No. 24-227

In the Supreme Court of the United States

JOHN KEVIN WOODWARD,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL, SIXTH DISTRICT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

California law provides several statutory procedures by which a trial court can dismiss a criminal charge. Under Penal Code Section 1118.1, for example, a trial court can dismiss a criminal charge only if the court deems the evidence legally insufficient to support a conviction, meaning that no reasonable juror could vote to convict even when viewing the evidence in the light most favorable to the prosecution. Under Penal Code Section 1385, by contrast, a trial court may dismiss a charge for a range of reasons, so long as the dismissal is "in furtherance of justice." The question presented is:

Whether the California Court of Appeal erred when it reviewed the record and held that the trial court's dismissal of a criminal charge under Section 1385 did not constitute an "acquittal" for purposes of the Double Jeopardy Clause of the Fifth Amendment.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

COURT RULES

STATEMENT

1. Several provisions of California law authorize trial courts to dismiss a criminal charge. California Penal Code Section 1118.1, for example, authorizes a court—"at the close of the evidence . . . and before the case is submitted to the jury"—to enter "a judgment of acquittal of one or more of the offenses charged" if the evidence is insufficient to support a verdict of guilty as a matter of law. The standard governing whether evidence is legally insufficient is sometimes called the "substantial evidence" standard. *See People v. Trevino*, 39 Cal. 3d 667, 695 (1985), *disapproved in part on other grounds by People v. Johnson*, 47 Cal. 3d 1194 (1989). That standard tracks the standard described in *Jackson v. Virginia*, 443 U.S. 307 (1979): California courts "'view[] the evidence in the light most favorable to the prosecution'" and determine whether "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Trevino*, 39 Cal. 3d at 695 (quoting *Jackson*, 443 U.S. at 318-319).

In contrast, Penal Code Section 1385 provides trial courts general discretion to dismiss a case "in furtherance of justice."[1] A range of circumstances can support a dismissal under that "broad" standard. *People v. Tirado*, 12 Cal. 5th 688, 696 (2022). One is that the evidence presented by the prosecution is insufficient as a matter of law (which would also support a Section 1118.1 dismissal). *See Wheeler v. App. Div. of Super. Ct.*, 15 Cal. 5th 1193, 1208 (2024). But dismissals under Section 1385 "often" do not reflect that rationale. *Id.* (internal quotation marks omitted). To the

[1] The California Legislature has amended Section 1385 several times during the relevant time period, but the statutory language quoted in this brief has not changed.

contrary, where dismissal would promote the interests of justice, a trial court may dismiss a charge under Section 1385 "notwithstanding the fact that there is sufficient evidence of guilt" to support a conviction. *Id.* (internal quotation marks omitted). Examples of permissible interests-of-justice dismissals include cases where "a trial or a retrial" of the defendant would amount to "harassment," *id.* (internal quotation marks omitted); where a defendant is only minimally culpable for a criminal charge "despite indications of guilt," *id.* at 1212; and where a prior conviction would unjustly enhance punishment at sentencing, *id.* at 1207. *See generally Tirado*, 12 Cal. 5th at 696 (Section 1385 "permits dismissals in the interests of justice in any situation where the Legislature has not clearly evidenced a contrary intent.").

2. This case involves the murder of 25-year-old Laurie Houts. *See* Pet. App. 4a; *see also* Exhibits to Pet. for Writ of Mandate, *People v. Woodward*, No. H051311 (Cal. Ct. App., 6th Dist.) (Mandate Pet. Exs.), at 73. In 1992, Houts's body was found "strangled with a rope" in the driver's seat of her car. Pet. App. 4a. Police investigating the murder found several items of evidence connecting petitioner John Kevin Woodward to the crime. *See id.* For example, Woodward lived with Houts's boyfriend and "had reportedly displayed possessive behavior toward" the boyfriend. *Id.* Woodward's fingerprints were "on the outside of Houts's car." *Id.* "[F]ibers 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." *Id.* Moreover, Woodward "had no alibi for the window of time in which Houts was killed." *Id.* And during a "pretext phone call" placed by Houts's boyfriend, Woodward "never denied killing Houts." *Id.* He instead asked

the boyfriend "what evidence the police had against him and suggested they meet in a parking lot to discuss the matter." Mandate Pet. Exs. 10.

