No. 24-____

IN THE

Supreme Court of the United States

JOHN KEVIN WOODWARD,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

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PETITION FOR WRIT OF CERTIORARI

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August 27, 2024

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QUESTION PRESENTED

The Fifth Amendment's Double Jeopardy Clause bars retrial whenever a court's order dismissing a criminal case constitutes an "acquittal." Under this Court's broad definition, an "acquittal" includes a finding that the evidence is insufficient to convict and also any other ruling which relates to the ultimate question of guilt or innocence. The Supreme Court of California excludes some of those rulings from its definition of an "acquittal" under the Fifth Amendment. The California Court limits an "acquittal" only to circumstances where the record clearly shows that the judge correctly applied the substantial evidence standard. Does the Supreme Court of California's narrow test for an "acquittal" under the Fifth Amendment conflict with this Court's precedent?

RELATED PROCEEDINGS

People v. Superior Court (Woodward), Supreme Court of California, No. S284711 (May 29, 2024).

People v. Superior Court (Woodward), Court of Appeal of the State of California, Sixth Appellate District, No. H051311 (March 14, 2024).

People v. Woodward, Court of Appeal of the State of California, Sixth Appellate District, No. H051416 (appeal dismissed July 17, 2024).

People v. Woodward, Superior Court of California, County of Santa Clara, No. C2200594 (August 22, 2023).

People v. Woodward, Superior Court of California, County of Santa Clara, No. 167658 (ordered dismissed August 7, 1996).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Kevin Woodward respectfully petitions for a writ of certiorari to review the decision of the Supreme Court of California.

OPINION BELOW

The California Court of Appeal's opinion is published and reported at 100 Cal.App.5th 679, 319 Cal.Rptr.3d 488 (March 14, 2024) and reprinted in the Appendix to the Petition ("Pet. App.") at 2a-51a. The Supreme Court of California's order denying the petition for review is unpublished and reprinted at Pet. App. 1a.

JURISDICTIONAL STATEMENT

The Supreme Court of California denied review on May 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION AND STATUTE

The Fifth Amendment to the Constitution of the United States provides, in relevant part: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb[.]"

There are two relevant versions of California Penal Code section 1385(a): the 1996 version and the current version. The statute in 1996 provided, in relevant part: "The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes." Currently, the statute provides, in relevant part: "The judge or magistrate may, either on motion of the court

or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter."

STATEMENT OF THE CASE

In the 1990s, Mr. Woodward was tried twice for murder, with both trials ending in hung juries that favored acquittal. Pet. App. 2a-4a. After the second mistrial, Superior Court Judge Lawrence F. Terry dismissed the case for "insufficient evidence" on August 7, 1996. Pet. App. 71a. Twenty-five years later, in January 2022, the People refiled the same murder charge that had been dismissed for insufficient evidence. *Id.* 7a.

Mr. Woodward moved to dismiss the refiled charge on February 23, 2023, arguing that the new prosecution violated his rights against double jeopardy under the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution. Pet. App. 8a (Woodward's motion argued "that the prosecution violated his state and federal constitutional protections against double jeopardy" and "invoked the Fifth and Fourteenth Amendments to the United States Constitution"). The People filed an opposition and Mr. Woodward filed a reply, and both parties filed additional briefs. *Id.* 8a-10a. The superior court held a hearing and took the motion under submission on August 10, 2023.

The superior court granted the motion to dismiss on August 22, 2023, holding that Judge Terry's dismissal from 1996 based on "insufficient evidence" operated as

an acquittal that barred retrial on "Double Jeopardy grounds." *Id.* 52a-67a, 67a. The superior court applied this Court's cases applying the Fifth Amendment's Double Jeopardy Clause. *Id.* 58a-59a.

The People sought relief by petition to the California Court of Appeal, which on March 14, 2024, issued a published opinion in the People's favor. *Id.* 2a. The majority opinion, signed by two justices, directed the trial court to vacate its order dismissing the case and enter a new order denying Mr. Woodward's motion to dismiss.

The two-justice majority held that Judge Terry's 1996 dismissal did not satisfy the Supreme Court of California's test from *People v. Hatch*, 22 Cal.4th 260 (2000) for when a dismissal bars retrial on federal double jeopardy grounds. *Hatch* narrowed the circumstances where the right against double jeopardy will bar retrial following a judge's dismissal. *Hatch* also created a default presumption in favor of allowing retrial and against criminal defendants' constitutional right against double jeopardy. Pet. App. 30a. Under *Hatch*, a dismissal operates as an acquittal only when "the record clearly indicates that the trial court applied the substantial evidence standard," meaning "that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." *Hatch*, 22 Cal.4th at 273. Here, the two-justice majority held that the 1996 dismissal did "not *clearly indicate* an intent to dismiss for legally insufficient evidence and preclude retrial," Pet. App. 3a (italics added), despite the superior court's order in 1996 expressly dismissing "based on insufficient evidence." *Id.* 71a. The Court of Appeal reasoned that construing the 1996 dismissal as an acquittal

"would be inconsistent with *Hatch*," and "particularly [*Hatch*'s] articulation of the default presumption" against applying a double jeopardy bar. *Id.* 24a, 30a. In the end, the two-justice majority allowed retrial on grounds "that the 1996 dismissal order does not satisfy the rule articulated in *Hatch* for construing a section 1385 dismissal as an acquittal[.]" *Id.* 40a.

Justice Cynthia C. Lie's concurring opinion explained that the state-law rule from *Hatch* conflicted with this Court's cases construing the Double Jeopardy Clause, particularly *Evans v. Michigan*, 568 U.S. 313 (2013) and *McElrath v. Georgia*, 601 U.S. 87 (2024). Pet. App. 42a, 50a. Justice Lie reasoned that this Court's decisions "have eroded the analytical foundations of the rule announced in *Hatch*," *id.* 42a, and "urge[d]" the Supreme Court of California to reexamine *Hatch* under this Court's decisions in *Evans* and *McElrath*. *Id.* 50a. Justice Lie explained that she would have ruled that double jeopardy barred retrial under the federal Constitution if not for the duty, as an intermediate appellate court, to follow and apply *Hatch*. *Id.* 42a, 50a. Justice Lie reasoned that the court's "application of *Hatch* is no more than a determination that the trial court's dismissal—expressly based on 'the insufficiency of the evidence'—failed to conform to a state-law standard even though it is an acquittal as defined by the United States Supreme Court." *Id.* 48a.

On April 23, 2024, Mr. Woodward filed a petition for review in the Supreme Court of California. *Id.* 78a-112a. He argued that retrial was barred under the federal Double Jeopardy Clause, *id.* 98a-99a, and that the state-law standard from *Hatch* conflicted with this Court's double jeopardy cases. *Id.* 83a, 89a-102a. On May 29, 2024, the Court denied the petition for review,

with one justice writing that the petition should be granted. *Id.* 1a.

REASONS FOR GRANTING THE WRIT

I. California's *Hatch* rule conflicts with this Court's decisions on what constitutes an acquittal for double jeopardy purposes.

The conflict between *Hatch* and this Court's cases (*Evans* and *McElrath* and others discussed below) concerns how to define an "acquittal" for double-jeopardy purposes, and specifically the rule governing which dismissals bar retrial. California Penal Code section 1385 authorizes trial courts to dismiss cases in the interests of justice, and California law recognizes that some, but not all, such dismissals constitute acquittals that bar retrial on double jeopardy grounds. In *Hatch*, the Supreme Court of California adopted a narrow rule and held that a dismissal does not serve as an acquittal unless "the record clearly indicates that the trial court applied the substantial evidence standard," meaning "that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." *Hatch*, 22 Cal.4th at 273. Under *Hatch*, retrial is barred "*only when* a trial court clearly makes a finding of legal insufficiency[.]" *Id.* at 274 (italics added). No other circumstance will bar retrial under California's *Hatch* standard.

This Court, in contrast, applies a broader definition of acquittal and does not condition an acquittal on application of the substantial evidence standard. This Court has even clarified that an "acquittal" includes a finding of insufficient evidence and also includes "*any other* ruling which relates to the ultimate

question of guilt or innocence." *Evans*, 568 U.S. at 319 (italics added, cleaned up). As Justice Lie reasoned in the published concurring opinion below, this Court's rulings in *Evans* and *McElrath* have "eroded the analytical foundations" of *Hatch*. Pet. App. 42a; *id.* 50a.

In *Evans*, this Court distinguished procedural dismissals (which allow retrial) from substantive dismissals (which bar retrial under the Double Jeopardy Clause). *Evans*, 568 U.S. at 319. Procedural dismissals include rulings on questions "unrelated to factual guilt or innocence," such as errors with the indictment. *Id.* Substantive dismissals, on the other hand, are acquittals and "encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." *Id.* at 318. Thus, while an "acquittal" includes a ruling by the court that the evidence is insufficient to convict, it also includes other circumstances, such as "a factual finding that necessarily establishes the criminal defendant's lack of criminal culpability, and any other ruling which relates to the ultimate question of guilt or innocence." *Id.* at 319 (cleaned up).

This Court in *Evans* rejected the government's argument that an acquittal necessarily requires a finding that there was a failure of proof on an element of the offense. The government argued, "only if an actual element of the offense is resolved can it be said that there has been an acquittal of the offense[.]" *Evans*, 568 U.S. at 323. This Court deemed that proposition too narrow, explaining that the touchstone of whether a judicial decision acts as an "acquittal" depends on whether it relates to the defendant's "lack of criminal culpability," and "not whether any particular elements were resolved or whether the

determination of nonculpability was legally correct." *Id.* at 323-24.

That rule and analysis from *Evans* conflicts with California's *Hatch* rule. While this Court in *Evans* established that the touchstone of an acquittal is "not whether any particular elements were resolved," *Evans,* 568 U.S. at 323-24, the *Hatch* standard for an acquittal requires a decision on whether particular elements were resolved. *Hatch* requires a decision on particular elements because that is an inherent part of the substantial evidence test. The substantial evidence standard asks "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have *found the essential elements of the crime* beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (second italics added). Thus, *Hatch* says a dismissal is not an acquittal unless the dismissing judge resolves an element of the crime by applying the substantial evidence standard. But that was precisely the government's argument in *Evans* that this Court rejected. *Evans*, 568 U.S. at 323. California's *Hatch* rule therefore conflicts with this Court's ruling in *Evans*.

More recently, in *McElrath v. Georgia*, 601 U.S. at 94, this Court expressly asked, "What, then, is an acquittal?" and answered without any requirement to apply the substantial evidence standard. This Court noted that the ruling's substance controls rather than its label, and added, "In particular, we look to whether the ruling's substance 'relate[s] to the ultimate question of guilt or innocence.'" *Id.* (quoting *United States v. Scott*, 437 U.S. 82, 98 n.11 (1978)). *McElrath*'s answer to "What, then, is an acquittal?" is broader than California's rule from *Hatch*, which

always requires a clear application of the substantial evidence standard.

The federal Constitution can bar further proceedings even when the judge *certainly* did not apply the substantial evidence standard. In *Fong Foo v. United States*, 369 U.S. 141 (1962), the district court interrupted the government's case-in-chief, directed the jury to return verdicts of acquittal, and later entered a judgment of acquittal. *Id.* at 141. The district judge's "action was based upon one or both of two grounds: supposed improper conduct on the part of the [prosecutor], and a supposed lack of credibility [of the prosecution's witnesses so far]." *Id.* This Court held that the Double Jeopardy Clause barred retrial even if the district court's decision rested on "an egregiously erroneous foundation." *Id.* at 143. This Court barred retrial, but the *Hatch* rule would lead to the opposite outcome—retrial would be allowed because the district court did not apply the substantial evidence standard. It does not matter that the district court in *Fong Foo* labeled its decision as an "acquittal," as this Court in *McElrath* confirmed that "labels . . . do not control our analysis in this context." *McElrath*, 601 U.S. at 96 (cleaned up) (quoting *Evans*, 568 U.S. at 322). Even the use of the word "acquit" "is not dispositive . . . ; instead, an acquittal has occurred if the factfinder 'acted on its view that the prosecution had failed to prove its case.'" *Id.* (quoting *Evans*, 568 U.S. at 322).

This Court's broad standard for assessing an "acquittal" for double-jeopardy purposes conflicts with the narrower standard from *Hatch*, which excludes from double jeopardy protection some circumstances in which this Court has barred retrial. Whereas *Hatch* conditions a finding of acquittal on application of the substantial evidence standard, this Court does not.

Instead, the question is whether the dismissal "relates to the ultimate question of guilt or innocence." *McElrath*, 601 U.S. at 94 (cleaned up).

In sum, California's narrow test for what constitutes an acquittal for purposes of the federal Double Jeopardy Clause conflicts with this Court's precedent. California construes the federal right more narrowly than this Court's precedents require, creating a conflict that this Court should resolve.

II. California's *Hatch* standard also conflicts with this Court's precedent by creating a presumption against applying the double-jeopardy bar.

Hatch created a "default presumption" against applying double jeopardy to bar retrial, a presumption the defendant must overcome by showing that "the record clearly indicates the trial court applied the substantial evidence standard." Pet. App. 30a (quoting *Hatch*, 22 Cal.4th at 273). This Court's decisions do not reference a presumption in favor of the government, and "whether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not state, law." *McElrath*, 601 U.S. at 96. State courts may not add barriers to the application of a federal constitutional right, but that is what the *Hatch* presumption does; it adds an additional requirement to construing a court ruling as an "acquittal."

The *Hatch* presumption also conflicts with federal law because it reviews whether a trial court, in entering an acquittal for insufficient evidence, *correctly* applied the *correct legal standard* for the acquittal. Under *Hatch*, a dismissal will not operate as an acquittal unless the record "clearly indicates" the trial court applied the substantial evidence standard and "viewed

the evidence in the light most favorable to the prosecution[.]" *Hatch*, 22 Cal.4th at 273. Federal law, in contrast, bars retrial after a court-decreed acquittal even when "the legal rulings underlying the acquittal were erroneous." *Sanabria v. United States*, 437 U.S. 54, 64 (1978); *see also Fong Foo*, 369 U.S. at 143; *Evans*, 568 U.S. at 318. Consider *United States v. Sisson*, 399 U.S. 267, 278, 289-290 (1970), where the jury convicted defendant but then the district court granted what it termed an "arrest in judgment" holding that the defendant could not constitutionally be convicted of the offense. *Id.* at 269-70. The government appealed, but this Court dismissed the appeal for lack of jurisdiction after concluding that the district court's decision was "not an arrest of judgment but instead [was] a directed acquittal." *Id.* at 270. This Court noted that, under the Double Jeopardy Clause, the "acquittal" barred retrial after the dismissal of the appeal. *Id.* at 289-90 & n.18; *see also United States v. Wilson*, 420 U.S. 332, 351 (1975) (reiterating that the "acquittal" in *Sisson* barred *retrial* on double jeopardy grounds, while clarifying that the only barrier to the *appeal* in *Sisson* was statutory, not constitutional). The "acquittal" in *Sisson* demonstrably did not arise from applying the substantial evidence standard and viewing the evidence in the light most favorable to the prosecution. To the contrary, the district court in *Sisson* made credibility findings that favored defendant, explaining that "Sisson's demeanor on the [witness] stand convinced the court of his sincerity." *Sisson*, 399 U.S. at 273. *Sisson* establishes that a judge may enter an "acquittal" for double jeopardy purposes *without* applying the substantial evidence standard, in direct conflict with *Hatch*'s rule that always requires applying that standard.

The *Hatch* presumption exempts one type of legal error—an error regarding the standard for holding the evidence to be insufficient—from this Court's rule that an acquittal bars retrial even if the acquittal is factually erroneous or based on a mistake of law. This Court has broadly applied the principle that any acquittal bars retrial, "even if the acquittal is 'based upon an egregiously erroneous foundation.'" *Evans*, 568 U.S. at 318 (quoting *Fong Foo*, 369 U.S. at 143. The *Hatch* presumption conflicts with that principle because it not only allows retrial if the acquittal is based upon an erroneous foundation (failing to apply the substantial evidence standard, or failing to apply it correctly), it allows retrial unless the record clearly demonstrates *the correctness* of the acquittal. Thus, *Hatch* conflicts with federal law by allowing retrial when the record establishes an erroneous acquittal or when the record is merely silent.

III. The question presented is an important one, and this case presents an excellent vehicle for addressing it.

Because of *Hatch*, the Double Jeopardy Clause applies with less force in California than it does in other states and in federal courts. The prohibition on double jeopardy is a fundamental right protected by the Constitution. *See Benton v. Maryland*, 395 U.S. 784, 794 (1969) ("[T]he double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage."). Under *Hatch* and the decision below, California presumptively *allows* retrial following a judicial acquittal, in stark contrast to this Court's cases and the principles underlying the Double Jeopardy Clause. The most populous state in the country affords its residents a weakened, narrowed

version of their constitutional right against being placed twice in jeopardy.

This case presents a clean vehicle to address the question presented and resolve the conflict. There is a dismissal expressly based on "insufficient evidence." Pet. App. 71a; *id.* 77a ("insufficiency of the evidence"). There is a renewed prosecution for the same charge that was dismissed. *Id.* 2a-3a. Mr. Woodward presented the federal double jeopardy claim to the trial court, to the intermediate appellate court, and to the Supreme Court of California. *Id.* 8a, 24a-25a, 78a-102a. The intermediate appellate court published its opinion, and Justice Lie wrote a concurring opinion highlighting the ways that *Hatch* conflicts with this Court's decisions on federal law. The relevant facts come from court records, so there are no disputed facts or concerns about erroneous factual findings. The federal claim is important, preserved, based on an objective factual record, and is dispositive to the outcome below. Under this Court's precedent, the 1996 dismissal in this case "is an acquittal that bars retrial under *Evans* and *McElrath*," as Justice Lie concluded below. *Id.* 50a. The only reason California refused to recognize it as an acquittal, and decided to allow another trial, was the state-law test from *Hatch*.

IV. The decision below is wrong and results in a violation of Mr. Woodward's federal constitutional rights.

If this Court resolves the conflict and holds that *Hatch* does not accurately define an acquittal under the federal Constitution, then Mr. Woodward has already been acquitted and any retrial will violate his constitutional rights.

Judge Terry's dismissal in 1996 operates as an acquittal under federal law because the substance of the dismissal "relates to the ultimate question of guilt or innocence." *See McElrath*, 601 U.S. at 94 (cleaned up). In Judge Terry's recitation of the governing law, he noted a duty to consider the "evidence indicative of guilt or innocence." Pet. App. 73a. After reciting the governing law for nearly two pages, the very first paragraph specific to this case discussed the prosecution's inability "to prove the defendant guilty beyond a reasonable doubt" at two trials, with both juries favoring acquittal. *Id.* 74a. Judge Terry noted that "the vast majority of the evidence does not point to the defendant's guilt." *Id.* 75a. Multiple times, Judge Terry called the evidence "insufficient" or a variation of that term. *Id.* 74a ("lacks the sufficiency"), 75a ("evidence is insufficient"), 75a-76a ("there is insufficient proof"), 76a ("There is simply a lack of evidence on which to convict the defendant."), 77a (dismissing case for "insufficiency of the evidence"). In short, Judge Terry's dismissal "relates to the ultimate question of guilt or innocence," so it is an acquittal under this Court's cases. *McElrath*, 601 U.S. at 94 (cleaned up).

In the concurring opinion below, Justice Lie agreed that Judge Terry's dismissal "is an acquittal as defined by the United States Supreme Court." Pet. App. 48a. If Justice Lie is correct, then Mr. Woodward's federal constitutional right against double jeopardy prohibits any future trial and the case must be dismissed. Thus, this Petition presents an important question of law with broad application, but this Court's review is also warranted because the issue is dispositive here.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Court of Appeal, Sixth Appellate District -
No. H051311

S284711

THE PEOPLE,

Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY,

Respondent;

JOHN KEVIN WOODWARD,

Real Party in Interest.

The petition for review is denied.

Evans, J., is of the opinion the petition should be granted.

/s/ GUERRERO
Chief Justice

APPENDIX B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

[Filed 3/14/2024]

H051311
(Santa Clara County Super. Ct. No. C2200594)

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,

Respondent;

JOHN KEVIN WOODWARD,

Real Party in Interest.

In this petition for extraordinary writ relief, we consider whether constitutional prohibitions against double jeopardy bar the refiling of a murder charge after its dismissal by court order in 1996 following two mistrials.

In 1992, John Kevin Woodward was charged with the murder of Laurie Houts. The case proceeded to trial and twice resulted in deadlocked juries and declarations of mistrial. After the second mistrial in 1996, the trial court dismissed the case pursuant to

Penal Code former section 1385.[1] In a written order, the trial court explained the dismissal was "in the furtherance of justice for insufficiency of the evidence."

Advancements in DNA technology led to new evidence against Woodward. In 2022, the Santa Clara County District Attorney (district attorney) refiled the murder charge against him. Woodward moved to dismiss the complaint on double jeopardy grounds. The trial court agreed that the 1996 dismissal of the case for insufficiency of the evidence operated as an acquittal and dismissed the refiled complaint.

