an interview they wanted to go to a Chinese restaurant in
24 the shopping center. They walked towards the restaurant but turned back to their vehicle after
25 they saw the restaurant was closed. The Martinez's did not walk along the driver side of the
26 defendant's vehicle and did not circle her vehicle. It was only at this time the "old man and
27 caretaker" arrived but they paid no attention to the defendant. They did not assist her with her
28 stroller.

1 **Search Warrant of the defendant's social media accounts**

2 Law Enforcement obtained a search warrant for the defendant's social media accounts
3 and found that she spent much of 2020 trying to establish and expand her "brand" on Instagram,
4 with limited success. She stated she needed money to support her children's home-schooling
5 program, and to pay for treatments for her autistic son. She sought to monetize the posts she
6 shares, much of which is centered around scenes and stories regarding her family, personal life,
7 and children. While political views or affiliation should in no anyway influence the suitability of
8 a defendant for diversion, the defendant was found to be in significant engagement with Q Anon
9 conspiracy theories which tend to center around kidnappers and pedophiles. Lieutenant Ed
10 Crosby stated in his report adherents to Q Anon conspiracy theories may tend to see "kidnappers
11 around every corner" and draw false correlations between insignificant or innocuous behaviors.
12 When adherents act on these beliefs and correlations, there can be serious negative "real-world"
13 consequences to innocent businesses, institutions, and people. This could include Eduardo and
14 Sadie Martinez, whom Sorensen accused of trying to kidnap her children and stated she wanted
15 prosecuted on December 14, 2020 when interviewed by police. Fortunately for the Martinez's,
16 video evidence has caused the defendant's account to be called into question.
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18 **LAW AND ARGUMENT**

19 **I. DEFENDANT IS NOT SUITABLE FOR DIVERSION. THE COURT SHOULD**
20 **EXERCISE ITS DISCRETION TO DENY THE DIVERSION REQUEST**
21 **BECAUSE DEFENDANT HAS FAILED TO MAKE A SUFFICIENT SHOWING**
22 **OF SUITABILITY FOR COURT DIVERSION.**

23 "Judicial discretion must also be guided and controlled by fixed legal principles, to be
24 exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede
25 or defeat the ends of substantial justice. This understanding is essential to assess the scope of
26 judicial discretion conferred by statute. It means that all discretionary authority is contextual."
27 (*Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 694.)

28 Defendant asks the Court to exercise its power of judicial discretion and grant diversion,
but provides little rationale as to how or why she is suitable and more suitable for diversion than

1 similarly situated offenders. She failed to provide the Court with a voluntary acknowledgement
2 of wrongdoing and continues to maintain she did not intend to falsify any information but merely
3 relayed what she understood. Granting diversion in this case would be inappropriate considering
4 diversion it is not only aimed at those who are minimally involved in the criminal justice system,
5 but those who are remorseful and maximally motivated to reform. Without such a showing, the
6 Court should not exercise its discretion and dismiss this case.

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8 **II. GRANTING DIVERSION AND EVENTUALLY DISMISSING DEFENDANT'S
CASE WOULD NOT FURTHER JUSTICE.**

9 The court's discretion to dismiss under Penal Code section 1385 in the furtherance of
10 justice is very broad. Furtherance of justice requires consideration of the constitutional rights of
11 the defendant and the interests of society represented by the People. (*People v. Orin* (1975) 13
12 Cal.3d 937, 945; *People v. Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 144.) In this
13 evaluation the court must consider the interests of the People as equal in importance to the rights
14 of the accused. (*People v. Andrade* (1978) 86 Cal.App.3d 963, 976.) “[I]n view of the
15 fundamental right of the People to prosecute defendants upon probable cause to believe they are
16 guilty [citations], neither judicial convenience, court congestion, nor judicial pique, no matter
17 how warranted, can supply justification for an order of dismissal.” (*People v. Ferguson* (1990)
18 218 Cal.App.3d 1173, 1183.)

19 The reasons for the dismissal must be set forth on the record, including upon the minutes
20 if requested by a party. (Pen. Code, § 1385, subd. (a); see, generally, *People v. Jones* (2016) 246
21 Cal.App.4th 92 [discussing effect of 2015 amendment to § 1385]; see also *People v. Fuentes*
22 (2016) 1 Cal.5th 218, 231.) This requirement is mandatory. (*People v. Bonnetta* (2009) 46
23 Cal.4th 143, 149-151.) Moreover, the reasons given must be such as would motivate a reasonable
24 judge. (*People v. Orin, supra*, 13 Cal.3d at p. 945; *People v. S.M.* (2017) 9 Cal.App.5th 210, 218;
25 *People v. Verducci* (2016) 243 Cal.App.4th 952, 962.) “In the light of the importance to the
26 administration of criminal justice of not having a case brought by the People of the State of
27 California thrown out of court except for a reason which can be said to be that which would
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1 motivate a reasonable judge, we conclude that a judge does not have absolute discretion to
2 dismiss a criminal case.” (*People v. Curtiss* (1970) 4 Cal.App.3d 123, 126.)