Based on this and other evidence, the district attorney charged Woodward with Houts's murder. *See* Pet. App. 4a. At the close of evidence in Woodward's first trial in 1995, the court denied Woodward's motion under Section 1118.1 for judgment of acquittal based on legal insufficiency of the evidence. *See* Trial Minutes for Jun. 21, 1995, *People v. Woodward*, No. 167658 (Cal. Super. Ct., Santa Clara Cnty.), at 3 (indicating that the trial court denied Woodward's "motion for dismissal under Penal Code Section 1118.1"); *see generally supra* p. 1. The jury was unable to reach a verdict, however, with four jurors voting to convict and eight to acquit. *See* Pet. App. 4a. During Woodward's second trial in 1996, the court once again denied Woodward's motion at the close of the evidence for judgment of acquittal pursuant to Section 1118.1. *See id.* at 9a, 52a. But the second jury's deliberations also ended in deadlock; this time, five jurors voted to convict and seven to acquit. *See id.* at 4a.

At a hearing after Woodward's second trial, on August 7, 1996, the trial court dismissed the murder charge under Penal Code Section 1385. *See* Pet. App. 4a-5a; *id.* at 71a (minute order). In its written order explaining that dismissal, the court discussed "some of the factors to be considered . . . in determining whether to dismiss the charge in furtherance of justice," including the "weight of [the] evidence indicative of guilt or innocence," the "nature of [the] crime involved," and the "likelihood of new or additional evidence" at any subsequent trial. *Id.* at 73a. The trial court judge explained that he was "in an excellent position to determine whether another trial would

further the interest[s] of justice," because he "had the opportunity to view the witnesses and hear the conflicting testimony" at the first two trials. *Id.*

Based on his view of the previous trials, the judge concluded that the "interest[s] of justice w[ould] best be served by a dismissal," because "a jury will never be able to reach a unanimous verdict of guilty" without additional evidence, and thus "[a]nother trial would only serve to harass the defendant." Pet. App. 76a, 77a. Although the court recognized that Woodward's "fingerprints and [his] apparent inconsistent statements" arguably "point[ed] to the defendant's guilt," the court also noted certain weaknesses in the prosecution's case. *Id.* at 74a-75a. For example, Woodward's fingerprints "were only found on the outside of the car," he "was never found in possession of the type of rope used in the killing," and he "cooperated fully with the police during questioning and also allowed them to search his car and apartment without objection." *Id.* at 75a. The court also considered the prosecution's "theory that [Woodward] killed [Houts] out of jealousy" to be "not . . . credible." *Id.* at 75a-76a. After reading into the record its written order describing this rationale, the court issued a minute order "dismissing th[e] case pursuant to Penal Code Section 1385 based on insufficient evidence." *Id.* at 71a.

3. In the ensuing years, the investigation of Houts's murder continued. Detectives examined a DNA sample collected from the rope that had been used to murder Houts and determined that "Woodward's DNA profile matched the DNA sample from the rope at all 25 markers." Pet. App. 7a & n.4. The county crime lab used new technology to analyze fibers found on Woodward's sweatpants and concluded that "the fibers were indistinguishable from the fibers

found on the rope" used in the murder. *Id.* at 7a n.4. And the investigation revealed "additional latent fingerprints matching Woodward on the exterior of Houts's car." *Id.* In 2022, the district attorney refiled the murder charge against Woodward. *See id.* at 7a-8a; *see also* Mandate Pet. Exs. 9-11.