Petitioner district attorney brings this petition for writ of mandate. He asks this court to order the trial court to vacate its dismissal order and enter a new order denying real party in interest Woodward's motion to dismiss. The district attorney disputes that the murder charge against Woodward was dismissed due to legal insufficiency of the evidence and contends the trial court erred in construing the 1996 dismissal order as an acquittal.

We agree. Applying the standard articulated in *People v. Hatch* (2000) 22 Cal.4th 260 (*Hatch*), we decide the trial court's section 1385 dismissal order does not clearly indicate an intent to dismiss for legally insufficient evidence and preclude retrial. As double jeopardy principles do not bar the refiling of the case against Woodward, we will issue a peremptory writ directing the trial court to vacate its order dismissing the refiled murder charge.

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[1] Unspecified statutory references are to the Penal Code.

I. FACTS AND PROCEDURAL BACKGROUND

A. 1992–1996 Murder Prosecution

On September 5, 1992, Laurie Houts was found dead in her car, parked about one mile from her place of work in Mountain View. She had been strangled with a rope while seated in the driver's seat. The rope had been pulled through her mouth like a gag, knotted behind the neck, and left in place. The cause of death was strangulation.

Woodward was identified as a suspect. At the time, he lived with Houts's boyfriend Brent Fulmer. Woodward had reportedly displayed possessive behavior toward Fulmer and became jealous when Houts began spending time with Fulmer. Two latent fingerprints belonging to Woodward were recovered on the outside of Houts's car, and fibers collected from masking tape on the free end of the rope used to strangle Houts showed characteristics similar to the outside of Woodward's sweatpants. Woodward had no alibi for the window of time in which Houts was killed. During a pretext phone call between Woodward and Fulmer, Woodward never denied killing Houts. Based on these and other circumstances and evidence, the district attorney charged Woodward with Houts's murder.

The first jury trial resulted in a hung jury, with the majority (8 to 4) voting for acquittal. The prosecution elected to retry the case, resulting in a second jury deadlock with the majority (7 to 5) again voting for acquittal. The same judicial officer presided over both trials.

B. 1996 Dismissal of Case

At a posttrial hearing on August 7, 1996, the trial court ordered the murder case dismissed pursuant to

former section 1385.[2] The court's dismissal order is reflected in two documents issued on August 7, 1996, a minute order[3] and a written order signed by the judge ("written decision") (collectively the "1996 dismissal order").

The minute order states as follows: "In open court at 9:49 [a.m.] with above-named counsel and defendant present. [¶] The [c]ourt reads the written decision into the record dismissing this case pursuant to Penal Code [s]ection 1385 based on insufficient evidence. The written decision is ordered filed and defendant's bail is ordered exonerated."

The written decision cites the relevant factors for dismissing a case "in furtherance of justice" under former section 1385, subdivision (a) (hereafter former section 1385(a)) and describes the prosecution theories and evidence presented in both jury trials.

Regarding the evidence, it states that "[a] comparison of the first trial and the second trial shows that the prosecution has presented no new evidence pointing to the defendant's guilt and there is no probability that new evidence will become available. Absent new evidence there is no likelihood that a jury would be able to convict the defendant of murder." The decision critiques the quality of the evidence, noting that while over 300 items of evidence and 30 witnesses were presented during each trial, "the prosecution was not

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[2] We refer to former section 1385 when referencing the version of section 1385 in effect in 1996 when the trial court issued its dismissal order. (Former § 1385, as amended (Stats. 1986, ch. 85, § 2, eff. May 6, 1986).)

[3] The term "'minute order'" generally refers to the written entry of a court's ruling into the minutes. (See *Southwestern Law School v. Benson* (2019) 42 Cal.App.5th Supp. 1, 9.)

able to utilize the evidence to prove" guilt beyond a reasonable doubt because "[t]he substantive quality of the evidence did not lend itself to proving the prosecution's contentions." It explains, "This lack of quality meant that the prosecution was limited to very little evidence with which to try its case. With the possible exception of the fingerprints and the defendant's apparent inconsistent statements, the vast majority of the evidence does not point to the defendant's guilt."

The written decision also addresses the prosecution's theory that Woodward killed Houts out of jealousy, stating there was "insufficient proof that such a jealousy existed." Citing *Tibbs v. Florida* (1982) 457 U.S. 31 (*Tibbs*), it explains that a dismissal would further the interests of justice "by preventing the prosecution from honing its trial strategies and perfecting its presentation of the evidence through successive attempts at conviction." It further cautions, citing *Tibbs*, that "[r]epeated prosecutions would create a risk of conviction through sheer governmental perseverance."

The final two paragraphs of the written decision reiterate the trial court's reasoning for the dismissal order. It states, "The prosecution has not met its burden of proof in two trials and absent new evidence it will be unable to do so in subsequent trials. Another trial would only serve to harass the defendant. It is reasonable to believe that society will not be endangered by this decision and the interest of justice will best be served by a dismissal. [¶] A dismissal of this case is not meant to criticize the work done by the prosecution or deprive the victim's family of an opportunity to see their daughter's killer brought to justice. There is simply a lack of evidence on which to convict [Woodward]. Without new evidence, the result of this case will be

the same at each successive trial. Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty. It appears that justice would best be served if the charges were dismissed." The decision orders "that the case be dismissed in the furtherance of justice for insufficiency of the evidence."

C. 2022 Refiling of Murder Charge

In 2021, the district attorney, Mountain View police detectives, and the Santa Clara County crime lab collaborated in follow up on the investigation into Houts's murder. According to the declaration of Mountain View Police Department Detective Sergeant David Fisher, whose statement of facts accompanied the refiling of charges against Woodward, new technology applied to evidence in the case supports a finding of Woodward's guilt. This evidence includes a DNA sample collected from the rope that had been found on Houts and fibers collected from Woodward's sweatpants, as well as the discovery of additional latent fingerprints on the outside of Houts's vehicle.[4]

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[4] The evidence referenced in the declaration supporting the refiled complaint includes the use of DNA technology to process a DNA sample collected from the end of the rope that had been used to murder Houts. A Y-STR analysis of the sample determined that Woodward's DNA profile matched the DNA sample from the rope at all 25 markers, while a second DNA sample from the rope contained a mixture of at least three male individuals and was unsuitable for comparison. Houts's then-boyfriend Fulmer and another male friend who had carpooled with Houts were both excluded as the sources of the DNA. The 2021 follow up also identified two additional latent fingerprints matching Woodward on the exterior of Houts's car. In addition, new technology used by the county crime lab to analyze the fibers from Woodward's sweatpants showed the fibers were indistinguishable from the fibers found on the rope.

In 2022, the district attorney refiled a felony complaint in the Santa Clara County Superior Court charging Woodward with one count of murder, in violation of section 187, subdivision (a). The complaint alleged, pursuant to section 1170, subdivision (b), and California Rules of Court, rule 4.421(a)(1), (a)(3), (a)(8), (a)(11), and (b)(1), respectively, that the crime involved great violence, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness; that the victim was particularly vulnerable; that the crime involved planning, sophistication, or professionalism; that Woodward took advantage of a position of trust or confidence to commit the offense; and that Woodward had engaged in violent conduct that indicated a serious danger to society.

D. Motion to Dismiss

Woodward moved in the trial court to dismiss the charges, arguing that the prosecution violated his state and federal constitutional protections against double jeopardy. Woodward's motion invoked the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution.

Woodward contended that under settled law as articulated by the California Supreme Court in *Hatch*, *supra*, 22 Cal.4th 260, the 1996 dismissal order for insufficiency of the evidence "serves the same function as an acquittal for double jeopardy purposes" and bars retrial. In support of the motion to dismiss, Woodward asked the trial court to take judicial notice of the 1996 dismissal order.

The district attorney opposed the motion to dismiss. The district attorney argued that a dismissal under

section 1385 is not an acquittal for double jeopardy purposes under *Hatch* unless the trial court clearly intended to exercise that power and applied the substantial evidence standard, viewing the evidence in the light most favorable to the prosecution, in deciding no reasonable jury could convict. (See *Hatch*, *supra*, 22 Cal.4th at pp. 271, 273.) The district attorney disputed that the 1996 dismissal order offered any clear indication that the trial court had intended the dismissal to serve as an acquittal or applied the substantial evidence standard in deciding to dismiss the charges.

The district attorney attached documents in support of its opposition, though it did not request judicial notice of the items. These included Woodward's motion for judgment of acquittal, filed pursuant to section 1118.1 during the second trial, the opposition thereto, and a minute order showing the trial court denied the motion for judgment of acquittal, as well as a copy of an unfiled "motion to dismiss after deadlocked jury" that "presumably" had been filed by Woodward's deputy public defender after the second mistrial (but was not found in the trial court's review of its files). The district attorney argued that the trial court's denial of the acquittal motion, in which the parties had expressly identified substantial evidence as the standard for acquittal based on insufficient evidence, stood in contrast with the court's later decision to dismiss the case pursuant to section 1385. This, according to the district attorney's opposition, illustrated that the trial court "clearly knew what was required for a dismissal for insufficient evidence as a matter of law" but elected instead to apply the standard for dismissal in furtherance of justice.

The opposition also attached a declaration of the prosecuting attorney for both trials that expressed his

recollection of the trial judge's statements at the dismissal hearing regarding refiling of the case; a contemporaneous newspaper article from the San Jose Mercury News, dated August 22, 1996, covering the dismissal of charges and statements by the prosecutor and defense counsel regarding the likelihood of refiling charges; and an excerpt of Woodward's motion to set bail in response to the refiled charges. The district attorney argued that these materials further demonstrated that the 1996 dismissal order was not intended to preclude a later refiling of the case in the event the district attorney obtained additional evidence against Woodward.

In reply, Woodward countered that under former section 1385, only the minute order (and not the concurrently filed written decision) should be used to determine the effect of the dismissal. Woodward argued that the district attorney's proffer of other extrinsic evidence, such as the prosecutor's declaration and the newspaper article, was improper. Woodward argued the trial court should not consider the evidence and should order it stricken. Woodward maintained that the district attorney's argument failed to recognize the 1996 dismissal order's citation (in the written decision) to the United States Supreme Court's decision in *Tibbs*, which explains why a dismissal for insufficient evidence bars a retrial. Both parties submitted additional briefing.

At the hearing on the motion to dismiss, the trial court indicated it had carefully considered all the briefing and had made several attempts to find "any and all portions of" the original court file. It explained that "[a]fter a very thorough and diligent search" the court was unable to find any other portions of the trial court record.

On August 22, 2023, the trial court issued a written order granting Woodward's motion to dismiss. It granted Woodward's request for judicial notice of the 1996 dismissal order but rejected the argument that it should consider only the minute order and not the written decision. The court declined to consider the unfiled, unsigned copy of the "motion to dismiss after deadlocked jury" that arguably prompted the 1996 dismissal order, since there was no file stamp or any indication that the motion had been filed, and similarly declined to consider the declaration of the prosecutor, the newspaper article regarding the 1996 dismissal, and the bail motion. The court reasoned that the section 1118.1 acquittal motion and opposition were of minimal relevance, insofar as they served to contrast the discussion of substantial evidence with the absence of any reference to that standard in the unfiled motion to dismiss but noted it would consider the acquittal motion and opposition "to contrast their content with the standards articulated" in the written decision.

On the merits, the trial court evaluated the 1996 dismissal order under *Hatch*. It found that while the 1996 dismissal order did not expressly apply the substantial evidence standard, "the minute order clearly evidenced an intent to dismiss based on the insufficiency of the evidence." The court emphasized that the written decision cites *Mannes v. Gillespie* (9th Cir. 1992) 967 F.2d 1310 (*Mannes*), in which the Ninth Circuit Court of Appeals held that """[i]nsufficient evidence""" is a term of art, the use of which courts have found to mean—absent contrary indication—insufficient as a matter of law. (*Id*. at p. 1315.) While noting the written decision does not cite *Mannes* for that proposition, the court found the citation to *Mannes* suggests the trial court was aware of that use

of the term "'insufficient evidence.'" The court further reasoned that insofar as former section 1385 required the reasons for the dismissal to appear in the minute order, it was "telling" that the minute order listed only insufficiency of the evidence. The court rejected the district attorney's position that the dismissal was "in furtherance of justice" based on the written decision's invocation of those factors, since "all dismissals under section 1385 were required to be in the interest of justice."

E. Writ Proceedings in this Court

Shortly after the trial court issued its dismissal order, the district attorney filed in this court a petition for writ of mandate and request for stay of order of dismissal (petition). The district attorney requested that this court stay the trial court's dismissal order and "[i]ssue an alternative writ of mandate, and thereafter a peremptory writ, commanding respondent court to vacate its order dismissing the complaint, and enter a new order denying [r]eal [p]arty's motion to dismiss; [or] [¶] . . . [¶] [] any other appropriate relief."

This court issued a stay of the trial court's order and requested that Woodward (as real party in interest) file a preliminary opposition to the petition. After Woodward filed his preliminary opposition, the district attorney filed a notice of appeal seeking appellate review of the same dismissal order at issue in this writ proceeding. The appeal is pending in this court (No. H051416) and currently awaits briefing.

This court subsequently issued an order to show cause why a peremptory writ should not issue, as requested by the district attorney. In his return, Woodward contends there is no basis for granting writ relief because the 1996 dismissal order for "'insuffi-

cient evidence'" indicates the trial court deemed the evidence insufficient as a matter of law, barring retrial. Woodward also challenges the petition on procedural grounds, arguing in his demurrer that the petition fails to allege specific facts showing entitlement to relief, including because the district attorney has not alleged the absence o a plain, speedy, and adequate remedy justifying writ review.

We analyze those objections below before turning to the merits of the petition.

II. DISCUSSION

A. Propriety of Writ Relief and Demurrer

Woodward disputes the propriety of writ review in this case. He demurs to the petition on the ground that it fails to state a claim showing entitlement to relief by not explicitly alleging any error in the trial court's August 22, 2023 dismissal of the charges. He also contends that the petition fails to allege the lack of a plain, speedy, and adequate remedy at law.

We overrule the demurrer as to both grounds.

A proceeding in mandamus is generally subject to the rules of pleading governing civil actions. (*Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 271 (*Chapman*), citing *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573; Code Civ. Proc., § 1109.) A petition that fails to allege specific facts showing entitlement to relief may be subject to general demurrer. (*Chapman*, at p. 271.) We independently determine whether the petition states a cause of action as a matter of law. (*Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, 277 (*Jones*).) In so doing, "[w]e give the petition a reasonable interpretation, reading it as a whole and viewing its parts in context. We deem to be true all

material facts that were properly pled, as well as all facts that may be inferred from those expressly alleged. [Citation.] We also accept as true all recitals of evidentiary facts contained in exhibits attached to the petition. [Citation.] We interpret the petition's allegations liberally, with a view toward substantial justice between the parties." (*Id*. at pp. 277–278.)

To be entitled to relief, the petitioner must show that the respondent has a clear, present, and ministerial duty, and that the petitioner has a correlative right to performance of that duty entitling him to a writ of mandate. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916; accord *People v. Picklesimer* (2010) 48 Cal.4th 330, 340; *In re Dohner* (2022) 79 Cal.App.5th 590, 597.) The petitioner also must demonstrate "no 'plain, speedy, and adequate' alternative remedy exists (Code Civ. Proc., § 1086)." (*Picklesimer*, at p. 340.)

The district attorney's verified petition meets these criteria. While the petition does not explicitly aver that the respondent trial court erred, it alleges that the prosecution opposed dismissal of the murder charge and attaches exhibits demonstrating the district attorney's opposition to dismissal of the charges against Woodward.

Giving the petition a reasonable interpretation, it is apparent that the district attorney is challenging the respondent court's dismissal order as an erroneous application of the law. The allegations imply a duty that the trial court is obligated to perform in a prescribed manner required by law when a given state of facts exists. (*Jones*, *supra*, 125 Cal.App.4th at p. 278.) We decline to sustain the demurrer for failure to state a claim. (See *Chapman*, *supra*, 130 Cal.App.4th at p. 272.)

We further conclude that writ review is proper under the circumstances presented. Typically, mandamus relief will not issue if there is "a plain, speedy, and adequate remedy" at law. (Code Civ. Proc., § 1086.) Thus, "a judgment that is immediately appealable is not subject to review by mandate or other extraordinary writ." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112.) However, an exception may arise "when the remedy by appeal would be inadequate or the issues presented are of great public importance and must be resolved promptly. [Citations.] A remedy by immediate direct appeal is presumed to be adequate, and a party seeking review by extraordinary writ bears the burden of demonstrating that appeal would not be an adequate remedy under the particular circumstances of that case." (*Id*. at p. 113.)

"When the petitioner may immediately appeal, his remedy is considered adequate and writ relief is precluded, unless the petitioner 'can show some special reason why it is rendered inadequate by the particular circumstances of his case.'" (*Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1221 (*Baeza*).) "The adequacy of an appellate remedy depends on the circumstances of the case, vesting a large measure of discretion in the appellate court to grant or deny a writ." (*City of Oakland v. Superior Court* (1996) 4 Cal.App.4th 740, 750.)

The district attorney acknowledges that he has a right to appeal the dismissal order (§ 1238, subd. (a)(8)) and has, in fact, noticed an appeal after filing the writ petition. Nevertheless, the district attorney argues the right to an appeal does not preclude writ relief because the circumstances here warrant expedited review of the trial court's ruling.

We agree that the factors asserted in the petition establish the inadequacy of the remedy in the direct appeal. Specifically, the district attorney asserts there is a need to ensure that Woodward remains subject to the court's jurisdiction pending appellate review of the dismissal order. Without such a retention of jurisdiction, Woodward might be able to return to his primary place of residence outside the United States, risking a potential delay of several years in extradition efforts to retrieve him if review were to proceed successfully by direct appeal.[5]

In addition to maintaining jurisdiction over Woodward, other considerations render the right of appeal inadequate. These include the age of the case and the risk of loss of evidence (including aging witnesses) for both parties, the public's interest and victim's family's interest in the right to a speedy trial (Cal. Const., art. I, §§ 28, subds. (b)(9), (e), 29 [providing the victim's immediate family and the People the constitutional right to a speedy trial]), and the interest in minimizing the duration of pretrial restraints on Woodward. Woodward's state and federal constitutional speedy

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[5] The petition includes exhibits related to this issue and to the district attorney's initial request to the trial court to stay its dismissal order until the writ petition was filed. The declaration of Mountain View Police Department sergeant and primary investigator for the case explains that Woodward's primary residence and business are in the Netherlands. Woodward was arrested "opportunistically" (not based on a voluntary surrender) on the current charge during a vacation to New York in 2022 and is currently residing out of custody on house arrest with a GPS monitor and living in a family home in Modesto. According to the investigator, a dismissal and discharge from the court's jurisdiction will enable Woodward to return to his home and work in the Netherlands, where any future extradition process would likely take several years.

trial rights (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15, cl. 1) attached in this case as of the time of the 2022 refiling of the murder charge. (*People v. Nelson* (2008) 43 Cal.4th 1242, 1250.) Given the seriousness of the charge and date of the crime more than 30 years ago, further delaying adjudication of the dismissal for double jeopardy only aggravates the potential hardship for all parties awaiting resolution, including Woodward. (See *U.S. v. Marion* (1971) 404 U.S. 307, 320 (*Marion*).)

Woodward counters that the remedy of an appeal is not inadequate merely because it might take longer than pursuing relief by extraordinary writ. (*Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 498.) Citing *People v. Superior Court* (*Kaulick*) (2013) 215 Cal.App.4th 1279, he also questions the district attorney's assertion that maintaining jurisdiction is provided by writ review and a stay, but not by appeal. However, *Kaulick* does not assist Woodward. In that case, the appellate court determined that an appeal would *not* provide a speedy and adequate remedy where the defendant "was scheduled for imminent release" from prison. (*Id*. at p. 1296.) The court reasoned that even if it stayed the matter while an appeal was pending, the matter required speedy resolution, including because any delay in resolving an appeal would leave the defendant unnecessarily incarcerated, contrary to his own interest as well as to the interest of the "public fisc." (*Ibid*., fn. 16.)

Similarly in this case, even assuming a mechanism to retain court jurisdiction over Woodward pending appeal, the age of the case, risk of evidence becoming lost or growing more stale, interest of the victim's immediate family as well as the people of California in obtaining a speedy trial and resolution, and interest in not prolonging Woodward's pretrial restraint and

home monitoring, together confirm that a direct appeal in the ordinary course of law would be neither speedy nor adequate. (See U.S. Const., 6th Amend.; Cal. Const., art. I, §§ 15, cl. 1, 28, subds. (b)(9), (e), 29; *Marion*, *supra*, 404 U.S. at p. 320.) We conclude that under the unusual circumstances of this case, the prospect of a direct and immediate appeal of the dismissal order is inadequate to serve the interests of the parties and the public. (*Baeza*, *supra*, 201 Cal.App.4th at p. 1221.) We overrule the demurrer and turn to the merits of the petition.