3 A judge’s ruling under section 1385 is reviewed for abuse of discretion. (*People v. Halim*
4 (2017) 14 Cal.App.5th 632, 649; *People v. S.M.*, *supra*, 9 Cal.App.5th at p. 218.) A dismissal
5 arbitrarily terminating the right of the People to prosecute a properly alleged offense without any
6 showing of detriment to the defendant is an abuse of discretion. (*People v. Orin*, *supra*, 13
7 Cal.3d at p. 947; *People v. Uribe* (2011) 199 Cal.App.4th 836, 882.) “A dismissal not in
8 furtherance of justice is an abuse of discretion requiring reversal. [Citation.]” (*People v. Bracey*
9 (1994) 21 Cal.App.4th 1532, 1541.)

10 In this case, the defendant did not merely misunderstand the situation. Based on the video
11 surveillance footage, it is clear defendant manufactured the entire report. The defendant
12 continuously maintained she was “one hundred percent sure” the Martinez’s attempted to abduct
13 her children and broadcasted her dishonest certainty to millions of people. Moreover, she
14 fabricated additional facts to add to the gravity of her narrative such as the Martinez’s moving
15 back and forth and attempting to grab the stroller. Though she reiterated she did not want to press
16 charges and merely wants to raise awareness, when her narrative was challenged she “doubled-
17 down” and said she was willing to testify against the Martinez’s. This case caused significant
18 reputational injury to the victims, substantial concern within our community, and the People
19 have a strong interest in prosecuting these false accusations.

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21 **III. THE PEOPLE OBJECT TO DEFENSE COUNSEL’S IMPUTING STATEMENTS**
22 **TO THE DEFENDANT WITHIN HER MOVING PAPERS THAT ARE NOT**
23 **SUPPORTED BY A DECLARATION FROM THE DEFENDANT NOR SUBJECT**
24 **TO CROSS-EXAMINATION.**

25 Evidence Code section 710 states: “Every witness before testifying shall take an oath or
26 make an affirmation or declaration in the form provided by law, except that a child under the age
27 of 10 or a dependent person with a substantial cognitive impairment, in the court’s discretion,
28 may be required only to promise to tell the truth.” Personal statements are testimonial in nature.
“California law gives a defendant the right to make a personal statement in mitigation of
punishment but only while under oath and subject to cross-examination by the prosecutor.”

1 (*People v. Evans* (2008) 44 Cal.4th 590, 593.) Only with the parties' consent may the defendant
2 make a brief unsworn statement urging lesser punishment. (*Id.* at 559.) "A defendant may also
3 provide an unsworn written statement...by including such a statement in a "written report" filed
4 by the defense that 'presents a study of [her] background and personality and suggests a
5 rehabilitation program'." (*Id.* at 558.)

6 Here, it is the People's position that the defendant may submit a declaration if she wishes
7 to acknowledge wrongdoing and/or express contrition. Should the defendant choose to submit
8 such a supporting declaration, the People have a right to cross examine her on same.

9 **IV. THE VICTIM HAS A RIGHT TO BE HEARD.**

10 Under Marcy's Law, "[i]n order to preserve and protect the victim's right to justice and
11 due process, a victim shall be entitled to...be heard, upon request, at any proceeding, including
12 any delinquency proceeding, involving a post-arrest release decision, plea, sentencing,
13 postconviction release decision, or any proceeding in which a right of the victim is at issue." (Cal
14 Const, Art. I § 28 subd. (b)(8).)

15 The People request at least one of two of the victims, Sadie Martinez, be heard and
16 express her views before the Court rules on this motion.

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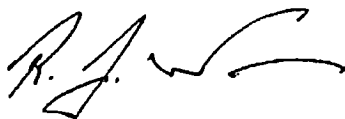
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CONCLUSION

The defendant's false and reckless claims of attempted kidnap resulted in a significant reputational injury to Sadie and Eduardo Martinez; substantial consumption of law enforcement resources; and unwarranted community concern of kidnappers at-large within the County. For the aforementioned reasons, the People respectfully request that the Court deny Defendant's Motion for Court initiated Misdemeanor Diversion in this matter.

DATED: May 3, 2022

Respectfully submitted,
JILL R. RAVITCH, District Attorney
County of Sonoma, State of California



BY: _____

Robert J. Waner
Deputy District Attorney

PREPARED BY: Sean Healy,
Certified Law Clerk

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I, the undersigned, declare that I am a citizen of the United States, am over eighteen years of age and not a party to the within action; my business address is Hall of Justice, Room 212-J, Santa Rosa, California 95403; I am employed in Sonoma County, California.

Gail Shifman
Law Office of Gail Shifman
2431 Fillmore Street
San Francisco, CA 94115-1814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 3, 2022, at Santa Rosa, California.

[Signature]

Karen Peterson
Legal Secretary