Woodward moved to dismiss the charge on the ground that it violated the state and federal constitutional protections against double jeopardy. *See* Pet. App. 8a. Invoking the California Supreme Court's decision in *People v. Hatch*, 22 Cal. 4th 260 (2000), he argued that the 1996 dismissal order under Section 1385 "'serves the same function as an acquittal for double jeopardy purposes' and bars retrial." Pet. App. 8a. In his reading, *Hatch* established that a Section 1385 dismissal "acts as an acquittal, and bars a retrial, when 'the record clearly indicates the trial court applied the substantial evidence standard.'" Mandate Pet. Exs. 55 (quoting *Hatch*, 22 Cal. 4th at 273). And as he parsed the record here, that standard prohibited his retrial, because the written and minute orders describing the Section 1385 dismissal "repeatedly rul[ed] the evidence 'insufficient.'" *Id.*

The trial court granted Woodward's motion. *See* Pet. App. 52a-68a.[2] It followed *Hatch* as the relevant precedent. *See id.* at 58a-60a. In the court's view, the minute order's one-sentence explanation was "unambiguous that the reason for the dismissal was insufficiency of the evidence." *Id.* at 60a. And the court reasoned that the separate written order did not undermine the minute order's clarity: "although the

[2] The trial judge who presided over Woodward's two trials and entered the 1996 dismissal order retired before the district attorney refiled the murder charge in 2022. Woodward's motion was therefore heard by a new trial judge. *See* Pet. App. 68a.

court's discussion of the evidence . . . might be construed as weighing it, the court does not expressly mention the weight of the evidence, only its sufficiency." *Id.* at 63a. Because the court read the Section 1385 order as a dismissal based on insufficient evidence as a matter of law, it ruled that the Double Jeopardy Clause prohibited another trial. *See id.* at 67a.

4. The California Court of Appeal granted the district attorney's petition for a writ of mandate. *See* Pet. App. 2a-40a. Once again, the parties' arguments centered on whether the 1996 dismissal was an acquittal under *Hatch*. *See, e.g.*, Verified Answer to Pet. for Writ of Mandate, *People v. Woodward*, No. H051311 (Cal. Ct. App., 6th Dist.) (Woodward Mandate Answer), at 18-19 (arguing that the trial court "correctly applied" *Hatch*). Applying *Hatch* to the record in this case, the court of appeal held that the trial court had misinterpreted the 1996 dismissal order. *See* Pet. App. 3a. Although "trial courts *may* acquit pursuant to section 1385 for legal insufficiency of the evidence," the court of appeal noted, such dismissals "'often are not based'" on that rationale. *Id.* at 20a, 21a (quoting *Hatch*, 22 Cal. 4th at 273). And "because section 1385 dismissals are often based on factors other than insufficiency of the evidence," the California Supreme Court had instructed state appellate courts not to construe a dismissal under that provision as an acquittal for legal insufficiency unless the record clearly indicates that the trial court applied the substantial evidence standard. *See id.* at 21a (citing *Hatch*, 22 Cal. 4th at 273).

The court of appeal disagreed with Woodward's contention that the dismissal order reflected a finding that "the evidence was insufficient as a matter of law to support a conviction." Pet. App. 31a. The dismissal

order contained "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 [were] dismissed." *Id.* at 38a (internal quotation marks omitted). The trial "court's reasoning suggest[ed] 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." *Id.* at 31a. In contrast, there was "no indication the trial court viewed the evidence in the light most favorable to the prosecution." *Id.* Given the written order, the court of appeal found it "impossible . . . to conclude that the [trial] court intended to dismiss [Woodward's case] for lack of sufficient evidence as a matter of law." *Id.* at 38a. As a result, the Section 1385 dismissal order was not an "acquittal," and the Double Jeopardy Clause did not bar the district attorney's refiled murder charge. *See id.* at 40a.[3]

Justice Lie concurred in the judgment while expressing certain reservations. *See* Pet. App. 42a-50a. She agreed that the court of appeal's "dutifully exacting scrutiny of the trial court's dismissal order" suggested that the order was not based on insufficient evidence as a matter of law. *Id.* at 50a. In her opinion,

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[3] In reaching this conclusion, the court of appeal found it unnecessary to consider certain additional evidence bearing on the meaning of the 1996 dismissal order—including a declaration from the prosecuting attorney concerning statements from the trial judge about the possibility of refiling the case and a contemporaneous newspaper article that quoted "statements by the prosecutor and defense counsel regarding the likelihood of refil[ed] charges." Pet. App. 9a-10a; *see also* Mandate Pet. Exs. 138-142. The trial court had found these documents to be "irrelevant," and the district attorney's writ petition did not challenge that relevancy determination. Pet. App. 56a; *see id.* at 28a n.8.

however, the trial court's Section 1385 order might nevertheless function as an acquittal for double jeopardy purposes because it was a "ruling which relates to the ultimate question of guilt or innocence." *Id.* at 43a (emphasis, internal quotation marks, and brackets omitted); *see id.* at 50a. Although Woodward had not mentioned it, Justice Lie also raised the possibility that *Hatch* had been superseded by later cases from this Court. *See id.* at 42a.