B. Standard of Review

Where the question presented is one of law on undisputed facts, we exercise de novo review and are not bound by the findings of the trial court. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) Deference to trial court findings of fact does not extend to rulings on questions of law. (*People v. Aldridge* (1984) 35 Cal.3d 473, 477.) Just as courts determine the meaning and effect of a judgment "according to the rules governing the interpretation of writings generally" (*Rancho Pauma Mutual Water Co. v. Yuima Municipal Water Dist.* (2015) 239 Cal.App.4th 109, 115), we apply the same principles to our review of the 1996 dismissal order. Because the underlying facts are undisputed, our review of the trial court's ruling on the operation of the 1996 dismissal order is de novo.

C. Principles Governing Double Jeopardy After a Section 1385 Dismissal

The constitutional principle of double jeopardy prohibits a defendant from being "twice put in jeopardy" for the same offense. (U.S. Const., 5th & 14th Amends.; see also Cal. Const., art. I, § 15.) It "'serves principally as a restraint on courts and prosecutors.'" (*People v.*

Fields (1996) 13 Cal.4th 289, 298.) Under both the federal and state Constitutions, the double jeopardy clause protects against a second prosecution for the same offense after acquittal. (*United States v. Wilson* (1975) 420 U.S. 332, 342–343; *Hatch*, *supra*, 22 Cal.4th at p. 271.) In applying double jeopardy protections, California courts take guidance from "those decisions interpreting the double jeopardy clauses of both the United States and California Constitutions." (*Hatch*, at p. 271.)

Under both federal and California law, the double jeopardy clause precludes retrial if a court determines the evidence at trial was insufficient to support a conviction as a matter of law. (*Hatch*, *supra*, 22 Cal.4th at p. 271, citing *Burks v. United States* (1978) 437 U.S. 1, 18; *People v. Pierce* (1979) 24 Cal.3d 199, 210.) A determination of legal insufficiency of the evidence—whether made at the trial or appellate level—serves as a constitutional bar to retrial for that offense. (*Hatch*, at p. 272; see *Hudson v. Louisiana* (1981) 450 U.S. 40, 42–43.)

On the other hand, "[w]here a court merely 'disagrees with a jury's resolution of conflicting evidence and concludes that a guilty verdict is against the weight of the evidence,' [] a reversal or dismissal on that ground does not bar retrial." (*Hatch*, *supra*, 22 Cal.4th at p. 272, quoting *Tibbs*, *supra*, 457 U.S. at p. 42.) The same exception applies under California's double jeopardy clause. "[T]he reversal of a conviction based on a reweighing of evidence does *not* bar retrial under the California Constitution." (*Hatch*, at p. 272.)

A reversal based on legal insufficiency of the evidence has the same double jeopardy effect as an acquittal "because it means that no rational factfinder could have voted to convict the defendant." (*Tibbs*,

supra, 457 U.S. at p. 41.) By contrast, a determination based on the weight of the evidence "does not mean that acquittal was the only proper verdict." (*Id*. at p. 42.) Instead, the court "sits as a 'thirteenth juror' and disagrees with the jury's resolution of the conflicting testimony." (*Ibid*.) As in the case of a deadlocked jury, a court's disagreement about the weight of the evidence "does not result in an acquittal barring retrial under the Double Jeopardy Clause." (*Ibid*.)

The trial court dismissed Woodward's case pursuant to section 1385. Since its codification in 1872, section 1385 has authorized California courts to dismiss actions in furtherance of justice. (§ 1385(a); *People v. Bonnetta* (2009) 46 Cal.4th 143, 149.)

The trial court's authority under section 1385 is "broad" but not "absolute." (*People v. Orin* (1975) 13 Cal.3d 937, 945 (*Orin*).) It is "limited by the amorphous concept which requires that the dismissal be 'in furtherance of justice.' As the Legislature has provided no statutory definition of this expression, appellate courts have been faced with the task of establishing the boundaries of the judicial power conferred by the statute as cases have arisen challenging its exercise. . . . [¶] From the case law, several general principles emerge. Paramount among them is the rule 'that the language of that section, "furtherance of justice," requires consideration both of the constitutional rights of the defendant, and the interests of society represented by the People, in determining whether there should be a dismissal.'" (*Id.* at p. 945, italics omitted.)

As our Supreme Court has observed, "section 1385 dismissals often are not based on the insufficiency of the evidence as a matter of law." (*Hatch*, *supra*, 22

Cal.4th at p. 273.)[6] Nevertheless, trial courts *may* acquit pursuant to section 1385 for legal insufficiency of the evidence. (*Ibid*.) Because dismissals under section 1385 are "often [] not based" on insufficiency of the evidence, but sometimes are, courts reviewing such dismissals for double jeopardy purposes much determine whether to construe the dismissal as an acquittal. (*Ibid*.)

The leading case in California for determining when the exercise of the broad dismissal authority under section 1385 triggers application of the double jeopardy bar is *Hatch, supra*, 22 Cal.4th 260. *Hatch* explained that because section 1385 dismissals are often based on factors other than insufficiency of the evidence, they "should not be construed as an acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard. Specifically, the record must show that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." (*Id.* at p. 273, fn. omitted.) The court further reasoned that "[a]bsent such a showing, we will assume the court did *not* intend to dismiss for legal insufficiency and foreclose reprosecution." (*Ibid*.)

Under *Hatch*, the distinction between a decision based on legal insufficiency of the evidence and one based on a reweighing of the evidence (or other factors applicable to a section 1385 dismissal), lies in the

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[6] This feature distinguishes a dismissal pursuant to section 1385 from the Georgia statutory scheme examined by the United States Supreme Court in *McElrath v. Georgia* (2024) 601 U.S. ___ [144 S.Ct. 651]), which constituted a "verdict of acquittal under state law" and therefore engaged the double jeopardy bar. (*Id*. at p. 659.)

application of the substantial evidence standard. A court "must apply the substantial evidence standard when making" a determination of legal insufficiency. (*Hatch*, *supra*, 22 Cal.4th at p. 272.) Under this standard, courts "must review 'the whole record in the light most favorable to the judgment' and decide 'whether it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*Ibid*.) "'[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" (*Ibid*.)

At the same time, the court in *Hatch* cautioned that it did "not intend to impose rigid limitations on the language trial courts may use to dismiss for legal insufficiency of the evidence pursuant to section 1385." (*Hatch*, *supra*, 22 Cal.4th at p. 273.) Instead, it offered the following guidance: "[C]ourts need not restate the substantial evidence standard or use certain 'magic words' whenever they determine that the evidence is insufficient as a matter of law" but should "make their rulings clear enough for reviewing courts to confidently conclude they viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Ibid*.)

The court in *Hatch* explained that by construing a section 1385 dismissal as an acquittal for legal insufficiency *only* when the record clearly indicates the trial court applied the substantial evidence standard, the reviewing court "properly balances the competing interests embodied in the constitutional prohibitions against double jeopardy." (*Hatch*, *supra*, 22 Cal.4th at p. 273.) This balance, on the one hand, seeks to ensure against "repeated prosecutions [which] unfairly burden a

defendant and increase the risk of conviction through sheer perseverance" (*ibid.*), while on the other hand acknowledging "the 'important public interest in finally determining whether [a defendant] committed' an offense." (*Id.* at p. 274.) The court concluded that "barring retrial only when a trial court clearly makes a finding of legal insufficiency" enables courts to abide by these governing principles. (*Ibid.*)

Applying its rule to the facts of the case, the court in *Hatch* concluded retrial was permitted because the record did "not clearly show an intent by the trial court to dismiss for legal insufficiency of the evidence." (*Hatch*, *supra*, 22 Cal.4th at p. 274.) Among the factors the high court considered, it noted the trial court's minute order "merely states that 'no reasonable jury would convict . . . based on the evidence presented in court.'" (*Ibid.*) It observed that the language of the minute order did not indicate the court had viewed the evidence in the light most favorable to the prosecution, especially given that its "use of the word 'would' rather than 'could' suggests a reweighing of evidence rather than an application of the substantial evidence standard." (*Ibid.*) The court stated it was "impossible" considering these "ambiguities" to conclude the trial court intended to dismiss for lack of sufficient evidence as a matter of law. (*Ibid.*)

The *Hatch* court found further support for its interpretation of the minute order in the reporter's transcript, which gave no indication that the trial court had viewed the evidence in the light most favorable to the prosecution. (*Hatch*, *supra*, 22 Cal.4th at p. 274.) Instead, it viewed the court's inquiries about additional evidence, its remarks on the quality of the trial presentations and the apparent pro-prosecution bent of the jury (*id.* at pp. 274–275), and its comments

on the improbability of a unanimous verdict of guilt, as "an assessment of the strength of the evidence." (*Id*. at p. 275.) The court in *Hatch* thus declined to construe the section 1385 dismissal as an acquittal for double jeopardy purposes. (*Ibid*.)

D. The 1996 Dismissal Order Does Not Bar Retrial of the Murder Charge

Applying the rule of *Hatch* to the 1996 dismissal order, we conclude the record does not clearly indicate that the trial court applied the substantial evidence standard, viewing the evidence in the light most favorable to the prosecution, in dismissing the case. We recognize the consequences of this determination are significant. Nevertheless, we believe construing the 1996 dismissal order as an acquittal would be inconsistent with *Hatch*. That decision provides that, unless the record *clearly indicates* the court applied the substantial evidence standard in deciding the evidence was legally insufficient to prove guilt beyond a reasonable doubt, "we will assume the court did *not* intend to dismiss for legal insufficiency and foreclose reprosecution." (*Hatch*, *supra*, 22 Cal.4th at p. 273.)

Woodward contends that the respondent trial court correctly concluded the minute order was clear and unambiguous in stating that the reason for the 1996 dismissal was insufficiency of the evidence. He argues that the minute order's use of the term insufficient evidence is significant because, at the time the court issued the 1996 dismissal order, former section 1385 required the reasons for dismissal to be set forth in the minute order.[7]

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[7] The current language of section 1385 requires "[t]he reasons for the dismissal [to] be stated orally on the record." (§ 1385(a).) However, former section 1385 in effect at the time of the 1996

Woodward points out that the trial court both quoted the statute in its written decision and cited extensively to *People v. Andrade* (1978) 86 Cal.App.3d 963 (*Andrade*), which devotes an entire section of the opinion to the requirement that the reasons for a section 1385 dismissal must be set forth in the minutes. (*Id*. at p. 975.) Because the trial court knew the law and included only one reason for dismissal in the minute order—that of insufficient evidence—Woodward asserts the use of the term "insufficient evidence" controls. Even if the minute order is construed as a shorthand reference to the reasons for dismissal stated in the written decision, Woodward points out that the written decision similarly cites "'insufficiency of the evidence'" as the basis for the dismissal. Furthermore, because the written decision also cites the Ninth Circuit's decision in *Mannes*, in which the Ninth Circuit Court of Appeals construed "insufficient evidence" as a term of art meaning insufficient as a matter of law, Woodward argues the trial court used the term with that same intended meaning, barring retrial.

The district attorney counters that Woodward places improper weight and significance on the minute order over that of the written decision. He argues that despite both sides' agreement that *Hatch* does not require that a court use specific language to engage the bar on retrial, Woodward attempts to place just such significance on the trial court's use of the term "insufficient evidence." The district attorney contends that because there is no clear indication in the 1996 dismissal order that the trial court viewed the

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dismissal order, as well as when the Supreme Court decided *Hatch*, required "[t]he reasons for the dismissal [to] be set forth in an order entered upon the minutes." (Former § 1385(a); see *Hatch*, *supra*, 22 Cal.4th at p. 274.)

evidence in the light most favorable to the prosecution and found the evidence *legally* insufficient, the 1996 dismissal order is ambiguous and may not be construed as an acquittal.

We agree with the district attorney that the 1996 dismissal order may not be construed solely based on the minute order or on a presumed understanding of the trial court's intended meaning for its use of the term "insufficient evidence." Instead, in construing the 1996 dismissal order, we will review the entire available record of the court's decision, including the minute order and written decision, considering the language of former section 1385, contemporaneous case authority on dismissals "in furtherance of justice," and the Supreme Court's guidance in *Hatch*.

Former section 1385 frames the 1996 dismissal order. The minute order states that the dismissal is "pursuant to Penal Code [s]ection 1385," and the written decision quotes subdivision (a) of former section 1385 and discusses the statutory requirements for a section 1385 dismissal according to contemporaneous case authority. Former section 1385 states, "The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes."

The trial court undoubtedly understood the requirement that it set forth the reasons for dismissal in the minute order. In *Orin*, *supra*,13 Cal.3d 937, the California Supreme Court reiterated it was "settled law" that the requirement under former section 1385(a) to set forth the reasons for dismissal in the minute order was "mandatory and not merely directory," (*Orin*, at p. 944) and that the failure to do so was enough to

invalidate the dismissal. (*Id*. at p. 945.) The high court explained the purpose of the mandatory requirement was to insure against "'improper or corrupt'" dismissals and "to impose a purposeful restraint upon the exercise of judicial power." (*Id*. at p. 944.) The court in *Orin* thus rejected the trial court's purported exercise of authority under former section 1385, where the trial court had "merely check[ed] a box" on a printed form and neither specified any reasons to justify its dismissal of the charges nor provided any statement "which by clear incorporation or reference" could be deemed to be the reasons set forth in a minute order. (*Ibid*.)

Here, the trial court not only specified in the minute order that it had "read[] the written decision into the record" but also expressly directed the concurrent filing of the written decision. The minute order couched the reason stated for dismissal in terms of its reading the written decision into the record: "The [c]ourt reads the written decision into the record dismissing this case pursuant to Penal Code [s]ection 1385 based on insufficient evidence." This language suggests an intent to include in the minute order, or incorporate by reference, the more detailed written decision. (See *Orin*, *supra*, 13 Cal.3d at p. 944.)

A contrary interpretation of the record would artificially limit this court's understanding of the basis for the 1996 dismissal order to the sparse statement in the minute order, contrary to the language of the minute order itself. Such a restrictive approach would be inconsistent with the California Supreme Court's analysis in *Hatch*, which considered the reporter's transcript in relation to the minute order under review and found the transcript bolstered its conclusion. (*Hatch*, *supra*, 22 Cal.4th at pp. 274–275; see also

People v. Salgado (2001) 88 Cal.App.4th 5, 10 (*Salgado*) [citing trial court's minute order based on insufficient evidence as well as its repeated reference to "insufficient evidence" during the hearings]; *Andrade*, *supra*, 86 Cal.App.3d at p. 975 [noting "[m]inutes have been interpreted to include a filed and signed written memorandum opinion intended to be and in fact filed as part of the court minutes"].)

As in *Hatch*, the written decision in this case is not inconsistent with the minute order and does not require an attempt to reconcile the minutes with contradictory statements elsewhere in the record. (Cf. *People v. Smith* (1983) 33 Cal.3d 596, 599 [rejecting a mechanical rule and seeking to harmonize, if possible, discrepancies between the minute order and reporter's transcript].) It is therefore appropriate to consider both the language of the minute order and the concurrently filed written decision in construing the 1996 dismissal order.[8]

Together, the minute order and written decision reflect the trial court's analysis of the factors relevant

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[8] We decline to consider the other documents submitted by the district attorney in support of its opposition to Woodward's motion to dismiss the refiled charge on double jeopardy grounds. These include the unfiled copy of the defense "motion to dismiss after deadlocked jury," the declaration of the prosecutor regarding his recollections of the trial court's statements to counsel at the dismissal hearing, and the news article referring to statements of the prosecutor and defense counsel after the 1996 dismissal. We agree with Woodward that the district attorney has forfeited any argument that this evidence should be considered by having failed to allege error in its writ petition based on the trial court's ruling that it would not consider these documents. We likewise decline to consider Woodward's motion to set bail in response to the refiling of charges as irrelevant to the interpretation of the prior dismissal.

to a section 1385 dismissal and its determination that a dismissal of the case against Woodward would be "'in the furtherance of justice for insufficiency of the evidence.'" The parties dispute the extent to which these aspects of the trial court's decision define the nature of its dismissal order by rendering it an acquittal based on legal insufficiency of the evidence or a dismissal in the furtherance of justice.

However, these options are not mutually exclusive. As the California Supreme Court explained in *Hatch*, "trial courts historically have had the power to acquit for legal insufficiency of the evidence pursuant to section 1385." (*Hatch*, *supra*, 22 Cal.4th at p. 268.) The power to acquit for legal insufficiency of the evidence does not depend on the stage of the case (i.e., before submission to the jury under § 1118.1, or after submission to the jury under § 1385) or on the "'the form of the judge's action.'" (*Id*. at p. 270.) Rather, it depends on "'whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.'" (*Ibid*., quoting *United States v. Martin Linen Supply Co.* (1977) 430 U.S. 564, 571.) Thus, neither the trial court's identification of insufficient evidence as the reason for the 1996 dismissal order, nor the court's analysis of various "interest of justice" factors relevant to a section 1385 dismissal, is determinative unless the record demonstrates the court intended to exercise its power to acquit. *Hatch* is unambiguous on this point: while the trial court has the power to dismiss for insufficient evidence as a matter of law pursuant to section 1385, the reviewing court "will not construe its dismissal as an acquittal for double jeopardy purposes absent clear evidence the court intended to exercise this power." (*Hatch*, *supra*, 22 Cal.4th at p. 271.)

Woodward contends the dismissal meets the standard for acquittal under *Hatch* because the minute order and written decision expressly cite "insufficiency of the evidence" as the basis for the dismissal. He argues that because all dismissals under section 1385 must be in furtherance of justice, the trial court's discussion of factors relevant to that determination, based on cases like *Andrade* and *People v. Bracey* (1994) 21 Cal.App.4th 1532 (*Bracey*), demonstrates compliance with former section 1385 but does not indicate the court meant the dismissal for insufficient evidence "to actually be for some other reason not stated in the minutes."

This argument overlooks several critical points elucidated in *Hatch,* particularly its articulation of the default presumption. The default presumption, absent clear evidence to the contrary, is that a dismissal pursuant to section 1385 is *not* based on application of the substantial evidence standard. (*Hatch*, *supra*, 22 Cal.4th at p. 273 ["Because section 1385 dismissals often are not based on the insufficiency of the evidence as a matter of law, we believe these dismissals should not be construed as an acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard."].) Further, that courts "need not restate the substantial evidence standard or use certain 'magic words' whenever they determine that the evidence is insufficient as a matter of law" (*ibid*.) does not change the underlying requirement that, for purposes of an acquittal, the dismissal must be based on the application of that standard. The ruling must be "clear enough for reviewing courts to confidently conclude [the trial court] viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Ibid*.) Moreover, not all dismissals based on an evaluation of the evidence engage the double

jeopardy bar. *Hatch* contrasts the distinction between a ruling based on legal insufficiency of the evidence that is functionally equivalent to an acquittal with a dismissal based on a reweighing of the evidence or other justice-related factors that do not preclude retrial. (*Id*. at p. 272.)

Applying these points to the 1996 dismissal order, we observe that although the trial court articulated "insufficient evidence" as the primary basis for its dismissal in furtherance of justice under section 1385, the record does not "clearly indicate[]" that the court applied the substantial evidence standard to conclude the evidence was insufficient as a matter of law to support a conviction. (*Hatch*, *supra*, 22 Cal.4th at p. 273.) Further, there is no indication the trial court viewed the evidence in the light most favorable to the prosecution. On the contrary, the court's reasoning suggests it independently assessed the strength and weight of the evidence and deemed the available evidence insufficient to justify retrying Woodward given the relevant interest of justice factors.

Citing *Bracey* and *Andrade*, the trial court framed its analysis of the case against Woodward in terms of the requirements and relevant considerations for a dismissal in furtherance of justice under former section 1385. In *Bracey*, the court defined a dismissal "'in furtherance of justice'" as requiring "consideration of the constitutional rights of the defendant and the interests of society represented by the People." (*Bracey*, *supra*, 21 Cal.App.4th at p. 1541; see *Orin*, *supra*, 13 Cal.3d at p. 945.) In *Andrade*, the court listed factors relevant to this consideration, including the weight of the evidence indicative of guilt or innocence, the nature of the crime involved, whether the defendant is or has been incarcerated awaiting trial and length

of incarceration, the possibility of harassment, the likelihood of new or additional evidence at trial, and the effect on public safety if the defendant should actually be guilty. (*Andrade*, *supra*, 86 Cal.App.3d at pp. 976–977.)

The trial court used the framework of these decisions to compare the public interest in providing the prosecution with a full and fair opportunity to convict Woodward against the likelihood of the prosecution obtaining a conviction in the absence of new evidence. It considered that having had two opportunities to convict Woodward, the prosecution in both instances "has been unable to prove the defendant guilty beyond a reasonable doubt" and had produced hung juries "with the majority of jurors voting for acquittal." The court linked these results to the "lack of quality" evidence and observed that despite the volume of evidence presented by the prosecution, its "substantive quality . . . did not lend itself to proving the prosecution's contentions."

Specifically, the trial court viewed the hair and fingerprint evidence as "insufficient to convict [Woodward] of murder" because the fingerprints were found on only the outside of the car and "lack[ed] the evidentiary strength usually attributable" to that evidence, while the prosecution could not "conclusively show" the hair found in the victim's car was Woodward's. The court reasoned that "[a]bsent more compelling evidence that places the defendant in the car at the time of the murder, the hair evidence taken together with the fingerprint evidence is insufficient to convict [Woodward] of murder." The court cited other weaknesses in the prosecution's evidence, including the prosecutor's struggle to "cast any doubt on [Woodward]'s veracity" after his testimony in the second trial, and found the

theory that Woodward killed Houts out of jealousy was "not [] credible" given there was insufficient proof of jealousy so great that it would have led Woodward to kill Houts.

Following its assessment of the evidence, the trial court identified other factors that supported a dismissal in furtherance of justice. The court explained, citing *Tibbs*, that dismissal would "further the interests of justice by preventing the prosecution from honing its trial strategies and perfecting its presentation of the evidence" and thus "create a risk of conviction through sheer governmental perseverance." It noted that "[a]nother trial would only serve to harass [Woodward]" and found it "reasonable to believe that society will not be endangered by this decision." The court concluded its explanation by stating, "There is simply a lack of evidence on which to convict the defendant. Without new evidence, the result of this case will be the same at each successive trial. Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty. It appears that justice would best be served if the charges were dismissed. [¶] It is therefore the order of this [c]ourt that the case be dismissed in the furtherance of justice for insufficiency of the evidence."

The trial court's discussion of the evidence bears comparison to *Hatch*, which involved a dismissal under former section 1385 after several days of jury deliberations resulted in a deadlock on all counts. (*Hatch*, *supra*, 22 Cal.4th at p. 266.) The trial court in *Hatch* stated in dismissing the case that "'there is no reason to believe another jury would reach a verdict in this case one way or the other'" and "'[t]he court finds that no reasonable jury would convict the defendant of the charges alleged in the information based on the

evidence presented in court.'" (*Ibid.*) The minute order stated that "'no reasonable jury would convict the defendant of the charges alleged in the information based on the evidence presented in court.'" (*Ibid.*) In reviewing both the minute order and reporter's transcript of the section 1385 dismissal, the high court found no indication that the trial court had viewed the evidence in the light most favorable to the prosecution and thus intended to dismiss for lack of sufficient evidence as a matter of law. (*Id*. at p. 274.)

The trial court's findings in the 1996 dismissal order that "the result of this case will be the same at each successive trial" and "[d]ue to the lack of evidence . . ., a jury will never be able to reach a unanimous verdict of guilty" are comparable to those statements assessed by the California Supreme Court in *Hatch* as not implicating the bar on successive prosecution. Like in *Hatch*, the trial court considered and weighed the evidence presented and concluded it was insufficient to support a unanimous verdict. The trial court's assessment of the substantive quality of the evidence and likelihood that a jury would be able to convict Woodward in the absence of new evidence "suggests a reweighing of evidence rather than an application of the substantial evidence standard." (*Hatch*, *supra*, 22 Cal.4th at p. 274.)

Indeed, in the absence of any indication in the minute order or reporter's transcript that the trial court in *Hatch* had applied the substantial evidence standard, the California Supreme Court characterized the court's "inquiries about additional evidence and . . . remarks on the quality of the trial presentations" (*Hatch*, *supra*, 22 Cal.4th at p. 274) as "an assessment of the strength of the evidence." (*Id*. at p. 275.) The Supreme Court also rejected an argument that the

trial court's "comments on the improbability of an unanimous verdict of guilt" (*id*. at p. 275) supplied the requisite standard for a finding of legal insufficiency of the evidence, since "the mere likelihood of disagreement among rational men 'is not in itself equivalent to a failure of proof by the State.'" (*Ibid*.; see also *Tibbs*, *supra*, 457 U.S. at p. 42, fn. 17.)

So, too, in this case the trial court's determination that "a jury will never be able to reach a unanimous verdict of guilty" does not imply that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Rather, it suggests the trial court believed that retrial would likely produce yet another non-unanimous result. It further explains the court's finding that "[t]he prosecution has not met its burden of proof in two trials and absent new evidence it will be unable to do so in subsequent trials. Another trial would only serve to harass [Woodward]." In addition, nowhere does the decision state that the trial court viewed the evidence in the light most favorable to the prosecution—a critical consideration articulated in *Hatch.*

Woodward contends the 1996 dismissal order is distinguishable from *Hatch* because it specifically identifies "'insufficient evidence'" as the basis for dismissal. By contrast, the dismissal order in *Hatch* did not use the term "'insufficient evidence'"—a fact noted by the California Supreme Court in addressing whether the Ninth Circuit's holding in *Mannes* would alter the high court's double jeopardy analysis. (*Hatch*, *supra*, 22 Cal.4th at p. 276.) Woodward argues *Mannes* is germane because, unlike *Hatch*, it specifically addresses use of the term "'insufficient evidence'" in context of a section 1385 dismissal. He maintains that by citing to *Mannes* in its written decision, the trial

court in this case implicitly adopted its holding and used the term "'insufficient evidence'" knowing it was a term of art that functioned as an acquittal.

Woodward further points out that courts since *Mannes* have treated the phrase as a term of art with an established meaning. (See *People v. Hampton* (2022) 74 Cal.App.5th 1092, 1105 (*Hampton*) [noting that while there are no "'magic words'" to establish legal insufficiency, there appears to be no published case wherein a court dismissed for "'insufficient evidence'" and the dismissal was not found to operate as an acquittal]; see also *People v. Pedroza* (2014) 231 Cal.App.4th 635, 646 (*Pedroza*) [affirming double jeopardy bar where trial court explicitly stated it found the evidence insufficient as a matter of law and had not ruled as a 13th juror]; *Salgado*, *supra*, 88 Cal.App.4th at p. 10 [concluding the trial court applied substantial evidence standard in finding (albeit incorrectly) there was "'not legally sufficient evidence to support a conviction for the carjacking'" and "'really no evidence to'" establish aiding and abetting the carjacking].)

Although we recognize the force of these arguments, we decide that *Mannes* is not dispositive here. California courts are not bound by decisions of the lower federal courts, even on federal questions. (*People v. Avena* (1996) 13 Cal.4th 394, 431.) Although the California Supreme Court in *Hatch* recognized the Ninth Circuit's holding in *Mannes*, it distinguished it as inapplicable and did not opine on its reasoning. (*Hatch*, *supra*, 22 Cal.4th at p. 276.) Because *Hatch* did not directly address whether a trial court's dismissal for insufficient evidence, in the absence of contrary indication, necessarily implies application of the substantial evidence standard, we are not bound to

follow the reasoning of *Mannes*. Nevertheless, we do not view *Hatch* and *Mannes* as entirely irreconcilable under the circumstances of this case.

In *Mannes*, the trial court dismissed murder charges pursuant to section 1385 after a mistrial. (*Mannes*, *supra*, 967 F.2d at p. 1312.) The trial court based the dismissal on "insufficient evidence" of certain elements of the charges (such as that the defendant acted with "'implied malice,'" and that she was aware at the time of driving drunk that her act carried a high probability of death to herself or others). (*Id*. at p. 1314.) In concluding the dismissal was an acquittal for purposes of double jeopardy, the Ninth Circuit noted there was no indication the trial judge had resolved questions of credibility and rejected the argument that the dismissal was based on "'weight,'" rather than "'sufficiency'" of the evidence. (*Id*. at p. 1315.) It explained that "'insufficient evidence' is a term of art" that—absent clear indication to the contrary—means "the evidence presented at the trial was not legally sufficient to support a conviction for the crime charged, rather than that the judge 'entertained personal doubts about the verdict.'" (*Ibid*.)

The presumption articulated in *Mannes* differs from our Supreme Court's direction to *not* presume application of the substantial evidence standard unless the dismissal under section 1385 clearly evidences an intent by the trial court to dismiss for legal insufficiency of the evidence. (*Hatch*, *supra*, 22 Cal.4th at p. 273.) We are, of course, bound by the standard articulated by our Supreme Court. (*People v. Perez* (2020) 9 Cal.5th 1, 13.) Applying the *Hatch* rule, we decline to impute application of the substantial evidence standard into the trial court's dismissal decision based solely on the

presumption that it employed "'insufficient evidence'" as a term of art. (*Hatch*, at p. 276.)

Furthermore, the 1996 dismissal order contains indication to the contrary, including language pertaining to the "weight" of the evidence, the likelihood of new evidence at trial, the possibility of harassment, and the effect on public safety if the charges are dismissed. (See *Andrade*, *supra*, 86 Cal.App.3d at pp. 976–977.) Because *Mannes* treated "'insufficient evidence'" as a term of art *only in the absence of contrary indication* (*Mannes*, *supra*, 967 F.2d at p. 1315), it appears consistent with both cases to refrain from assuming application of the term of art here. In this context, the variety of considerations that factored into the 1996 dismissal order, including the trial court's examination of factors not relevant to a dismissal for legal insufficiency of the evidence, inject ambiguity into the record as to the intended basis for the section 1385 dismissal. Notwithstanding the court's use of the term insufficient evidence, these "ambiguities" in the 1996 dismissal order provide "clear indication to the contrary" (*Mannes*, at p. 1315) and "make it impossible for us to conclude that the court intended to dismiss for lack of sufficient evidence as a matter of law." (*Hatch*, *supra*, 22 Cal.4th at p. 274.)

This outcome is also consistent with other decisions cited by Woodward, including *Hampton*, *Pedroza*, and *Salgado*. In *Hampton*, like in *Mannes*, there was nothing in the record to suggest a contrary indication for the meaning attributable to the court's use of the term insufficient evidence. The record simply showed that the trial court dismissed the robbery-murder special-circumstance allegation for "insufficient evidence" on the prosecutor's request after the jury convicted the defendant for first degree murder and robbery but

could not reach a verdict as to the allegation. (*Hampton*, *supra*, 74 Cal.App.5th at pp. 1096, 1097.) The same is true for *Pedroza* and *Salgado*. Both cases involved express findings of legal insufficiency, with the trial court in *Pedroza* going so far as to reject the prosecutor's argument that it "sat as a 13th juror when ruling on the new trial motion" and explaining its conclusion that it found "there was insufficient corroboration as a matter of law" and retrial was barred under United States Supreme Court precedent. (*Pedroza*, *supra*, 231 Cal.App.4th at p. 643.)

Nor are we persuaded that the trial court's citation of the United States Supreme Court's decision in *Tibbs* indicates the section 1385 dismissal was for legal insufficiency of evidence based on application of the substantial evidence standard. The written decision cites *Tibbs* as support for the trial court's decision that dismissing the murder charge would further the interests of justice by preventing successive attempts at conviction and risking "conviction through sheer governmental perseverance." (*Tibbs*, *supra*, 457 U.S. at p. 41.) While it is true that the passages of the opinion cited by the trial court come under the United States Supreme Court's discussion of double jeopardy and the principle that the prosecution cannot be afforded "'another opportunity to supply evidence which it failed to muster in the first proceeding'" (*ibid*.), the trial court's written decision mentions only those passages in *Tibbs* that discuss the risks of repeated prosecution. These references equally support a decision based on furthering the interests of justice, since "the possible harassment and burdens imposed upon the defendant by a retrial" is among the factors in furtherance of justice that courts consider under section 1385. (*Orin*, *supra*, 13 Cal.3d at p. 946; see *Andrade*, *supra*, 86 Cal.App.3d at p. 977.) Indeed,

Hatch specifically recognized the relevance of this factor to a section 1385 dismissal. (*Hatch*, *supra*, 22 Cal.4th at p. 273.)

We decide that the 1996 dismissal order does not satisfy the rule articulated in *Hatch* for construing a section 1385 dismissal as an acquittal based on a finding of insufficient evidence as a matter of law. The reasons for the dismissal as set forth in the trial court's minute order and written decision suggest the court found insufficient evidence to reach a unanimous verdict and justify retrial under section 1385's broad standard for dismissal, based on factors including the poor quality of evidence, unlikelihood that new evidence would be presented at another trial, risk of wearing down Woodward through repeated prosecutions, and harassment of Woodward. There is no clear indication in the record that the trial court viewed the evidence in the light most favorable to the prosecution and concluded that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*Hatch*, *supra*, 22 Cal.4th at p. 273.) We therefore cannot construe the section 1385 dismissal order as an acquittal. We conclude the constitutional protection against double jeopardy does not bar the refiling of the murder charge against Woodward.

III. DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its August 22, 2023 order granting the motion to dismiss on double jeopardy grounds and to enter a new order denying the motion. Upon issuance of the remittitur, this court's stay order is vacated.

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Danner, Acting P. J.

I CONCUR:

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Bromberg, J.

H051311
People v. Superior Court (Woodward)

Lie, J., Concurring:

I join the court in its application of *People v. Hatch* (2000) 22 Cal.4th 260 (*Hatch*). Our adherence to *Hatch* is compelled by *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450. The California Supreme Court has observed that on questions of federal law, however, a state high court "operate[s] as an intermediate court and not as a court of last resort." (*People v. Lopez* (2019) 8 Cal.5th 353, 366 (*Lopez*).) "'When emergent [United States] Supreme Court case law calls into question a prior opinion of [a state] court, that court should pause to consider its likely significance before giving effect to [its] earlier decision.' [Citation.] This is so even when the high court's decision does not directly address the continuing validity of the [state court's] rule . . .; the high court's guidance may nonetheless erode the analytical foundations of the old rule or make clear that the rule is substantially out of step with the broader body of relevant federal law." (*Id.* at pp. 366–367.) I write separately to explain my concern that decisions of the United States Supreme Court have eroded the analytical foundations of the rule announced in *Hatch*.

As Justice Ketanji Brown Jackson wrote this term for a unanimous United States Supreme Court, "it is well established that whether an acquittal has occurred for purposes of the [Fifth Amendment's] Double Jeopardy Clause is a question of federal, not state, law." (*McElrath v. Georgia* (2024) 601 U.S. ___ [144 S.Ct. 651, 659] (*McElrath*).) For double jeopardy purposes, federal law has long defined an acquittal broadly. (*Evans v. Michigan* (2013) 568 U.S. 313, 318 (*Evans*); see *id*. at p. 320 [holding that defendant was acquitted by the trial court's "determination that the State had failed to prove its case," despite errors of law informing

the directed verdict].) When the state has failed its “““one complete opportunity to convict””” (*Sattazahn v. Pennsylvania* (2003) 537 U.S. 101, 115), “an ‘acquittal’ includes ‘a ruling . . . that the evidence is insufficient to convict,’ a ‘factual finding [that] necessarily establish[es] the criminal defendant’s lack of criminal culpability,’ and *any other ‘rulin*[*g*] *which relate*[*s*] *to the ultimate question of guilt or innocence*’” (*Evans*, at p. 319, italics added, quoting *United States v. Scott* (1978) 437 U.S. 82, 98, fn. 11 (*Scott*).) “These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial.” (*Evans*, at p. 319.) “[T]he relevant distinction is between judicial determinations that go to ‘the criminal defendant’s lack of criminal culpability,’” which bar retrial, “and those that hold ‘that a defendant, although criminally culpable, may not be punished because of a supposed’ procedural error,” which do not. (*Id.* at pp. 323–324.) “Culpability (*i.e.*, the ‘ultimate question of guilt or innocence’) is the touchstone . . . .” (*Id.* at p. 324.) Even the lone dissenter in *Evans* agreed that “the Court’s ‘double-jeopardy cases have consistently’ defined an acquittal as a decision that ‘“actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.”’” (*Id*. at p. 336 (dis. opn. of Alito, J.).) Notably absent from the breadth of the constitutional definition of “acquittal” is any requirement that the court making the ruling find the evidence insufficient as a matter of law, drawing all inferences in favor of the prosecution.

Under controlling federal law, it is immaterial that the trial court’s evaluation of the evidence here was a dismissal “in the interest of justice” under Penal Code

section 1385[1] and not a directed verdict under section 1118.1. "'[L]abels'—including those provided by state law—'do not control our analysis . . . .' [Citation.] Thus, it is not dispositive whether a factfinder 'incanted the word "acquit"'; instead, an acquittal has occurred if the factfinder 'acted on its view that the prosecution had failed to prove its case.'" (*McElrath*, *supra*, 601 U.S. at p. ___ [144 S.Ct. at p. 660], quoting *Evans*, *supra*, 568 U.S. at pp. 322, 325; see also *United States v. Sisson* (1970) 399 U.S. 267, 270, 288 (*Sisson*) [treating "arrest of judgment" as an acquittal because "bottomed on factual conclusions . . . made on the basis of evidence adduced at the trial"].)

It is also immaterial—given the jury's inability here to return a guilty verdict—that the trial court did not rule that the evidence was insufficient as a matter of law. A final judicial determination that the evidence was insufficient as a matter of law is of course sufficient to constitute an acquittal. (See, e.g., *Sisson*, *supra*, 399 U.S. 267 [dismissing appeal for lack of jurisdiction, where trial court's arrest of judgment after jury's guilty verdict was in essence a directed acquittal based on the trial evidence].) It does not follow, however, that a determination of legal insufficiency is constitutionally *necessary* to an acquittal.[2]

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[1] Undesignated statutory references are to the Penal Code.

[2] A number of United States Supreme Court precedents examining district court rulings under rule 29 of the Federal Rules of Criminal Procedure naturally address the district court's application of rule 29's legal insufficiency standard. But this is a matter of federal rule and not constitutional doctrine, the Federal Rules of Criminal Procedure having no equivalent to section 1385. California courts, on the other hand, are at once obligated (like federal district courts under rule 29) to direct a verdict of acquittal when the evidence is insufficient as a matter of law (§

Only after a conviction has the United States Supreme Court conditioned the Double Jeopardy bar on a judicial determination that the evidence was "legally insufficient." (See *Tibbs v. Florida* (1982) 457 U.S. 31, 45–47 (*Tibbs*) [holding that reversal of a conviction based on a reviewing court's disagreement with the jury's weighing of the evidence does not bar retrial under the Double Jeopardy Clause unless the evidence were insufficient as a matter of law].)

Against this backdrop, the *Hatch* court understood that it was announcing a new rule—reflecting the court's "belie[f] [that section 1385] dismissals should not be construed" to foreclose retrial "unless the record clearly indicates that the trial court applied the substantial evidence standard" and its "proper[] balanc[ing of] the competing interests embodied in the constitutional prohibitions against double jeopardy." (*Hatch*, *supra*, 22 Cal.4th at p. 273.) The innovation of *Hatch* was to presumptively authorize retrial after a section 1385 acquittal when the prosecution at trial had failed to secure a conviction. (*Ibid*.) A defendant could overcome the presumption that "the court [despite its dismissal] did *not* intend to . . . foreclose reprosecution" by demonstrating that the court "viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Ibid.*) And *Hatch* required the trial court in dismissing the proceeding to "make [its ruling] clear enough for reviewing courts to confidently conclude [it] viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Ibid*.) In making legal insufficiency (or at least a trial court's view of it) the linchpin under the

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1118.1) and authorized to dismiss in the interest of justice (§ 1385).

Double Jeopardy Clause, the *Hatch* court extrapolated from *Tibbs*, *supra*, 457 U.S. 31 that "[w]here a court merely 'disagrees with a jury's resolution of conflicting evidence and concludes that a guilty verdict is against the weight of the evidence,' . . . a reversal or dismissal on that ground does not bar retrial." (*Hatch*, *supra*, 22 Cal.4th at p. 272.)

But the United States Supreme Court's much broader definition of an acquittal later reaffirmed in *Evans* and most recently in *McElrath* makes clear that the procedural posture of *Tibbs* was critical to the United States Supreme Court's holding in that case. The jury in *Tibbs* returned a guilty verdict from which the defendant obtained relief based not on the legal insufficiency of the evidence but the weight of that evidence—"'a determination . . . that a greater amount of credible evidence supports one side of an issue or cause than the other.'" (*Tibbs*, *supra*, 457 U.S. at pp. 37–38.) The Florida Supreme Court's reversal of the conviction under state law represented mere "disagree[ment] with [the] jury's resolution of conflicting evidence" on the convicted defendant's appeal. (*Id*. at p. 42; see also *id*. at pp. 37–38 [distinguishing "weight of the evidence" reversal under Florida law from reversal for "insufficient evidence"].) The *Tibbs* court accordingly framed its holding as grounded in the conviction and the defendant's election to challenge that conviction by an appeal necessarily contemplating retrial: "[T]he Double Jeopardy Clause does not prevent an appellate court from granting a *convicted* defendant an *opportunity* to seek acquittal through a new trial." (*Id*. at p. 45, italics added; see also *id.* at p. 45, fn. 22 [analogizing a defendant's motion for new trial following guilty verdict]; cf. *Evans*, *supra*, 568 U.S. at p. 326 [distinguishing a defendant's mistrial motion, which effectively "consents to a disposition

that contemplates reprosecution," unlike a defendant who moves for acquittal]; *People v. Eroshevich* (2014) 60 Cal.4th 583.) The court in *Tibbs* derived its holding from the long-standing rule that "a criminal defendant *who successfully appeals a judgment against him* 'may be tried anew . . . for the same offence of which he had been convicted.'" (*Tibbs*, at pp. 39–40, italics added, quoting *United States v. Ball* (1896) 163 U.S. 662, 672; see *Tibbs*, at p. 40, citing *North Carolina v. Pearce* (1969) 395 U.S. 711, 721 [explaining "the premise that the original conviction has, at the defendant's behest, been wholly nullified and the slate wiped clean"].) *Tibbs* distinguished the high court's contrary decisions in *Burks v. United States* (1978) 437 U.S. 1 and *Greene v. Massey* (1978) 437 U.S. 19 as representing "a narrow exception from the understanding that a defendant who successfully appeals a conviction is subject to retrial" where "'the reviewing court has found the evidence legally insufficient' to support conviction." (*Tibbs*, at pp. 40–41.) The Florida high court's reversal based on the weight of the evidence rather than its sufficiency did not meet that narrow exception. (*Id.* at pp. 37–38.) In short, *Tibbs* arose from a distinct strand of Double Jeopardy jurisprudence focused not on acquittals but on convictions and on the assent to retrial—unless acquittal on retrial could be assured as a matter of law—presumed by a convicted defendant's appeal. (*Id.* at pp. 42–43.)