5. Woodward filed a petition for review in the California Supreme Court. *See* Pet. App. 78a-112a. For the first time, Woodward argued that *Hatch*—the case on which he principally relied in the lower courts—conflicted with this Court's double jeopardy jurisprudence. *See id.* at 83a. The California Supreme Court denied Woodward's petition, with Justice Evans indicating that she would have granted the petition. *See id.* at 1a.

ARGUMENT

The court of appeal determined that the Section 1385 dismissal in this case was based on the trial court's assessment—given the weight of the evidence in 1996—that future trials would lead to more hung juries. Under this Court's precedent, that weight-of-the-evidence determination does not constitute an "acquittal" that bars retrial under the Double Jeopardy Clause. Woodward offers no persuasive reason for this Court to second-guess the court of appeal's fact-bound interpretation of the trial court record. He does not allege that the decision below implicates any conflict of authority among lower courts. And his argument that California's double jeopardy precedent contravenes this Court's precedent is not only incorrect, but also unpreserved: it was not raised before the trial court or before the court of appeal, whose judgment

Woodward asks this Court to review. The petition for a writ of certiorari should be denied.

1. The court of appeal faithfully applied this Court's double jeopardy precedent to the unique record before it.

"It has long been settled under the Fifth Amendment that a verdict of acquittal is final, ending a defendant's jeopardy, and . . . is a bar to a subsequent prosecution for the same offence." *Green v. United States*, 355 U.S. 184, 188 (1957). This Court has "defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." *Evans v. Michigan*, 568 U.S. 313, 318 (2013). For example, "a jury's verdict of acquittal is inviolate." *McElrath v. Georgia*, 601 U.S. 87, 94 (2024). The same is true when a court enters a directed verdict of acquittal based on its view that the prosecution's evidence "was legally insufficient to sustain a conviction." *Evans*, 568 U.S. at 320 (internal quotation marks omitted). And an acquittal also occurs when a court makes certain "substantive" rulings that "'relate[] to the ultimate question of guilt or innocence,'" such as a "factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability." *Id.* at 319 (quoting *United States v. Scott*, 437 U.S. 82, 98 n.11 (1978)).

In contrast, "a defendant who has been released by a court for reasons required by the Constitution or laws, but which are unrelated to factual guilt or innocence," has not been acquitted for purposes of the Double Jeopardy Clause. *Scott*, 437 U.S. at 98 n.11. A "retrial is permissible" in those circumstances because "the termination of proceedings is perfectly consistent with the possibility that the defendant is guilty of the charged offense." *Smith v. United States*, 599 U.S.

236, 253 (2023). "For example, the Double Jeopardy Clause is not triggered when a trial ends in juror deadlock." *Id.* Nor does an acquittal occur when a court "set[s] aside a conviction on the ground that the [jury's] verdict was against 'the weight of the evidence,'" such as when the judge "disagrees with the jury's resolution" of "conflicting testimony." *Tibbs v. Florida*, 457 U.S. 31, 32, 42 (1982). Determining the basis of the judicial decision that terminated a prosecution may require a "close reading" of the decision. *Id.* at 46.

The court of appeal below understood the difference between a judicial dismissal based on legally insufficient evidence (where no reasonable trier of fact could find guilt beyond a reasonable doubt), and a dismissal based on other factors like a jurist's personal view of the weight of the evidence (where reasonable minds could disagree on a verdict). *See* Pet. App. 19a-20a; *Tibbs*, 456 U.S. at 41-42. And the court examined the record in this case to determine whether the 1996 dismissal was based on a determination that the evidence presented at Woodward's trial was legally insufficient, or whether it was based instead on the trial judge's assessment of other factors—such as the "interests of justice" and the judge's individual perceptions about "conflicting" evidence. *Tibbs*, 457 U.S. at 46, 47; *see* Pet. App. 24a-40a.

As the court of appeal recognized, the dismissal order here falls in the latter category. Although Woodward emphasizes a single sentence in the minute order referencing "insufficient evidence," Pet. 2, 12 (citing Pet. App. 71a), he largely ignores the trial court's written explanation of that minute order, *see* Pet. App. 72a-77a. That explanation nowhere stated that the prosecution's evidence was *legally* insufficient

to support a guilty verdict. Instead, the trial court reviewed the factors relevant to an "interests of justice" determination under Section 1385—including the "weight of [the] evidence indicative of guilt or innocence," the "possibility of harassment," and the "likelihood of new or additional evidence at trial." *Id.* at 73a. The trial court's analysis of those factors was grounded in its own view of the evidence. For example, it acknowledged the existence of evidence (like Woodward's fingerprints and inconsistent statements) "point[ing] to [Woodward's] guilt." *Id.* at 74a-75a. But it also perceived shortcomings in the credibility of certain testimony. *See id.* at 75a-76a. And based on its overall assessment of the nature and extent of the prosecution's evidence, the court concluded that an additional trial would not result in "a *unanimous* verdict of guilty." *Id.* at 76a-77a (emphasis added).

Under these circumstances, the court of appeal properly construed the dismissal order as one based not on the legal sufficiency of the evidence, but on the weight of that evidence. This Court has long recognized that a judge's decision to set aside a jury's verdict based on the judge's own assessment of "the weight, rather than the sufficiency," of the evidence "permits the State to initiate a new prosecution." *Tibbs*, 457 U.S. at 32; *see id.* at 46-47. The same principle applies with equal force to a judge's decision to dismiss a charge based on his view of the "weight of [the] evidence indicative of guilt or innocence." Pet. App. 73a.

2. Woodward does not discuss or even cite *Tibbs*, but he nevertheless contends that allowing another trial would contravene this Court's double jeopardy jurisprudence. *See* Pet. 5-12. That is incorrect.

a. Woodward first argues that *Evans* and *McElrath* require a "broader definition" of "what constitutes an acquittal for double jeopardy purposes," encompassing the weight-of-the-evidence dismissal in this case. Pet. 5; *see id.* at 12-13. But neither decision purported to overrule the Court's earlier holding in *Tibbs* that dismissals based on evidentiary weight do not bar retrial. *See supra* pp. 10-11. And neither decision casts doubt on that holding.

The circumstances in both cases unquestionably involved acquittals that implicated the Double Jeopardy Clause. In *McElrath*, this Court held that inconsistencies between a jury's acquittal and conviction verdicts on various charges did not allow retrial on the charges for which the jury voted to acquit. 601 U.S. at 89-90. In *Evans*, the trial court had "evaluated the [State's] evidence and determined that it was legally insufficient to sustain a conviction"—a determination that remained an "acquittal" even if "it was predicated upon a clear misunderstanding of" the state-law elements of the crime. 568 U.S. at 320 (internal quotation marks omitted). So neither decision had any occasion to explore the line between dismissals based on a judge's view about the weight of the evidence and those based on a determination that the evidence is legally insufficient.

Woodward nonetheless contends that those decisions conflict with the California precedent that he invoked in the courts below. *See supra* pp. 5-8. He notes that, under *People v. Hatch*, 22 Cal. 4th 260 (2000), "retrial is barred '*only when* a trial court clearly makes a finding of legal insufficiency.'" Pet. 5 (brackets omitted). In his view, that conflicts with *Evans* and *McElrath*, which establish "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.'" *Id.* at 5-6 (quoting *Evans*, 568 U.S. at 319 (emphasis altered)); *see also id.* at 9 (quoting *McElrath*, 601 U.S. at 94).

But the "relates to the ultimate question of guilt or innocence" language from *Evans* and *McElrath* cannot bear the weight of Woodward's argument. "[T]he language of an opinion is not always to be parsed as though we were dealing with language of a statute." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373 (2023) (internal quotation marks omitted). Instead, *Evans* and *McElrath* "dispose[d] of discrete cases and controversies and . . . must be read with a careful eye to context." *Id.* at 373-374.