"'A reversal based on the weight of the evidence' " as in *Tibbs*, however, " 'can occur only after the State both has presented sufficient evidence to support conviction *and has persuaded the jury to convict*.' " (*Mannes v. Gillespie* (9th Cir. 1992) 967 F.2d 1310, 1315, italics added (*Mannes*).) *Tibbs* is thus inapplicable here, where the People failed twice to secure a guilty verdict, leading the trial court to exercise its discretion under

section 1385 to independently assess the trial evidence of Woodward's culpability. Here, unlike in *Tibbs*, Woodward was not "a convicted defendant" appealing for "an opportunity to seek acquittal through a new trial." (*Tibbs*, *supra*, 457 U.S. at p. 45, fn. omitted.) "[T]here was no occasion to set aside a verdict as 'against the weight' of the evidence, since no verdict was reached." (*Mannes*, *supra*, 967 F.2d at p. 1315, quoting *Tibbs*, *supra*, 457 U.S. at pp. 42–43.) Absent a conviction followed by an appeal or motion for new trial that would implicate *Tibbs*, I respectfully submit that *Evans* and *McElrath*, in reaffirming post-*Hatch* the broad definition of acquittal first articulated in *Scott*, would have us assess only whether the trial court's dismissal under section 1385 "'relate[s] to the ultimate question of guilt or innocence.'" (*Evans*, *supra*, 568 U.S. at p. 319; *McElrath*, *supra*, 601 U.S. at p. ___ [144 S.Ct. at p. 658].)

At bottom, our application of *Hatch* is no more than a determination that the trial court's dismissal—expressly based on "the insufficiency of the evidence"—failed to conform to a state-law standard even though it is an acquittal as defined by the United States Supreme Court. To my mind, this makes the acquittal here indistinguishable from those in *Evans* (where the trial court based its dismissal on the erroneous belief that the charged offense required proof of another element) and *McElrath* (where the jury's acquittal on one count was nullified, along with a conviction on another count, under state law "repugnancy doctrine"). Even where the trial court is "egregiously" wrong, its error does not exempt the acquittal from the double jeopardy bar. (*Evans*, *supra*, 568 U.S. at p. 318.) "[T]he fact that 'the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles,' . . . affects the accuracy of

that determination, but it does not alter its essential character." (*Scott*, *supra*, 437 U.S. at p. 98.)[3] *McElrath* made explicit that the states' "'primary authority for defining and enforcing the criminal law' and '. . . regulat[ion of] procedures under which [their] laws are carried out'" did not extend to "whether the Double Jeopardy Clause recognizes an event as an acquittal." (*McElrath*, *supra*, 601 U.S. at p. ___ [144 S.Ct. at p. 660].)

That the acquittal here was by a judge and not, as in *McElrath*, by a jury is constitutionally irrelevant, given the juries' inability to convict. In *United States v. Martin Linen Supply Co.* (1977) 430 U.S. 564, for example, the high court rejected the government's contention "that only a verdict of acquittal formally returned by the jury should absolutely bar further proceedings and that '[o]nce the district court declared a mistrial and dismissed the jury, any double jeopardy bar to a second trial dissolved.'" (*Id.* at p. 572.) As the court instructed, "'The constitutional requirement of a jury trial in criminal cases is primarily a right accorded to the defendant.' [Citations.] Any Government right to demand a jury verdict is limited to that afforded by [federal rule] (jury trial waivable with the consent of the Government) and, of course, can be qualified by

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[3] For example, the trial court's dismissal of sexual assault charges in *Hatch* followed defense argument that no jury would believe 15-year-old "Doratee L.'s 'behavior [to be] consistent with someone who was being pressured and forced into doing something against their will' " (*Hatch*, *supra*, 22 Cal.4th at p. 266)—an argument that betrays some incomprehension of both juvenile executive functioning and the nuance of coercion within otherwise consensual relationships. And joining the court's application of *Hatch* here, I have no reason to believe that the trial court in 1996—had it anticipated the new evidence that now prompts the petitioner to reprosecute—would have intended to foreclose retrial.

authority granted the trial judge" by rule. (*Id*. at pp. 574–575, fn. 13; see also *Sisson*, *supra*, 399 U.S. at p. 288.)

I agree that the court's dutifully exacting scrutiny of the trial court's dismissal order here yields "contrary indications" vitiating the otherwise unambiguous "insufficiency of the evidence" conclusion—suggesting that the trial court did not uniformly view the evidence in the light most favorable to the prosecution. But beyond *Evans* and *McElrath*, it bears noting how foreign our examination is to our customary appellate function: Under *Hatch*, we apply a presumption in favor of a petitioner for extraordinary relief and not in favor of the respondent court's 2023 judgment or 1996 acquittal; and we accord no deference to the respondent court's contrary finding on the trial court's "intent." Consequently, our decision today turns on how deeply and transparently the trial judge chose to scrutinize the trial evidence, with the through-the-looking-glass result that rote adoption of a party's "insufficiency of the evidence" recital is necessarily an acquittal (see, e.g., *People v. Hampton* (2022) 74 Cal.App.5th 1092, 1097), while the painstaking critique of evidence presented to two deadlocked juries is not.

But for our continuing duty to follow *Hatch*, I would instead conclude the section 1385 dismissal here is an acquittal that bars retrial under *Evans* and *McElrath*. Because *Evans* and *McElrath* "erode the analytical foundations" of *Hatch* (*Lopez*, *supra*, 8 Cal.5th at p. 367), I respectfully urge the California Supreme Court to reexamine the continuing vitality of *Hatch*'s narrow definition of an acquittal under federal double jeopardy principles.

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Lie, J.

H051311
People v. Superior Court (Woodward)

Trial Court: County of Santa Clara

Trial Judge: Hon. Shella Deen

Counsel: Jeffrey F. Rosen, District Attorney, Kaci R. Lopez, Supervising District Attorney, and David R. Boyd, Deputy District Attorney for Petitioner.

No appearance for Respondent.

Nolan Barton Olmos & Luciano, LLP, Daniel L. Barton and Evan C. Greenberg for Real Party in Interest.

H051311
People v. Superior Court (Woodward)

APPENDIX C

ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

[Filed: Aug 22 2023]

No. C2200594

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JOHN KEVIN WOODWARD,

Defendant.

ORDER GRANTING MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS

INTRODUCTION

In 1992, Laurie Houts was murdered. Defendant John Kevin Woodward was charged with her murder and the case proceeded to trial but the jury deadlocked. The parties agreed that the case should be dismissed. Thereafter, the People recharged Defendant with the same crime in Docket 167658. The case again proceeded to trial. At the close of evidence, prior to the submission of the case to the jury, Defendant filed a motion for judgment of acquittal under Penal Code section 1118.1.[1] The motion was denied. The jury

[1] All further undesignated statutory references are to the Penal Code.

again deadlocked and the court declared a mistrial. After the jury deadlocked, Defendant moved to dismiss the case under section 1385. The court dismissed the case.

After discovering new evidence they believed supported Defendant's guilt in 2021, the People refiled the murder charge in the instant Docket, C2200594.

On February 23, 2023, Defendant filed a motion to dismiss the case alleging that double jeopardy bars his retrial. The People filed an opposition and Defendant filed a reply. Thereafter, the Court heard oral argument and permitted the filing of sur-replies by both parties.

ANALYSIS

Defendant argues that the court's order dismissing the case (Docket 167658) was based on the court's finding that the evidence was legally insufficient to support a conviction and, therefore, the dismissal operates as an acquittal. The People counter that the dismissal was one in furtherance of justice, not based on a finding that the evidence was insufficient as a matter of law under the substantial evidence standard.

I. The Court May Consider the Entire Trial Court Record in Making its Ruling

In his motion to dismiss, Defendant requested that the court take judicial notice of (1) the trial court's written order dismissing the case in Docket 167658 and (2) the minute order from the date of the dismissal. The Court GRANTS the request for judicial notice under Evidence Code section 452, subdivision (d) as these orders are undoubtedly relevant to the outcome of the instant case.

The People urge the court to consider multiple other documents but do not explicitly request judicial notice. The People have provided to the Court: (1) A statement by Mountain View Police Detective Sergeant David Fisher detailing the new evidence that is now available (People's Opposition, Exhibit A), (2) a minute order showing that Defendant's motion for judgment of acquittal was denied (People's Opposition, Exhibit B), (3) Defendant's motion for judgment of acquittal (People's Opposition, Exhibit C), (4) The People's opposition to Defendant's motion for judgment of acquittal (People's Opposition, Exhibit D), (5) a minute order showing that Defendant testified at trial (People's Opposition, Exhibit E), (6) a minute order showing that the jury deadlocked and the court declared a mistrial (People's Opposition, Exhibit F), (7) an unified, unsigned defense motion to dismiss under section 1385 (People's Opposition, Exhibit G), (8) the minute order dismissing the case (People's Opposition, Exhibit H), (9) the written order dismissing the case (People's Opposition, Exhibit I), (10) a declaration of the trial prosecutor (People's Opposition, Exhibit J), (11) a contemporaneous news article discussing the dismissal with statements from both the trial prosecutor and defense counsel (People's Opposition, Exhibit K), and (12) a portion of the defense bail motion filed in this case on March 16, 2023 (People's Opposition, Exhibit L).

The Court may consider the court documents from the time of trial in determining whether the trial court's dismissal order served as an acquittal for Double Jeopardy purposes. (See *People v. Salgado* (2001) 88 Cal.App.4th 5, 10, citing *People v. Smith* (1983) 33 Cal. 3d 596, 599 [entire record may be considered in interpreting the minute order].) However, the Court will not consider the unfiled,

unsigned copy of the defense motion to dismiss as the People have not provided any basis for the court to do so.[2] The unfiled, unsigned motion is not a court document within the meaning of Evidence Code section 452, subdivision (d), because there is no file stamp or anything showing that the document was ever filed with the court.

Defendant appears to argue in reply that the Court should not consider the trial court's written order dismissing the case because at the time the case was dismissed, section 1385 provided, "The reasons for the dismissal must be set forth in an order entered upon the minutes." (Former § 1385, subd. (a).) As Defendant points out, "'it has been said: "The statement of reasons is not merely directory, and neither trial nor appellate courts have authority to disregard the requirement. It is not enough that on review the reporter's transcript may show the trial court's motivation; the minutes must reflect the reason 'so that all may know why this great power was exercised.'" [Citation.]" (*People v. Orin* (1975) 13 Cal.3d 937, 944 (*Orin*).)

However, this does not mean that the Court cannot consider the trial court's written order dismissing the case in making its ruling on the motion to dismiss. (See *People v. Hatch* (2000) 22 Cal.4th 260, 274-275 *(Hatch)* [trial court's statements in reporter's transcript bolstered Supreme Court's conclusions regarding the minute of the minute order dismissing the case].) Additionally, Defendant expressly asked the Court to

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[2] The unfiled, unsigned copy of the motion is attached to the People's opposition to the motion as Exhibit G. Defendant appears to dispute whether this motion was ever filed. The filed, signed copy does not appear anywhere in the court record. But, the minute order from the date of the dismissal indicates that the court granted Defendant's motion to dismiss.

take judicial notice of the written order in his motion and made multiple arguments relying on it. To the extent Defendant is arguing that the Court may consider only the minute order and not the written order dismissing the case, the Court rejects that argument.

With respect to the declaration of the trial prosecutor, the contemporaneous news article, and the bail motion, the Court declines to consider these documents, which were not part of the record before the trial court. The declaration and the news article both present the views of the attorneys involved in the case in the 1990s. They appear to indicate that Judge Terry, the trial judge, believed that the case could be refiled. But, this is irrelevant. *In Mannes v. Gillespie* (9th Cir. 1992) 967 F.2d 1310, 1316 *(Mannes),* on which both parties rely, the Ninth Circuit Court of Appeal explained, "The trial judge in this case believed retrial would be possible. Nevertheless, whether the Double Jeopardy Clause bars a prosecution is not determined by the characterization of a dismissal under state law, nor by the trial judge's personal understanding in this regard. [Citations.] What matters is whether the ruling in [defendant's] favor was actually an 'acquittal' even if state law or the trial court may have labeled it otherwise."

The motion for judgment of acquittal and the opposition are also of limited evidentiary value. These motions did not prompt the court to enter its order dismissing the case; in fact, the court denied the motion for judgment of acquittal. The People attempt to use these filings to contrast them with the unfiled, unsigned motion to dismiss after hung jury. The People contend that the parties discussed the substantial evidence standard in connection with the motion for judgment of acquittal but that the defense did not

make any mention of the substantial evidence standard in the motion to dismiss, which allegedly prompted the trial court to issue its dismissal order.[3] Although the motion for judgment of acquittal and the opposition are filed court documents properly subject to judicial notice, the People ask the Court to consider the motion for judgment of acquittal and opposition solely for the purposes of comparing them to the unsigned, unfiled motion to dismiss, which the Court declines to consider. Thus, the motion for judgment of acquittal and opposition are of extremely minimal, if any, relevance. Nonetheless, the Court will consider the motion for judgment of acquittal and opposition thereto in order to contrast their content with the standards articulated in the court's written dismissal order. The minute orders the People provide (excepting the one in which dismissal was entered) are similarly of minimal relevance to the court's decision. The Court declines to consider the minute orders as they do not reflect the court's dismissal decision or otherwise illustrate the reasoning of the court or the parties in the context of that decision.

II. Merits of the Motion

Here, it is undisputed that the trial court dismissed the case under section 1385. At the time of the dismissal, that section provided, "The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.

[3] The discussion of the substantial evidence standard is pertinent because, in *Hatch, supra,* 22 Cal.4th at p. 273, the California Supreme Court held that a court dismissing under section 1385 for insufficiency of the evidence should make clear that it considered the evidence in the light most favorable to the prosecution under the substantial evidence standard.

The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading." (Former § 1385, subd. (a).)

Defendant argues that the dismissal was one based on the legal insufficiency of the evidence such that the dismissal operates as an acquittal and he may not be subject to retrial on Double Jeopardy grounds. The People, on the other hand, argue that the dismissal was one made in furtherance of justice, which would not operate as an acquittal, allowing the People to retry Defendant now using the new evidence they now possess. The Court concludes that the dismissal was made based on insufficiency of the evidence and operates as an acquittal.[4]

As explained in *Hatch, supra,* 22 Cal.4th at pp. 271-272, "the United States Supreme Court held that the Fifth Amendment precludes retrial if a court determines the evidence at trial was insufficient to support a conviction as a matter of law. (*Burks v. United States* (1978) 437 U.S. 1, 18.) Thus, an appellate ruling of legal insufficiency is functionally equivalent to an acquittal and precludes a retrial. (See *id.* at pp. 16-17.) An analogous trial court finding is also an acquittal

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[4] Although the People argue that they possess new evidence of Defendant's guilt, they cite to no authority that provides that a defendant may be retried after an acquittal even with new evidence. This is because, where the defendant has been acquitted, he cannot be retried. (*People v. Romero* (1982) 31 Cal.3d 685, 689.) Further, the California Supreme Court has explained that double jeopardy principles include, *inter alia, "precluding the government from retrying the defendant armed with new evidence* and knowledge of defense tactics[.]" (*People v. Hernandez* (2003) 30 Cal.4th 1, 8, italics added.) Thus, double jeopardy bars retrial after an acquittal even if the People are now in possession of new evidence.

for double jeopardy purposes. ([*Hudson v. La.* (1981) 450 U.S. 40, 42]; [*United States v. Martin Linen Supply Co.* (1977) 430 U.S. 564, 571].) Where a court merely 'disagrees with a jury's resolution of conflicting evidence and concludes that a guilty verdict is against the weight of the evidence,' however, a reversal or dismissal on that ground does not bar retrial. (*Tibbs v. Florida* (1982) 457 U.S. 31, 42, 45-46, fn. 22 (*Tibbs*).)"

"Although a trial court may apply the substantial evidence standard when dismissing pursuant to section 1385, it usually does not. Indeed, the standard for dismissal under section 1385 is quite broad and permits dismissal under a variety of circumstances." (*Hatch, supra,* 22 Cal.4th at p. 273.) "Section 1385 dismissals should not be construed as an acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard. (*People v. Hatch* (2000) 22 Cal.4th 260, 271, 273 [].) There are no 'magic words' the court must use to demonstrate it has applied the substantial evidence standard, and the court need not restate the substantial evidence standard. (*Ibid.*) But, the record must make it clear for the reviewing court that the trial court viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict. (*Ibid.*) Whatever label the ruling is given, the . . . court '"must determine [if] the ruling ... actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." [Citation.]' (*Id.* at p. 270.)" (*People v. Hampton* (2022) 74 Cal.App.5th 1092, 1104 (*Hampton*).)

In other words, "the record must show that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt.

[Citation.] Absent such a showing, [the court] will assume the court did *not* intend to dismiss for legal insufficiency and foreclose reprosecution." (*Hatch, supra,* 22 Cal.4th at p. 273, italics in original.)

As explained in *Hatch,* the court's analysis starts with the minute order because, at the time, the reasons for dismissal had to be stated in the minutes. (*Hatch, supra,* 22 Cal.4th at p. 274.) Here, the minute order stated, "The Court reads the written decision into the record dismissing this case pursuant to Penal Code Section 1385 *based on insufficient evidence.* The written decision is ordered filed and defendant's bail is ordered exonerated." (See Motion, Exhibit B, italics added.) Thus, the Minute order *expressly* states that the basis for the dismissal was insufficiency of the evidence. The minute order is clear and unambiguous that the reason for the dismissal was insufficiency of the evidence.

In *Hatch,* the minute order stated "that 'no reasonable jury would convict . . . based on the evidence presented in court.'" The court reasoned, "This order does not indicate that the court viewed the evidence in the light most favorable to the prosecution. Moreover, the use of the word 'would' rather than 'could' suggests a reweighing of evidence rather than an application of the substantial evidence standard. [Citation.] Taken together, these ambiguities make it impossible for us to conclude that the court intended to dismiss for lack of sufficient evidence as a matter of law." (*Hatch, supra,* 22 Cal.4th at p. 274.) The *Hatch* court indicated that the reporter's transcript supported that conclusion. (*Ibid.*) "Like the minute order," the court stated, "nothing in the reporter's transcript indicates the trial court viewed the evidence in the light most favorable to the prosecution. Rather, the

court's inquiries about additional evidence and its remarks on the quality of the trial presentations and the apparent pro-prosecution bent of the jury suggest an assessment of the strength of the evidence. The court's comments on the improbability of a unanimous verdict of guilt do not suggest otherwise. Indeed, the mere likelihood of disagreement among rational men 'is not in itself equivalent to a failure of proof by the State . . . . [Citations.]" (*Id.* at pp. 274-275.) The court "decline[d] to construe the section 1385 dismissal in this case as an acquittal for double jeopardy purposes." (*Id.* at p. 275.)

Here, while the minute order does not indicate that the court considered the evidence in the light most favorable to the prosecution or that the court employed the substantial evidence standard, the minute order clearly evidenced an intent to dismiss based on the insufficiency of the evidence. In contrast, in *Hatch,* "the trial court in this case never used the term 'insufficient evidence.'" (*Hatch, supra,* 22 Cal.4th at p. 276.) Although the written order includes language indicating the court was dismissing the case in the interest of justice, it notably also dismissed due to the "insufficiency of the evidence." (Motion, Exhibit A, at p. 6 of 6.)

"'Insufficient evidence' is a term of art and—absent a contrary indication—means the evidence was insufficient to support a conviction as a matter of law. (*Hatch, supra,* 22 Cal.4th at p. 276; *Mannes v. Gillespie* (9th Cir. 1992) 967 F.2d 1310, 1315 (*Mannes*).) If the jury has not been able to reach a verdict and the trial court rules the evidence is insufficient as a matter of law to sustain a conviction, the ruling bars retrial even if the ruling is patently erroneous or the court has no statutory authority to make it. (*Hatch,* at pp.

270-271; see *Sanabria v. United States* (1978) 437 U.S.54, 75 [there is no exception permitting retrial once the defendant has been acquitted, no matter if the acquittal is egregiously erroneous.].)" (*Hampton, supra,* 74 Cal.App.5th at p. 1104.) Importantly, the trial court here cited to *Mannes,* which explained that insufficient evidence is a term of art and that invocation of that term indicated that a dismissal would be considered an acquittal. Although the court did not cite *Mannes* for that proposition, the citation to *Mannes* suggests that the trial court was aware of the proper use of the term "insufficient evidence."

As explained by the *Hatch* court, "[i]n *Mannes,* the trial court dismissed murder charges pursuant to section 1385 after a mistrial. In dismissing these charges, the court stated there was 'insufficient evidence' to establish certain elements of the crime and 'no likelihood that a retrial on these charges will result in a unanimous verdict of guilty of murder.' (*Mannes, supra,* 967 F.2d at p. 1314.) Concluding that the phrase 'insufficient evidence' is a term of art and—absent a contrary indication—means the evidence was insufficient to support a conviction as a matter of law, the Ninth Circuit Court of Appeals held that the dismissal was equivalent to an acquittal and barred retrial under the Fifth Amendment. (*Id.* at pp. 1315-1316.)" (*Hatch, supra,* 22 Cal.4th at p. 276.)

In concluding that the dismissal order in that case constituted an acquittal, the *Mannes* court reasoned, "The order does not refer at all to the 'weight' of the evidence but refers several times to 'insufficient evidence.' As the Supreme Court has noted, 'trial and appellate judges commonly distinguish between the weight and the sufficiency of the evidence.' [Citation.] Further, there was no occasion to set aside a verdict

as 'against the weight' of the evidence, since no verdict was reached. 'A reversal based on the weight of the evidence . . . can occur only after the State both has presented sufficient evidence to support conviction and has persuaded the jury to convict.' [Citation.]" (*Mannes, supra,* 967 F.2d at p. 1315.) Here, similarly, although the court's discussion of the evidence in the written order might be construed as weighing it, the court does not expressly mention the weight of the evidence, only its sufficiency. And, the court did not have occasion to determine that the jury's verdict was against the weight of the evidence because the jury did not reach a verdict.

In *Hampton,* the court explained, "Although there are no 'magic words' the court must use, we have not found, and the People have not cited, any authority where the trial court has used the language 'insufficient evidence' in its dismissal and the dismissal was not found to be the equivalent of an acquittal. (See *People v. Salgado, supra,* 88 Cal.App.4th at p. 10 [trial court stated insufficient evidence was as a matter of law to show the defendant aided and abetted carjacking]; *People v. Pedroza* (2014) 231 Cal.App.4th 635, 642 [trial court stated there was insufficient corroboration of accomplice testimony as a matter of law, and retrial barred by double jeopardy]; *Mannes, supra,* 967 F.2d at p. 1314 [trial court stated there was insufficient evidence for implied malice or conscious disregard and no likelihood retrial would result in unanimous verdict].)" (*Hampton, supra,* 74 Cal.App.5th at p. 1105.)

The People correctly point out that the trial court's written order also expressly states that it is dismissing in furtherance of justice and it refers to *People v. Andrade* (1978) 86 Cal.App.3d 963 and the furtherance of justice dismissal factors listed in that case.

But, Defendant correctly argues that the court likely believed that it must dismiss in furtherance of justice and that it was required to consider those factors. The court stated at the beginning of the order, "A dismissal not made in furtherance of justice is an abuse of discretion that requires reversal. [Citation.]" Thus, it appears that the trial court believed that the dismissal must be in the interest of justice to be valid. (See *Orin, supra,* 13 Cal.3d at p. 945 ["The trial court's power to dismiss an action under section 1385, while broad, is by no means absolute. Rather, it is limited by the amorphous concept which requires that the dismissal be 'in Furtherance of justice.'"].) In other words, the trial court would not have seen a contradiction in dismissing both in the interest of justice and due to insufficiency of the evidence because all dismissals under section 1385 were required to be in the interest of justice. (See *Hatch, supra,* 22 Cal.4th at p. 273 ["a trial court may apply the substantial evidence standard when dismissing pursuant to section 1385"].)

The People also point out that the court cited to certain cases and used certain language that may be read as invoking the "broad standard of justice." (See *People v. Superior Court of Marin County* (1968) 69 Cal.2d 491, 504.) But, that case did not involve the question of whether a dismissal operated as an acquittal and the trial court in that case referred to the insufficiency of the evidence despite dismissing in the interest of justice. (*Ibid.*) Furthermore, the trial court's written order in this case also cited cases that clearly discuss the distinction between a dismissal resulting in an acquittal and one that does not. (See *Tibbs, supra,* 457 U.S. 31; *Mannes, supra,* 967 F.2d 1310.)

Additionally, the trial court noted at the very outset of its written order that the reasons for the dismissal

must appear in the minute order. As mentioned above the *only* reason mentioned in the minute order was the insufficiency of the evidence. At the time the trial court entered its dismissal order, a statement of reason in the minutes was "mandatory and not merely directory." (*Orin, supra,* 13 Cal.3d at p. 944.) Thus, the fact that the minute order mentions only the insufficiency of the evidence is telling.

Further, the trial court's written order repeatedly referred to the lack of evidence to convict Defendant. The court stated, "There is simply a lack of evidence on which to convict the defendant" and "Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty." Further, the Court stated, "It is therefore the order of this Court that the case be dismissed in the furtherance of justice for insufficiency of the evidence."

The People contend that contemporaneous evidence indicates that Judge Terry believed the case could be reified if they provided new evidence. As discussed above, Judge Terry's views in that respect are irrelevant. In *Mannes, supra,* 967 F.2d at p. 1316, on which both parties rely, the Ninth Circuit Court of Appeal explained, "The trial judge in this case believed retrial would be possible. Nevertheless, whether the Double Jeopardy Clause bars a prosecution is not determined by the characterization of a dismissal under state law, nor by the trial judge's personal understanding in this regard. [Citations.] What matters is whether the ruling in [defendant's] favor was actually an 'acquittal' even if state law or the trial court may have labeled it otherwise."

The People also argue that they are entitled to a jury trial on any questions of material fact raised in

connection with the instant motion.[5] Specifically, they contend that Defendant has challenged the credibility of the contemporaneous statements made by the prosecutor and defense counsel. The Court has already declined to consider these statements as irrelevant. Accordingly, the request for a jury trial on this issue is moot.

As set forth above, the People contend that the motion for judgment of acquittal Defendant filed and the opposition to same both invoke the substantial evidence standard while the trial court's written dismissal order does not. "A motion under section 1118.1 seeks a judgment of acquittal for insufficient evidence." (*Porter v. Superior Court* (2009) 47 Cal.4th 125, 132, italics removed.) "In ruling on an 1118.1 motion for judgment of acquittal, the court evaluates the evidence in the light most favorable to the prosecution. If there is any substantial evidence, including all inferences reasonably drawn from the evidence, to support the elements of the offense, the court must deny the motion." (*Ibid.*) Thus, the parties invoked the correct standard in discussing the motion for judgment of

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[5] They rely on *Stone v. Superior Court* (1982) 31 Cal.3d 503, 509, fn. 1 (*Stone*), in which the California Supreme Court stated, "We note that a claim of double jeopardy is most appropriately raised by way of a pretrial motion to dismiss the accusatory pleading or portion thereof allegedly barred by double jeopardy. The determination of the validity of a claim of double jeopardy is a matter for the trial judge in the first instance. If there is no material issue of fact, the judge rules on the double jeopardy claim. If, however, a material issue of fact exists, then it is for the jury to resolve." As Defendant points out, the California Supreme Court later expressed "grave doubts" about this aspect of Stone, explaining that courts routinely decide factual questions of the prosecutor's intent in committing misconduct for double jeopardy purposes. (*People v. Batts* (2003) 30 Cal.4th 660, 697, fn. 28.)

acquittal. But, that fact has no bearing on the court's dismissal order, which was not prompted by the motion for judgment of acquittal.

Again, it is not clear that the unsigned, unfiled copy of the motion is the same motion, if any, that Defendant filed prompting the court to dismiss the case. And, the fact that that unfiled motion might not have mentioned the substantial evidence standard does not imply that the court utilized the wrong standard in reaching its decision to dismiss the case. Further, the fact that the court's order does not mention the substantial evidence standard is not dispositive because *Hatch,* which held that courts dismissing due to insufficient evidence should make it clear that that standard was employed, did not come out until 2000, four years after the court issued its dismissal order.[6]

For the above reasons, the Court concludes that the dismissal order operates as an acquittal and Defendant may not be retried, based on Double Jeopardy grounds. The motion to dismiss is GRANTED. The case is ordered DISMISSED.

IT IS SO ORDERED.

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[6] With this statement, the Court does not suggest that the trial court's order need not comply with the requirements of *Hatch* to operate as an acquittal. The Court merely notes that the trial court could not be expected to expressly invoke the substantial evidence standard without *Hatch's* guidance. And, as discussed above, *Hatch* does not require the court to expressly refer to that standard in dismissing for insufficiency of the evidence. (*Hatch, supra,* 22 Cal.4th at p. 273 ["courts need not restate the substantial evidence standard"].)

Dated: August 22, 2023

/s/ Shella Deen
HON. SHELLA DEEN
JUDGE OF THE SUPERIOR COURT

cc: Defendant's Attorney (Daniel Barton)
District Attorney (Barbara Cathcart)
Research (F)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

Habeas No. C2200594
Trial Ct. No.

Plaintiff:

THE PEOPLE OF THE STATE OF CALIFORNIA

Defendant:

JOHN KEVIN WOODWARD

FILED
Date: August 22, 2023
REBECCA FLEMING
Chief Executive Officer Clerk
Superior Court of CA County of Santa Clara
By: /s/ T. Abdul-Ghanee
T. Abdul-Ghanee, Deputy

PROOF OF SERVICE BY MAIL OF: ORDER GRANTING MOTION TO DISMISS ON DOUNBLE JEOPARDY GROUNDS

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was sent: electronically, inter-office mail or mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on: August 22, 2023.

Rebecca Fleming, Chief Executive Officer/Clerk

BY: /s/ T. Abdul-Ghanee, Deputy

T. Abdul-Ghanee

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Proof of Service
Clerk's Certificate of Service

APPENDIX D

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SANTA CLARA

CASE # 167658

TITLE:

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JOHN KEVIN WOODWARD,
Defendant.

DATE: AUGUST 7, 1996
HON. LAWRENCE F. TERRY
REPORTER: MARIE SUGINO
CLERK: INGRID STEWART
BAILIFF: CHUCK McCOY
COUNSEL PRESENT:

RANDY HEY, DEPUTY D.A.

GREG PARASKOU, DEPUTY P.D.

TYPE OF PROCEEDING: POST TRIAL HEARING CONTINUED FROM 7/22/96

In open court at 9:49A.M. with above-named counsel and defendant present.

The Court reads the written decision into the record dismissing this case pursuant to Penal Code Section 1385 based on insufficient evidence. The written decision is ordered filed and defendant's bail is ordered exonerated.

Court stands in recess.

APPENDIX E

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

[FILED: Aug-7 1996]

Case No. 167658

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JOHN KEVIN WOODWARD

Defendant.

ORDER

California Penal Code section 1385, subdivision (a), provides:

> The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reason for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

The term "furtherance of justice" was discussed in *People v. Bracey* (1994) 21 Cal.App.4th 1532. The court stated that the term requires the trial court to consider both the constitutional rights of the defendant and interests of society represented by the people. (*Bracey*

at 1541). "At the very least, the reason for dismissal must be that which would motivate a reasonable judge." (*Mannes v. Gillespie* 967 F.2d 1310, 1314 (9th Cir. 1992)). A dismissal not made in furtherance of justice is an abuse of discretion that requires reversal. (*Bracey* at 1541).

In *People v. Andrade* (1978) 150 C.A.3d 963, the court discussed some of the factors to be considered by the trial court in determining whether to dismiss the charge in furtherance of justice. Among the facts to be looked at are: weight of evidence indicative of guilt or innocence, nature of crime involved, whether defendant is or has been incarcerated awaiting trial or has been sentenced in related or similar case, length of incarceration, possibility of harassment, likelihood of new or additional evidence at trial, effect on protection to society in case defendant should actually be guilty, and probability of greater incarceration upon conviction of the other offense.

The trial judge is in an excellent position to determine whether another trial would further the interest of justice. (*People v. Superior Court* (1968) 69 C.2d 491, 504). The court has had the opportunity to view the witnesses and hear the conflicting testimony. The legislature has given the trial court the power to dismiss under the broad standard of justice and justice will best be served if such discretion is recognized. (*Superior Court* at 505).

When the balance falls clearly in favor of the defendant, a trial court should exercise the powers granted to it by the legislature and grant a dismissal in the interests of justice. (*People v. Superior Court* (1968) 69 C.2d 491).

The purpose of the criminal justice process is the administration of justice for the public interest. The public interest is served when the prosecution is given full and fair opportunity to convict a defendant charged with a crime. The prosecution can't serve the public interest in the enforcement of criminal laws unless the trial court provides the prosecution with the opportunity to present the admissible evidence.

In this case the prosecution has been given two opportunities to convict the defendant and serve the public interest. In both instances the prosecution has been unable to prove the defendant guilty beyond a reasonable doubt. Both trials have resulted in hung juries, with the majority of jurors voting for acquittal. (First trial eight to four for acquittal, second trial seven to five for acquittal.) A comparison of the first trial and the second trial shows that the prosecution has presented no new evidence pointing to the defendant's guilt and there is no probability that new evidence will become available. Absent new evidence there is no likelihood that a jury would be able to convict the defendant of murder.

The evidence presented by the prosecution lacks the sufficiency needed to find the defendant guilty. While over 300 pieces of evidence were available at both trials and over 30 witnesses were called during each trial, the prosecution was not able to utilize the evidence to prove the defendant guilty beyond a reasonable doubt. The substantive quality of the evidence did not lend itself to proving the prosecution's contentions. This lack of quality meant that the prosecution was limited to very little evidence with which to try its case. With the possible exception of the fingerprints and the defendant's apparent inconsistent

statements, the vast majority of the evidence does not point to the defendant's guilt.

The defendant's fingerprints found on the victim's car were the strongest pieces of evidence presented by the prosecution. While fingerprints are usually a highly reliable way of determining who the perpetrator of a crime was, in this case the prints are of an uncertain origin and were only found on the outside of the car. The defendant's fingerprints were not found inside the car, the scene of the murder. Because of this the fingerprints lack the evidentiary strength usually attributable to them.

The prosecution also presented evidence of hair that was found in the victim's car. However, they were unable to conclusively show that the hair was the defendant's. Absent more compelling evidence that places the defendant in the car at the time of the murder, the hair evidence taken together with the fingerprint evidence is insufficient to convict the defendant of murder. Further, the defendant was never found in possession of the type of rope used in the killing, nor was he found with the victim's missing car keys or American Express card. The defendant cooperated fully with the police during questioning and also allowed them to search his car and apartment without objection. In the first trial, the tape recorded interrogation of the defendant taken in violation of his Miranda rights, was admitted into evidence by stipulation. In the second trial it was not admitted, based upon the prosecution's objection. The defendant thereafter chose to testify in the second trial. During the defendant's testimony, the prosecution was unable to cast any doubt on the defendant's veracity.

The prosecution's theory that the defendant killed the victim out of jealousy is not a credible one. There

is insufficient proof that such a jealousy existed. Further, no evidence was offered to show that such a jealousy was so great that it lead the defendant to kill the victim. In the first trial the prosecution sought to buttress its theory of motive by introduction of evidence that the defendant is gay. However, the prosecution failed to show any connection between the defendant's homosexuality and the theory of motive. The prosecution's theory concerning the defendant's motive to kill the victim was not proven by the evidence it presented.

By dismissing the charge against the defendant the court would also further the interests of justice by preventing the prosecution from honing its trial strategies and perfecting its presentation of the evidence through successive attempts at conviction. (*Tibbs . Florida* (1982) 102 S.Ct.2211, 2218)). Repeated prosecution would create a risk of conviction through sheer governmental perseverance. (*Tibbs* at 2218). The government must not risk convicting an innocent citizen by wearing down the defendant through repeated trials while it perfects its case.

The decision to dismiss the case against the defendant appears to be in the furtherance of justice. The prosecution has not met its burden of proof in two trials and absent new evidence it will be unable to do so in subsequent trials. Another trial would only serve to harass the defendant. It is reasonable to believe that society will not be endangered by this decision and the interest of justice will best be served by a dismissal.

A dismissal of this case is not meant to criticize the work done by the prosecution or deprive the victim's family of an opportunity to see their daughter's killer brought to justice. There is simply a lack of evidence on which to convict the defendant. Without new

evidence, the result of this case will be the same at each successive trial. Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty. It appears that justice would best be served if the charges were dismissed.

It is therefore the order of this Court that the case be dismissed in the furtherance of justice for insufficiency of the evidence.

DATED: August 7, 1996

/s/ Lawrence F. Terry
LAWRENCE F. TERRY
Judge of the Superior Court

APPENDIX F

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

Case No.
Sixth District Court of Appeal No. H051311

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,

Respondent;

JOHN KEVIN WOODWARD,

Real Party in Interest.

Santa Clara County Superior Court
Case No. C2200594
The Honorable Shella Deen, Superior Court Judge

REAL PARTY IN INTEREST'S
PETITION FOR REVIEW

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B. The United States Supreme Court defines an "acquittal" more broadly than *Hatch* did, and Supreme Court decisions since *Hatch* have eroded the analytical foundations of *Hatch*. 15

C. The conflict between the United States Supreme Court's broad definition of "acquittal" and the narrow definition from *Hatch* affects the outcome here and results in a violation of Mr. Woodward's federal constitutional rights. 22

II. Review is warranted because the default presumption in *Hatch* against applying double-jeopardy protections conflicts with federal law by creating a barrier to double-jeopardy protections that does not exist under federal law. 24

III. Even under *Hatch*, review is warranted to secure uniformity of decision and decide the important question of law whether a dismissal for "insufficient evidence" bars retrial on double-jeopardy grounds and whether the prosecution of Mr. Woodward violates his state and federal constitutional rights against double jeopardy. 27

A. The opinion below misapplied *Hatch* in a manner that creates a split of authority that merits this Court's review. 28

B. Review is also warranted to give trial courts guidance on which section 1385 dismissals will and will not bar retrial. 34

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

In the published concurring opinion below, Sixth District Court of Appeal Justice Cynthia C. Lie urged this Court to review whether this Court's decision in *People v. Hatch* (2000) 22 Cal.4th 260 (*Hatch*) conflicts with emergent United States Supreme Court cases applying the Fifth Amendment's Double Jeopardy Clause. Real Party in Interest John Woodward seeks review on that issue and two others:

I. When deciding whether a dismissal counts as an acquittal for purposes of the federal Double Jeopardy Clause, does this Court's narrow definition of "acquittal" from *Hatch* conflict with subsequent U.S. Supreme Court cases defining an acquittal more broadly, such as the February 2024 decision in *McElrath v. Georgia* (2024) 601 U.S. 87 (*McElrath*)?

II. Does *Hatch*'s default presumption against applying the double-jeopardy bar conflict with federal law by narrowing the scope of double-jeopardy protection and creating a barrier to its application that does not exist under federal law?

III. Did the Court of Appeal deviate from established caselaw and create a split in authority by failing to correctly apply *Hatch* when it held that a dismissal

based on "insufficient evidence" does not operate as an acquittal for purposes of double jeopardy?

REASONS FOR GRANTING REVIEW

Review is necessary to resolve a conflict between this Court's *Hatch* decision and newer decisions on the same issue from the United States Supreme Court. The opinion below is certified for publication, and Justice Cynthia C. Lie expressly called for this Court to review this issue. Review is necessary to secure uniformity of decision and to settle important questions of law under California Rules of Court, rule 8.500(b)(1).[1]

The conflict between *Hatch* and United States Supreme Court cases concerns how to define an "acquittal" for double-jeopardy purposes, and specifically how courts decide whether a trial court's order dismissing a case operates as an acquittal and bars retrial. In *Hatch*, this Court adopted a narrow definition under which a trial court's dismissal does not serve as an acquittal unless "the record clearly indicates that the trial court applied the substantial evidence standard," meaning "that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." (*Hatch, supra*, 22 Cal.4th at p. 273.) But since this Court decided *Hatch* in 2000, the United States Supreme Court issued two decisions with a much broader definition of "acquittal" for double-jeopardy purposes. Most recently, in February 2024, the Supreme Court in *McElrath* unanimously held that the relevant question for defining an acquittal is whether "the ruling's substance 'relate[s] to the ultimate question of guilt or innocence.'" (*McElrath,*

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[1] Unless otherwise specified, rule citations are to the California Rules of Court and statutory citations are to the Penal Code.

supra, 601 U.S. at p. 94, original brackets.) Unlike the rule from *Hatch*, the U.S. Supreme Court does not condition an "acquittal" on the trial court's application of the substantial evidence standard, and does not include a presumption that the dismissal is not an acquittal. In an earlier case, the United States Supreme Court even noted that although an "acquittal" includes a ruling that the evidence is legally insufficient, that is not the only kind of ruling that will constitute an acquittal—acquittals also include factual findings that necessarily establish a lack of culpability, and also "any other ruling which relates to the ultimate question of guilt or innocence." (*Evans v. Michigan* (2013) 568 U.S. 313, 319 (*Evans*), cleaned up.) As Justice Lie concluded below, since this Court issued *Hatch*, subsequent decisions from the United States Supreme Court "erode the analytical foundations" of *Hatch*, and this Court's review is warranted to secure uniformity of decision and decide this important question of law. (Conc. Opn. of Lie, J., at pp. 1, 8, quoting *People v. Lopez* (2019) 8 Cal.5th 353, 366 (*Lopez*)).