In *Evans*, for example, the Court emphasized that it had "defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." 568 U.S. at 318. The passage cited by Woodward observes that a dismissal based on a finding of legally insufficient evidence as to an element that is erroneous or nonexistent still resolves the question of criminal culpability and thus amounts to an acquittal—just like a dismissal based on legally insufficient evidence as to "an actual element" (Pet. 6) of the charged offense. *Evans*, 568 U.S. at 319-320; *see also McElrath*, 601 U.S. at 94 (verdict of not guilty by reason of insanity was an acquittal because it determined "that the prosecution's proof is insufficient to establish criminal liability"). Understood in context, the language quoted by Woodward does not undermine *Tibbs* or bear on the weight-of-the-evidence dismissal at issue here.

And a more recent decision of this Court confirms that the dismissal in this case falls outside the category of orders that "relate[] to the ultimate question of

guilt or innocence" within the meaning of this Court's double jeopardy jurisprudence. In *Smith*, the Court noted that retrial after a jury deadlock does not constitute double jeopardy because the first trial "terminate[d] 'on a basis *unrelated* to factual guilt or innocence of the offence of which [the defendant] is accused.'" 599 U.S. at 253 (quoting *Scott*, 437 U.S. at 99 (emphasis added)). To be sure, a jury's inability to reach a unanimous verdict reflects individual jurors' assessment of things that "relate to" guilt or innocence in some colloquial sense—but not in the sense that matters for the Double Jeopardy Clause, because a hung jury "is perfectly consistent with the possibility that the defendant is guilty of the charged offense." *Id*. The same is true of weight-of-the-evidence dismissals, which "do[] not mean that acquittal was the only proper verdict" and "no more signif[y] acquittal than does a . . . deadlocked jury." *Tibbs*, 457 U.S. at 42.[4]

b. Woodward next criticizes *Hatch*'s methodology for interpreting ambiguous Section 1385 dismissal orders. That methodology examines whether the trial court "'applied the substantial evidence standard,'

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[4] The concurring opinion below suggested that *Tibbs* applies only to the reversal of a *conviction* based on a judge's assessment of the weight of the evidence, instead of a weight-of-the-evidence dismissal following a mistrial like the one at issue here. *See* Pet. App. 47a-48a. Woodward has forfeited that argument by not timely raising it in this petition or in the courts below. *See* S. Ct. R. 14(1)(a); Cal. R. Ct. 8.500(c)(1); *People v. Jablonski*, 37 Cal. 4th 774, 823 (2006). In any event, the argument would fail. From the standpoint of the Double Jeopardy Clause, there is no difference between a weight-of-the-evidence determination after a jury convicts and an identical determination after a jury hangs. In either situation, the court's order "d[oes] not adjudicate [the defendant's] culpability," and "thus does not trigger the Double Jeopardy Clause." *Smith*, 599 U.S. at 254.

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.'" Pet. 5 (quoting *Hatch*, 22 Cal. 4th at 273). There is nothing improper about that methodology: *Tibbs* recognized that the same standard is what defines "the difference between" a court's findings based on "evidentiary weight" and those based on "evidentiary sufficiency"—the dispositive issue in determining whether a dismissal constitutes an acquittal. *Tibbs*, 457 U.S. at 38 n.11; *see also id.* at 46 (reviewing a lower court decision for the "hallmark[s] of review based on evidentiary weight, not evidentiary sufficiency").

Woodward argues that *Hatch* improperly requires courts to "review[] whether a trial court, in entering an acquittal for insufficient evidence, *correctly* applied the *correct legal standard* for the acquittal." Pet. 9. But that argument misunderstands *Hatch*. As the California Supreme Court recognized, a court's task when reviewing a Section 1385 dismissal order is *not* to determine whether the trial court's dismissal was "correct." *Hatch*, 22 Cal. 4th at 270. Instead, the court must "'determine 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.'" *Id.* (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977) (emphasis added)). "If a trial court rules the evidence is insufficient as a matter of law" under Section 1385, "then the ruling bars retrial *even if it is patently erroneous* or the court has no statutory authority to make it." *Id.* at 270-271 (emphasis added).