Review is warranted on another issue regarding the conflict between federal law and *Hatch*'s default presumption against applying the double-jeopardy bar. *Hatch* created a "default presumption" against applying double jeopardy to bar retrial, a presumption the defendant must overcome by showing that "the record clearly indicates the trial court applied the substantial evidence standard." (Opn. at pp. 3-4; *Hatch, supra*, 22 Cal.4th at p. 273.) This presumption conflicts with federal law. The United States Supreme Court decisions do not reference a presumption in favor of the government. The *Hatch* presumption adds an additional requirement to construing a court ruling as an "acquittal," but for purposes of federal law, state

courts are prohibited from adding any such requirements. That is because "whether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not state, law." (*McElrath, supra*, 601 U.S. at p. 96.) The *Hatch* presumption also conflicts with federal law to the extent it reviews whether a trial court, in entering an acquittal for insufficient evidence, relied on the correct legal standard for the acquittal. Federal law bars retrial following a court-decreed acquittal even when "the legal rulings underlying the acquittal were erroneous." (*Sanabria v. United States* (1978) 437 U.S. 54, 64; see also *Fong Foo v. United States* (1962) 369 U.S. 141, 143 (*Fong Foo*) [acquittal bars retrial even when the acquittal stems from erroneous legal rulings and the district court lacked the power enter judgment]; *Evans, supra*, 568 U.S. at p. 318 [acquittals bar retrial even when premised on erroneous evidentiary decision, a mistaken understanding of what evidence would suffice to convict, or a misconstruction of the statute defining the requirements to convict].) The Supreme Court in *United States v. Sisson* (1970) 399 U.S. 267, 278, 289-290, deemed a district court's post-verdict decision an acquittal for double-jeopardy purposes even though the district court had expressly made its decision based on a determination of the defendant's demeanor and credibility during his testimony. By expressly depending on a credibility finding that favored defendant, the district court necessarily failed to view the evidence in the light most favorable to the prosecution, but the Supreme Court still construed the district court's ruling as an acquittal. (*Ibid.*) Thus, review is necessary to secure uniformity of decision and decide the important question of law whether the *Hatch* presumption conflicts with federal law on the Double Jeopardy Clause.

Last, even under the standard from *Hatch*, review is warranted to secure uniformity of decision and decide an important question of law. As the Third District recently noted, *every time* a trial court dismissed a case for "insufficient evidence," courts have deemed that dismissal an acquittal that bars retrial. (*People v. Hampton* (2022) 74 Cal.App.5th 1092, 1105 (*Hampton*)). Indeed, "insufficient evidence" means insufficient as a matter of law, and the phrase "is a legal term of art" and has been for decades. (*Id.* at p. 1106.) Here, the superior court in 1996 dismissed the case "based on insufficient evidence" (Pet.Ex. 39[2]), and the superior court in 2023 held that the 1996 dismissal operated as an acquittal because it was "clear and unambiguous that the reason for the dismissal was insufficiency of the evidence." (Pet.Ex. 205:14-16.) Yet despite the express dismissal "based on insufficient evidence," the Court of Appeal declined to give the term "insufficient evidence" its settled meaning as a legal term of art. Instead, the Court of Appeal relied on the presumption that a dismissal is not an acquittal and allowed retrial, which seems to be the first time any court has allowed retrial after a dismissal for "insufficient evidence." (Opn. at pp. 24, 30.) The Court of Appeal's decision is therefore in conflict with *Hampton* and every other case holding that a dismissal for "insufficient evidence" operates as an acquittal that bars retrial. The Court of Appeal here incorrectly applied *Hatch* and issued a decision that creates a conflict in the law. This Court's review is necessary to secure uniformity of decision and decide this important question of law.

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[2] As used here, "Pet.Ex." refers to the exhibits filed in the Court of Appeal in support of the petition for writ.

STATEMENT OF THE CASE

The procedural history of this case starts in the 1990s when two jury trials for murder both ended in hung juries favoring acquittal. (Pet.Ex. 52.) After the second mistrial, Superior Court Judge Lawrence F. Terry dismissed the case for "insufficient evidence" on August 7, 1996. (Pet.Ex. 39.) Then, 25 years later in January 2022, the People filed a felony complaint again charging Mr. Woodward with the same charge of murder for which he faced trial twice in the 1990s. (Pet.Ex. 5.)

Mr. Woodward moved to dismiss on February 23, 2023, arguing that the refiled charges violated his rights against double jeopardy under the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution. (Pet.Ex. 51.) The People filed an opposition and Mr. Woodward filed a reply, and both parties filed additional briefs supporting or opposing the motion. (Pet.Ex. 71-96, 148-158, 161-169, 172-180.) The superior court held a hearing and took the motion under submission on August 10, 2023. (Pet.Ex. 183-195.)

The superior court granted the motion to dismiss on Augus 22, 2023, holding that Judge Terry's dismissal from 1996 based on "insufficient evidence" operated as an acquittal that barred retrial. (Pet.Ex. 199-211.) At the People's request, the superior court and then the Court of Appeal stayed the dismissal order pending the outcome of the writ proceeding in the Court of Appeal. (Opn. at p. 8.)

The People petitioned the Court of Appeal for a writ of mandate on August 28, 2023. After the parties filed preliminary briefing, the Court of Appeal issued an Order to Show Cause. Real Party filed a Return by

Demurrer and Verified Answer, and the People filed a Reply. The Court of Appeal heard oral argument and then, on March 14, 2024, filed its published opinion. The two-justice majority opinion issued a peremptory writ of mandate directing respondent superior court to vacate the order granting the motion to dismiss and to enter a new order denying the motion.

Justice Cynthia C. Lie filed a concurring opinion explaining that decisions of the United States Supreme Court "have eroded the analytical foundations of the rule announced in *Hatch*," and calling for this Court's review. (Conc. Opn. of Lie, J., at p. 1.) Justice Lie concurred with the majority because "adherence to *Hatch* is compelled by *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450," (Conc. Opn. of Lie, J., at p. 1), but Justice Lie added that but for the duty to follow *Hatch*, she would "conclude the section 1385 dismissal here is an acquittal that bars retrial" under federal law. (Conc. Opn. of Lie, J., at p. 8.)

STATEMENT OF FACTS

The issues in this Petition turn on the content and meaning of court records and on questions of law. There are no disputed facts at issue, and the underlying facts of the alleged offense are not relevant to the issues presented for review. Thus, there are no facts to include in a Statement of Facts.

ARGUMENT

I. Review is necessary to decide the important question of whether *Hatch* remains good law considering intervening decisions of the United States Supreme Court that erode the analytical foundations of *Hatch*.

In the concurring opinion below, Justice Lie explained that *Hatch* conflicts with United States Supreme Court decisions on the federal Double Jeopardy Clause. Justice Lie urged this Court to examine whether *Hatch*'s narrow definition of an acquittal under federal law retains any "continuing vitality" in light of intervening United States Supreme Court decisions reaffirming a broader definition of an acquittal. (Conc. Opn. of Lie, J., at p. 8.) On questions of federal law, this Court operates as an intermediate appellate court and must sometimes reevaluate its own precedent when emergent United States Supreme Court cases calls into question a prior decision of this Court. (*Lopez, supra*, 8 Cal.5th at p. 367.) The United States Supreme Court cases conflict with *Hatch*, and this Court should grant review to secure uniformity of decision and decide an important question of law.

A. *Hatch* narrowly defined an "acquittal" for federal double-jeopardy purposes and conditioned an "acquittal" on application of the substantial evidence standard.

This Court in *Hatch* decided when "the constitutional prohibitions against double jeopardy bar retrial after a dismissal under section 1385 of the Penal Code." (*Hatch, supra*, 22 Cal.4th at p. 263.) *Hatch* held that section 1385 authorizes trial courts to dismiss a case for "legal insufficiency of the evidence," and that only those types of dismissals operate as acquittals that bar retrial. (*Id.* at p. 268.) But because section 1385 also authorizes dismissals for reasons that allow retrial, the question remained how to decide whether a particular dismissal barred or allowed retrial.

This Court answered that question by adopting a narrow definition of an acquittal. *Hatch* held that a section 1385 dismissal "should not be construed as an

acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard." (*Hatch, supra*, 22 Cal.4th at p. 273.) Thus, "the record must show that the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." (*Ibid.*) Absent that showing, *Hatch* requires courts to "assume the [dismissing] court did *not* intend to dismiss for legal insufficiency and foreclose prosecution." (*Ibid.*, original italics.) *Hatch* clarified that this rule does not impose any "rigid limitations" on the language trial courts may use and even confirmed that courts "need not restate the substantial evidence standard[.]" (*Ibid.*) Instead, courts need to "to make their rulings clear enough for reviewing courts to confidently conclude they viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Ibid.*)

Thus, under *Hatch*'s narrow definition, an "acquittal" necessarily requires application of the substantial evidence standard. The *Hatch* rule bars "retrial *only when* a trial court clearly makes a finding of legal insufficiency[.]" (*Hatch, supra*, 22 Cal.4th at p. 274, italics added.) And *Hatch* created a presumption that reviewing courts first "assume" that the dismissing court did not dismiss for legal insufficiency. (*Id.* at p. 273.) To overcome the presumption, the record must clearly show that the dismissing court applied the substantial evidence standard. (*Ibid.*)

B. The United States Supreme Court defines an "acquittal" more broadly than *Hatch* did, and Supreme Court decisions since *Hatch* have eroded the analytical foundations of *Hatch*.

As Justice Lie reasoned in the opinion below, the United States Supreme Court has issued two decisions since *Hatch* that call *Hatch*'s foundation into question. First, in 2013, the Court decided *Evans v. Michigan, supra*, 568 U.S. 313, and distinguished between procedural dismissals (which allow retrial) and substantive dismissals (which bar retrial under the Double Jeopardy Clause). Procedural dismissals "include rulings on questions that 'are unrelated to factual guilt or innocence,'" such as an error with the indictment. (*Id.* at p. 319, quoting *United States v. Scott* (1978) 437 U.S. 82, 98 (*Scott*).) Substantive dismissals, on the other hand, are acquittals and "encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." (*Id.* at p. 318.) Thus, an "acquittal" includes a ruling by the court that the evidence is insufficient to convict, but it also includes other circumstances, such as "a factual finding that necessarily establishes the criminal defendant's lack of criminal culpability, and any other ruling which relates to the ultimate question of guilt or innocence." (*Id.* at p. 319, cleaned up.)

Importantly, *Evans* rejected the government's argument that an acquittal necessarily requires a finding that there was a failure of proof on an element of the offense. The government argued, "only if an actual element of the offense is resolved can it be said that there has been an acquittal of the offense[.]" (*Evans, supra*, 568 U.S. at p. 323.) *Evans* deemed that proposition too narrow, explaining that the touchstone of whether a judicial decision acts as an "acquittal"

depends on whether it relates to the defendant's "lack of criminal culpability," and "not whether any particular elements were resolved or whether the determination of nonculpability was legally correct." (*Id.* at pp. 323-324.)

That rule and analysis from *Evans* conflicts with this Court's rule from *Hatch*. While *Evans* established that the touchstone of an acquittal is "not whether any particular elements were resolved" (*Evans, supra*, 568 U.S. at p. 323-324), the *Hatch* standard for an acquittal always requires a decision on whether particular elements were resolved. It requires a decision on particular elements because that is an inherent part of the substantial evidence test. Specifically, the substantial evidence standard asks "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have *found the essential elements of the crime* beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, second italics added). Thus, *Hatch* says a dismissal is not an acquittal unless the dismissing judge resolves an element of the crime by applying the substantial evidence standard. But that was precisely the government's argument in *Evans* that the Supreme Court rejected. (*Evans, supra*, 568 U.S. at p. 323.) This aspect of *Evans* erodes the analytical foundations of *Hatch* and calls for this Court's review.

The Supreme Court's second decision is more recent, from February 2024 in *McElrath v. Georgia, supra*, 601 U.S. 87, and expressly asked the question, "What, then, is an acquittal?" (*Id.* at p. 94.) The Court first noted that the substance of the ruling controls, rather than the label assigned to the ruling. (*Ibid.*) "In particular, we look to whether the ruling's substance 'relate[s] to the ultimate question of guilt or innocence.'" (*Ibid.*, quoting *Scott, supra*, 437 U.S. at p. 98 fn. 11.) Notably

absent from *McElrath*'s discussion is any requirement to apply the substantial evidence standard.

The federal Double Jeopardy Clause can bar further proceedings even if the judge certainly did not apply the substantial evidence standard. In *Fong Foo v. United States, supra*, 369 U.S. 141, a federal district court interrupted trial due to concerns about potential misconduct by the prosecutor and about the lack of credibility of the government's witnesses who had testified so far (the government had not yet rested). (*Id.* at p. 142.) Because of one or both of those concerns, the district judge directed the jury to return verdicts of acquittal and then the judge entered a judgment of acquittal. (*Ibid.*) The Supreme Court decision does not detail all the facts, but the First Circuit's opinion reveals that immediately after the judge directed the jury to return verdicts of acquittal, the judge told the defendants, "You have been acquitted by direction of the Court and by the Court." (*In re United States* (1st Cir. 1961) 286 F.2d 556, 560, revd. *sub nom Fong Foo*, at p. 143.) The next day, a written judgment was entered and noted that the acquittal was based on each defendant's motion for acquittal. (*Id.* at p. 560 fn. 3.) Neither the First Circuit nor the Supreme Court opinion indicates that the jury actually returned a verdict of any kind. The First Circuit granted the government's petition for writ of mandamus, reasoning that the district court was without power to enter the judgment of acquittal, so the judgment was void and would not bar retrial on double jeopardy grounds. (*Id.* at pp. 564 565.) The Supreme Court reversed and held that the district court's judgment, even if "based upon an egregiously erroneous foundation," could not be reviewed without putting defendants twice in jeopardy, in violation of their constitutional rights. (*Fong Foo*, at p. 143.)

Thus, *Fong Foo* establishes that a decision by a court (not a jury) can bar retrial under the Double Jeopardy Clause even when the court never applies the substantial evidence standard. The court in *Fong Foo* entered judgment for defendants based on a concern about improper conduct by the prosecutor, or about witness credibility, or both—but certainly not because the evidence was insufficient as a matter of law after viewing the evidence in the light most favorable to the prosecution. (*Fong Foo, supra*, 369 U.S. at p. 142.) This case shows that *Hatch* is narrower than the federal rule. *Fong Foo* held that double jeopardy barred further proceedings, but *Hatch*'s rule would lead to the opposite outcome because the record conclusively established the absence of the substantial evidence standard.

The United States Supreme Court's broad standard for assessing an "acquittal" for double-jeopardy purposes conflicts with the narrow standard from *Hatch*. *Hatch* conditions a finding of acquittal on application of the substantial evidence standard. The United States Supreme Court does not. Instead, under that Court's decisions, the question is simply whether the dismissal "relates to the ultimate question of guilt or innocence." (*McElrath, supra*, 601 U.S. at p. 94, cleaned up.) The United States Supreme Court has even clarified that an "acquittal" includes a finding of insufficient evidence and also includes "*any other* ruling which relates to the ultimate question of guilt or innocence." (*Evans, supra*, 568 U.S. at 319, italics added, cleaned up.)

As Justice Lie reasoned in the opinion below, *Hatch*'s rule flows from *Tibbs v. Florida* (1982) 457 U.S. 31 (*Tibbs*), (Conc. Opn. of Lie, J., at p. 4 ["the *Hatch* court extrapolated from *Tibbs*"]), but *Tibbs* concerns a

"distinct strand of Double Jeopardy jurisprudence focused not on acquittals but on convictions and on the assent to retrial . . . presumed by a convicted defendant's appeal." (*Id.* at p. 5.) The defendant in *Tibbs* was convicted by a jury, but the Florida Supreme Court granted a new trial based on the weight of the evidence. (*Tibbs, supra*, 457 U.S. at pp. 36-38.) At the time, a Florida Appellate Rule allowed the appellate court to review the evidence to decide if the interests of justice required a new trial, "whether the insufficiency of the evidence is a ground of appeal or not." (*Id.* at p. 36 fn. 8.) On remand, the trial court dismissed the indictment on grounds that retrial would violate the federal Double Jeopardy Clause. (*Id.* at p. 38.) But on appeal from that dismissal, the Florida Supreme Court disagreed and ruled that retrial was allowed because its own prior decision granting a new trial was based on the weight of the evidence, not based on its legal insufficiency. (*Id.* at p. 39.) The United States Supreme Court affirmed, based on the longstanding rule that a criminal defendant who successfully appeals a judgment against him may be tried again without offending double jeopardy. (*Id.* at pp. 39-40.) The "narrow exception" to that rule bars retrial when a reviewing court finds the evidence legally insufficient to support the conviction. (*Id.* at p. 40.) The Florida Supreme Court's decision granting a new trial did not fit that narrow exception because the Florida court's decision turned on the weight of the evidence, not on its legal insufficiency (the evidence "clearly" was constitutionally sufficient to uphold a conviction). (*Id.* at pp. 38, 45 fn. 21.) Importantly, *Tibbs* explained that a reversal based on the weight of the evidence—which allows retrial—"can occur *only after* the State both has presented sufficient evidence to support conviction and has persuaded the jury to convict." (*Id.* at pp. 42-

43, italics added.) Here, in contrast, there is no jury verdict that could be against the weight of the evidence, and the State never persuaded any jury to convict. Because there has never been a jury verdict in this case, *Tibbs* is inapplicable, as Justice Lie reasoned below. (Conc. Opn. of Lie, J., at p. 5.) At least in cases like this, where there has not been any verdict of conviction, *Hatch* conflicts with the United States Supreme Court's definition of an acquittal.

The gap between the federal rule and *Hatch* is apparent from the Ninth Circuit's decision in *Mannes v. Gillespie* (9th Cir. 1992) 967 F.2d 1310, 1315-1316 (*Mannes*), decided four years before Judge Terry dismissed this case. *Mannes* held that the federal Double Jeopardy Clause barred retrial after a California trial judge dismissed a case under section 1385 for "insufficient evidence." (*Ibid.*) *Mannes* described "insufficient evidence" as a term of art with an accepted meaning of insufficient as a matter of law, and thus retrial was barred under the Double Jeopardy Clause. (*Ibid.*) Although federal law barred retrial in *Mannes*, the outcome might differ under the state-law decision in *Hatch*. The trial court in *Mannes* did not expressly apply the substantial evidence standard or state that it viewed the evidence in the light most favorable to the prosecution. Thus, federal law under *Mannes* barred retrial, but *Hatch* might lead to a different outcome if a judge found (as the Court of Appeal did in Mr. Woodward's case) that using the term of art "insufficient evidence" fails to satisfy *Hatch*'s rule for when retrial is barred.

In sum, the United States Supreme Court cases on the federal Double Jeopardy Clause conflict with the narrow, strict rule from *Hatch*. Whereas *Hatch* says application of the substantial evidence standard is

necessary for an acquittal, the Supreme Court does not. To the contrary, the Supreme Court expressly reasoned in *Evans* that although one form of an "acquittal" is a ruling of legal insufficiency, an "acquittal" for double-jeopardy purposes also includes "any other ruling which relates to the ultimate question of guilt or innocence." (*Evans, supra*, 568 U.S. at p. 319, cleaned up.) *Hatch* conflicts with United States Supreme Court decisions on the federal Double Jeopardy Clause, and this Court should grant review to secure uniformity of decision and decide an important question of law.

C. The conflict between the United States Supreme Court's broad definition of "acquittal" and the narrow definition from *Hatch* affects the outcome here and results in a violation of Mr. Woodward's federal constitutional rights.

If this Court resolves the conflict and holds that *Hatch* does not accurately define an acquittal under the federal Constitution, then Mr. Woodward has already been acquitted and any retrial will violate his constitutional rights.

Judge Terry's dismissal order in 1996 operates as an acquittal under federal law even if Judge Terry failed to conform to the state-law standard established four years later by *Hatch*. The dismissal is an acquittal under federal law because the substance of Judge Terry's dismissal "relates to the ultimate question of guilt or innocence." (See *McElrath, supra*, 601 U.S. at p. 94, cleaned up.) In Judge Terry's recitation of the governing law, he noted a duty to consider the "evidence indicative of guilt or innocence." (Pet.Ex. 42:9-10.) After reciting the governing law for nearly two pages, the very first paragraph specific to Mr.

Woodward's case discussed that the prosecution "has been unable to prove the defendant guilty beyond a reasonable doubt" at two trials, with both juries favoring acquittal. (Pet.Ex. 43:7-11.) Judge Terry noted that with two possible exceptions, "the vast majority of the evidence does not point to the defendant's guilt." (Pet.Ex. 43:25-27.) Multiple times, Judge Terry called the evidence "insufficient" or a variation of that term. (Pet.Ex. 43:17-18, 44:12-13, 44:26-27, 45:26, 46:4-5.) In short, Judge Terry's dismissal at the very least "relates to the ultimate question of guilt or innocence," so it is an acquittal under United States Supreme Court law even if it fails to meet the *Hatch* standard. (*McElrath, supra*, 601 U.S. at p. 94, cleaned up.)

In the concurring opinion below, Justice Lie agreed that Judge Terry's dismissal "is an acquittal as defined by the United States Supreme Court." (Conc. Opn. of Lie, J., at p. 6.) If Justice Lie is correct, then Mr. Woodward's federal constitutional protection against double jeopardy prohibits any future trial and the case must be dismissed. Thus, this Petition presents an important question of law with broad application, but review is also warranted because the issue is dispositive here.

II. Review is warranted because the default presumption in *Hatch* against applying double-jeopardy protections conflicts with federal law by creating a barrier to double-jeopardy protections that does not exist under federal law.

This Court in *Hatch* created a default presumption in favor of the government and against applying double-jeopardy protection. The majority below called it a "default presumption" that a dismissal does not bar retrial "absent clear evidence to the contrary."

(Opn. at p. 24.) Justice Lie characterized this presumption as an "innovation of *Hatch* . . . to presumptively authorize retrial after a section 1385 acquittal when the prosecution at trial had failed to secure a conviction." (Conc. Opn. of Lie, J., at pp. 3-4.) This presumption narrows the federal protection against double jeopardy by adding a burden California defendants must meet before they can invoke the federal double-jeopardy protection. Review is necessary to decide the important question of whether the *Hatch* default presumption conflicts with federal law.

Hatch wrote that courts will "assume" a dismissal under section 1385 does not bar retrial absent a showing that the dismissing court applied the substantial evidence standard. (*Hatch, supra*, 22 Cal.4th at p. 273.) This "default presumption" operates in the government's favor and allows retrial "absent clear evidence to the contrary[.]" (Opn. at p. 24.) To overcome the default presumption, *Hatch* requires defendants to show that "the record clearly indicates" application of the substantial evidence standard, such that a reviewing court can "confidently conclude" the dismissing court applied that standard. (*Hatch*, at p. 273.)

Hatch's requirement for defendants to show clearly that the dismissing court applied the substantial evidence standard conflicts with federal law. It adds a requirement to the definition of an acquittal for double-jeopardy purposes; namely, a trial court's acquittal will not be construed as an acquittal unless "the record clearly indicates" the correct application of the substantia evidence standard. (*Hatch, supra*, 22 Cal.4th at p. 273.) But state courts cannot add any requirement to the definition of an acquittal because "whether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not

state, law." (*McElrath, supra*, 601 U.S. at p. 96.) Thus, unless *federal law* creates this presumption, state courts cannot add a presumption that increases the defendant's burden. Whether the *Hatch* presumption conflicts with federal law is an important question of law warranting this Court's review.

The default presumption also conflicts with federal law by tilting the legal standard in the government's favor. A trial court's dismissal will not operate as an acquittal unless the reviewing court can "confidently conclude [the dismissing court] viewed the evidence in the light most favorable to the prosecution and found that no reasonable trier of fact could convict." (*Hatch, supra*, 22 Cal.4th at p. 273.) In creating this default presumption, *Hatch* did not cite any federal case applying a similar presumption (see *ibid.*), nor could petitioner's counsel find such a case.

Although some federal cases put a minimal burden on a defendant to meet a slight threshold before double jeopardy will bar retrial, those cases then require the government to prove that retrial is allowed. These cases apply a burden-shifting approach where defendants need only show that the claim of double jeopardy is "non-frivolous," and then the government must prove by a preponderance that double jeopardy does not bar retrial. (See, e.g., *United States v. Rigas* (3d Cir. 2010) 605 F.3d 194, 203-204; *United States v. Bennett* (8th Cir. 1995) 44 F.3d 1364, 1368; *United States v. Jones* (4th Cir. 2017) 858 F.3d 221, 225.) That burden-shifting approach applies when a defendant has formerly been convicted of an offense and then argues that a second prosecution violates double jeopardy. Compared to that minimal requirement to show a "non-frivolous" claim of double jeopardy, the *Hatch* default presumption burdens defendants with making

a much more difficult showing before receiving the benefit of their federal constitutional rights against double jeopardy.

Moreover, the *Hatch* presumption exempts one type of legal error—an error regarding the standard for holding the evidence to be insufficient—from the rule that an acquittal bars retrial even if the acquittal is factually erroneous or based on a mistake of law. The United States Supreme Court has broadly applied the principle that any acquittal bars retrial, "even if the acquittal is 'based upon an egregiously erroneous foundation.'" (*Evans, supra*, 568 U.S. at p. 318, quoting *Fong Foo, supra*, 369 U.S. at p. 143.) The *Hatch* presumption conflicts with that principle because it not only allows retrial if the acquittal is based upon an erroneous foundation (failing to apply the substantial evidence standard, or failing to apply it correctly), it allows retrial unless the record clearly demonstrates *the correctness* of the acquittal. Thus, *Hatch* conflicts with federal law by allowing retrial when the record establishes an erroneous acquittal or when the record is merely silent.

In sum, this Court should also grant review to secure uniformity of decision between the federal caselaw on one hand, and *Hatch* and the opinion below on the other. The Court should decide the important question of whether federal law allows a default presumption in the government's favor when deciding what constitutes an "acquittal."

III. Even under *Hatch*, review is warranted to secure uniformity of decision and decide the important question of law whether a dismissal for "insufficient evidence" bars retrial on double-jeopardy grounds and whether the prosecution of Mr. Woodward violates his state and federal constitutional rights against double jeopardy.

Even assuming the continuing vitality of *Hatch* and the absence of any conflict between *Hatch* and the United States Supreme Court cases, review is still warranted under rule 8.500(b) to secure uniformity of decision and settle an important question of law.

A. The opinion below misapplied *Hatch* in a manner that creates a split of authority that merits this Court's review.

For decades, the term "insufficient evidence" has been understood as a legal term of art that means insufficient as a matter of law absent clear indications to the contrary. Just two years ago, the Third District Court of Appeal explained that it could not find (and the State did not cite) a single case in which a trial court used the words "insufficient evidence" in its dismissal and the dismissal was not found to be an acquittal. (*Hampton, supra*, 74 Cal.App.5th at p. 1092.) Other cases are in accord and treat "insufficient evidence" as a term of art meaning insufficient as a matter of law. (See, e.g., *People v. Salgado* (2001) 88 Cal.App.4th 5, 10; *Mannes, supra*, 967 F.2d 1310 at pp. 1315-1316 [California trial court's dismissal for "insufficient evidence" was an acquittal under federal law and barred retrial]; *People v. Pedroza* (2014) 231 Cal.App.4th 635, 642; *Delap v. Dugger* (11th Cir. 1989) 890 F.2d 285, 310.)

Here, the minute order on which Judge Terry was required to state the reason for the dismissal states the case is dismissed for "insufficient evidence." (Pet.Ex. 39.) In the written order filed with the minute order, Judge Terry repeatedly called the evidence "insufficient" or lacking the "sufficiency" needed to convict. (Pet.Ex. 43:18, 44:13, 44:26, 45:4-6 [the prosecution's theory "was not proven"], 45:25-26 ["lack of evidence"], 46:4-5.) And Judge Terry knew that using the term "insufficient evidence" would bar retrial because that was the holding from th Ninth Circuit's decision in *Mannes*, and Judge Terry cited *Mannes* in the written decision dismissing the case. (Pet.Ex. 42.) The opinion below correctly noted that *Mannes* is not binding on California courts (Opn. at p. 29), but Judge Terry's discussion of *Mannes* is highly probative for a different reason. *Mannes* held that a California trial court's section 1385 dismissal for "insufficient evidence" operated as an acquittal and barred retrial under federal law—Judge Terry knew of that holding and chose to dismiss for the precise same reason. Judge Terry's citation of *Mannes* reinforces the notion that Judge Terry understood the usual term-of-art meaning of "insufficient evidence" and must have expected and intended that his use of that term to bar retrial. Importantly, *Mannes* held that double jeopardy barred retrial even though the California court, when it dismissed for "insufficient evidence" also noted that "[t]here is no likelihood that a retrial on these charges will result in a unanimous verdict of guilty of murder." (*Mannes, supra*, 967 F.2d at p. 1314.) Judg Terry included almost the same phrasing in the dismissal order, noting, "Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty." (Pet.Ex. 45-46.) The opinion below cited that sentence as a reason *not to* apply a double-jeopardy bar

(Opn. at p. 27), but Judge Terry would have expected that including this sentence would lead to the same outcome as in *Mannes*. Respondent court correctly interpreted the 1996 dismissal as an acquittal, as the dismissal was "clear and unambiguous that the reason for the dismissal was insufficiency of the evidence." (Pet.Ex. 205.)

But the Court of Appeal deviated from the settled law treating "insufficient evidence" as a term of art and instead allowed retrial despite the dismissal for insufficient evidence. The opinion in this case thus stands in conflict with, for instance, the Third District's opinion in *Hampton* noting that in every case in which a court used the term "insufficient evidence," the dismissal was found to be an acquittal. (*Hampton, supra*, 74 Cal.App.5th at p. 1105.) Similarly, the opinion below conflicts with the Second District's decision in *People v. Johnston* (2003) 113 Cal.App.4th 1299, 1309-1310 (*Johnston*). In *Johnston*, a trial court used the term "insufficient evidence" when reducing a murder conviction to manslaughter, and the Second District held that reduction to be based on insufficient evidence as a matter of law even though the trial court also referred to "weighing" and "reweighing" evidence. (*Ibid.* [the trial court's ruling was "as a matter of law" that the evidence did not support second degree murder, even though the Court of Appeal disagreed with the trial court's ruling].) Here, in contrast, the opinion below reasoned that retrial was allowed despite the use of the term "insufficient evidence" because Judge Terry's reasoning from 1996 suggested that he independently weighed the evidence. (Opn. at pp. 24-25.) The conflict between earlier opinions and the Court of Appeal's opinion in this case warrants review to provide guidance to the trial courts and

secure uniformity of decision regarding the application of the *Hatch* standard.

The opinion below also failed to give "insufficient evidence" its settled meaning based on reasoning from *Hatch*, a decision that did not exist at the time of the 1996 dismissal. As respondent court noted, "the trial court [in 1996] could not be expected to expressly invoke the substantial evidence standard without *Hatch*'s guidance," which would not come until four years later in 2000. (Pet.Ex. 210:25-28.) Instead, the trial court in 1996 had the benefit of *Mannes* and other cases treating "insufficient evidence" as a term of art that barred retrial and selected that precise term of art as the *only* basis for the dismissal documented in the minutes. (Pet.Ex. 39.) In *Hatch*, this Court held that the dismissal was not an acquittal because the trial court appeared to have reweighed the evidence instead of applying the substantial evidence standard, but this Court also found it meaningful that the trial court *had not* used the term "insufficient evidence." (*Hatch, supra*, 22 Cal.4th at p. 276.)

The opinion below misapplied *Hatch* in its treatment of Judge Terry's 1996 citation to and discussion of the United States Supreme Court's decision in *Tibbs*. *Tibbs* distinguished two types of dismissals: (1) those based on legally insufficient evidence and (2) those in which a court sits as a 13th juror and decides that the jury's "guilty verdict is against the weight of the evidence." (*Tibbs, supra*, 457 U.S. at p. 42.) In explaining why the former type of dismissal bars retrial under the Double Jeopardy Clause, *Tibbs* explained that "the core of the Clause's protections" is the prevention of letting the State "hon[e] its trial strategies and perfect[ ] its evidence through successive attempts at conviction. Repeated prosecutorial sallies would

unfairly burden the defendant and create a risk of conviction through sheer governmental perseverance." (*Id.* at p. 41.) Judge Terry cited that portion of *Tibbs* nearly verbatim in the written dismissal order in this case. (See Pet.Ex. 56-57 [comparing *Tibbs* and the 1996 order].) That is the *only* part of *Tibbs* that Judge Terry cited. The fact Judge Terry cited the precise page of *Tibbs* explaining why the Double Jeopardy Clause bars retrial after a finding of legally insufficient evidence, and quoted that part of *Tibbs* nearly verbatim, reveals Judge Terry's intent to dismiss for legally insufficient evidence. In short, Judge Terry used the term "insufficient evidence" and quoted the United States Supreme Court's language explaining why such a dismissal bars retrial. This aspect of Judge Terry's dismissal makes it "clear enough" under *Hatch* to conclude that Judge Terry dismissed for legally insufficient evidence. (*Hatch, supra*, 22 Cal.4th at p. 273.)

The opinion below, however, misconstrued the citation and near-verbatim quotation of *Tibbs*. The opinion noted that Judge Terry mentioned "only those passages in *Tibbs* that discuss the risks of repeated prosecution," and reasoned that those references equally indicated a dismissal that is *not* an acquittal and would allow retrial. (Opn. at p. 31.) That reasoning ignores the plain text of *Tibbs*, as Judge Terry cited from the portion of *Tibbs* explaining the "principle that '[t]he Double Jeopardy Clause *forbids a second trial*[.]'" (*Tibbs, supra*, 457 U.S. at p. 41, italics added, original brackets.) Contrary to reasoning of the opinion below, invoking the federal rule that "forbids a second trial" does not "equally support a decision" that allows a second trial (or here, a third trial). (Opn. at p. 31.) Even under *Hatch*, Judge Terry's 1996 dismissal was "clear enough" to bar retrial under the Double Jeopardy Clause. (*Hatch, supra*, 22 Cal.4th at p. 273.)

Judge Terry's dismissal order must be considered in the pre-*Hatch* context, as Judge Terry dismissed the case four years before this Court in *Hatch* asked trial courts to clearly demonstrate their application of the substantial evidence standard. Even though Judge Terry did not expressly cite the substantial evidence standard, the record is "clear enough" under *Hatch* to conclude that he did so. He cited *Mannes*, which held that double jeopardy barred retrial. He cited *Tibbs*'s explanation for why double jeopardy barred retrial. He used the "insufficient evidence" term of art. This pre-*Hatch* record "clearly show[s] an intent by the trial court to dismiss for legal insufficiency of the evidence." (*Hatch, supra*, 22 Cal.4th at p. 274.) Although *Hatch* held there are no "magic words" a court must state to dismiss for insufficient evidence (*id.* at p. 273), the opinion below has the effect of requiring the use of magic words about applying the substantial evidence test to fit within *Hatch*'s rule. This outcome is especially troubling because the opinion applies *Hatch*'s clear-record rule retroactively to a decision issued when Judge Terry had no way of knowing it had to make the record even more clear than it did. (*Hicks v. Oklahoma* (1980) 447 U.S. 343 [denial of due process under the Fourteenth Amendment when a state arbitrarily denies a liberty interest by applying a state procedural rule].)

Review is also warranted to settle an important question of law regarding whether the federal and state constitutional rights against being twice put in jeopardy prohibit another trial against Mr. Woodward. The People had two chances to persuade a jury to convict and failed both times, with the juries favoring acquittal by votes of 8-4 and 7-5. (Opn. at 3.) The judge who presided over those trials dismissed the case for "insufficient evidence," and then respondent court in 2023 held that retrial was barred under double-

jeopardy grounds and the rule from *Hatch*. (Pet.Ex. 199-211.) One justice below concluded that retrial is barred under the federal Double Jeopardy Clause and would have upheld the trial court's ruling but for a duty to follow *Hatch*. (Conc. Opn. of Lie, J., at p. 8.) This Court should grant review to the decide the important question of law asking whether Mr. Woodward's state and federal constitutional rights against being twice put in jeopardy prohibit retrial and require dismissing the current charge.

B. Review is also warranted to give trial courts guidance on which section 1385 dismissals will and will not bar retrial.

At the very least, the tension between the *Hatch* definition of "acquittal" and the broader definition by the United States Supreme Court creates uncertainty for trial courts. Justice Lie's concerns illustrate the point, as she reasoned that the 1996 dismissal was not an acquittal under *Hatch* but should bar retrial as an acquittal under federal law. Trial judges throughout California who read Justice Lie's published concurring opinion will reasonably question whether a dismissal that allows retrial under *Hatch* might bar retrial under some other constitutional standard. The status quo creates uncertainty and invites litigation.

In *Hatch*, this Court intended to give guidance to trial courts on how to frame section 1385 dismissals, as this Court "merely ask[ed] trial courts to make their rulings clear enough for reviewing courts to confidently conclude they" applied the substantial evidence standard. (*Hatch, supra*, 22 Cal.4th at p. 273.) That rule from *Hatch* seems easy to follow, as a judge need only state the substantial evidence standard or leave a record "clear enough" to conclude that the judge applied that standard. (*Ibid.*) But at the same time,

section 1385 requires courts to expressly consider factors that create ambiguity about the court's intent and whether retrial would be barred. For instance, when dismissing under section 1385, courts must consider "the *weight* of the evidence indicative of guilt or innocence[.]" (*People v. Andrade* (1978) 86 Cal.App.3d 963, 976 (*Andrade*), italics added.) In the opinion below, the Court of Appeal reasoned that Judge Terry's consideration of required factors under section 1385 "inject[ed] ambiguity into the record as to the intended basis for the section 1385 dismissal." (Opn. at p. 30.) Thus, merely doing what *Andrade* requires can create unnecessary ambiguity.

Review will provide trial courts with necessary guidance. Part of the reason for the apparent ambiguity is that section 1385 allows for dismissals in furtherance of justice, which is a term that has been used to distinguish dismissals for legally insufficient evidence from other dismissals. But the only vehicle for a dismissal for legally insufficient evidence after the case is submitted to the jury is section 1385, so the confusion and ambiguity is inherent in the statutory scheme. (See § 1118.1 [allowing court to enter judgment of acquittal but only "before the case is submitted to the jury for decision"].) *Hatch* asks trial courts to only be "clear enough" for reviewing courts to confidently conclude that they viewed the evidence in the light most favorable to the prosecution. (*Hatch, supra*, 22 Cal.4th at p. 273.) But that requirement conflicts with the concurrent duty under section 1385 to consider the "weight of the evidence[.]" (*Andrade, supra*, 86 Cal.App.3d at p. 976.) If a trial court complies with both those duties—to simultaneously *weigh* evidence and also view it in the best light for the prosecution—the result may be ambiguous. An ambiguous result will create confusion and litigation

and frustrate one of *Hatch*'s stated goals of "reduc[ing] the likelihood of future confusion over the effect of a section 1385 dismissal[.]" (*Hatch*, at p. 274.)

This Court's guidance would also help trial courts that want to dismiss a case in the interest of justice even though the evidence satisfies the substantial evidence standard. Those trial courts could disclaim any application of the substantial evidence standard (so under *Hatch*, retrial would be allowed) and dismiss for another reason. But if the other reason "relates to the ultimate question of guilt or innocence," then under federal law the dismissal should be deemed an acquittal that bars retrial. (*McElrath, supra*, 601 U.S. at p. 94, cleaned up.) In other words, the tension between *Hatch* and United States Supreme Court cases creates a gray area where trial courts are uncertain of the consequences of their dismissals *even if* they expressly disclaim any application of the substantial evidence standard.

This Court can resolve the tension and provide guidance to trial courts for when a dismissal will bar or allow retrial. For instance, if this Court holds, in accordance with the federal cases, that a dismissal will bar retrial if it "relates to the ultimate question of guilt or innocence" (*McElrath, supra*, 601 U.S. at p. 94, cleaned up), then trial courts will understand the legal effect of their dismissal orders. With a clear understanding of which dismissals allow or bar retrial, courts can phrase their dismissals so the effect is clear, reducing the chance of ambiguity that creates litigation. This Court's guidance is necessary to resolve the important question of law and allow trial courts to know the consequences of their section 1385 dismissals.

CONCLUSION

For the foregoing reasons, Mr. Woodward respectfully asks this Court to grant review.

Dated: April 22, 2024

Respectfully submitted,

/s/ Daniel L. Barton
DANIEL L. BARTON
Attorney for Real Party in Interest
John Kevin Woodward

CERTIFICATE OF WORD COUNT

I certify that this Petition contains 8,150 words as calculated by Microsoft Word. This does not exceed the maximum word count of 8,400 allowed by California Rules of Court, rule 8.504(d).

Dated: April 22, 2024

/s/ Daniel L. Barton
Attorney for Appellant

PROOF OF SERVICE

People v. Superior Court (Woodward), Sixth District Case No. H051311

I am over 18 years of age and not a party to this action. I am employed in Santa Clara County and my business address is 600 University Avenue, Palo Alto, CA, 94301. My electronic service address is jgardella@nbo.law. On the date set forth below, I e-served via TrueFiling a true copy of the foregoing REAL PARTY IN INTEREST'S PETITION FOR REVIEW as follows:

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

Dated: April 23, 2024

/s/ Jill Gardella
JILL GARDELLA