Hatch and the decision below are therefore consistent with the decisions invoked by Woodward

concerning "court-decreed acquittal[s]" based on "legal rulings" that were "erroneous." Pet. 10 (internal quotation marks omitted); *see also id.* at 8. In those cases, this Court held that a trial court's decision to enter a judgment of acquittal remained an "acquittal" for double jeopardy purposes, even if it was later determined to be the product of a legal error. *See Evans*, 568 U.S. at 315; *Sanabria v. United States*, 437 U.S. 54, 77-78 (1978); *Fong Foo v. United States*, 369 U.S. 141, 143 (1962). Those cases say nothing about the situation presented here, where the court of appeal did not review the trial court's Section 1385 dismissal order for errors, but instead merely analyzed the order to determine whether it was meant to be an "acquittal." *See* Pet. App. 31a-40a.

Woodward's argument (Pet. 10) based on *United States v. Sisson*, 399 U.S. 267 (1970), is similarly unpersuasive. That pre-*Tibbs* case addressed whether a trial court's order "holding that [the defendant] could not be criminally convicted" for the charged offense qualified as "an arrest of judgment" under the Criminal Appeals Act, which "narrowly limits the Government's right to appeal in criminal cases to certain types of decisions." *Sisson*, 399 U.S. at 270. A plurality held that the trial court's order was not appealable, and that the appeal should have been dismissed for lack of jurisdiction. *Id.* at 270; *see also id.* at 280. That holding sheds no light on the issue here. The general discussion of double jeopardy principles in *Sisson* related to a "hypothetical" scenario, "not to the order entered by the trial court in *Sisson* itself." *United States v. Wilson*, 420 U.S. 332, 350 (1975). Indeed, it would have been "inappropriate" for the Court to have fully resolved the double jeopardy effect of the trial court's order in *Sisson* instead of the statutory question that was actually before the Court. *Id.* at 351 n.18.

c. Woodward also contends that *Hatch* "conflicts with this Court's precedent by creating a presumption against applying the double jeopardy bar." Pet. 9 (emphasis omitted). That misunderstands both *Hatch* and this Court's precedent.

Hatch recognized and squarely reaffirmed the principle "that the Fifth Amendment precludes retrial if a court determines the evidence" is "insufficient to support a conviction as a matter of law." *Hatch*, 22 Cal. 4th at 271; *see also id.* at 270 ("'[W]hat constitutes an 'acquittal' is not to be controlled by the form of the judge's action.'"); *id.* at 273 (no need for "'magic words'"). The Court also acknowledged an interpretive difficulty arising from California's unique statutory scheme. "[T]he standard for dismissal under section 1385 is quite broad and permits dismissal under a variety of circumstances," some of which "may not even 'involve a consideration of the merits of the cause.'" *Id.* at 273. That can create "future confusion" (*id.* at 274) about whether a dismissal is "based on the insufficiency of the evidence as a matter of law." *Id.* at 273. The Court therefore made a "simple request" of trial judges: "We merely ask trial courts 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." *Id.* When that is not clear, appellate courts "will assume that the [trial] court did *not* intend to dismiss for legal insufficiency." *Id.*; *see id.* at 271 (similar).

Although Woodward criticizes *Hatch*'s instructions for how California appellate courts should construe ambiguous Section 1385 orders, this Court has recognized in a related context that "the meaning attached to an ambiguous prior reversal is a matter of state

law" that generally "binds this Court" in conducting a double jeopardy inquiry. *Tibbs*, 457 U.S. at 46-47 & n.24 (citing *Greene v. Massey*, 437 U.S. 19, 26 n.8 (1978)); *see also Marshall v. Bristol Super. Ct.*, 753 F.3d 10, 18-19 (1st Cir. 2014). As Judge Easterbrook put it, "[n]o rule of federal law tells state courts how to interpret ambiguous judicial statements." *Rivera v. Sheriff of Cook Cnty.*, 162 F.3d 486, 489 (7th Cir. 1998). Of course, as *Tibbs* recognized, there is an exception if the state court's interpretive methodology "conflict[s] with the Due Process Clause." 457 U.S. at 46. But Woodward does not (and could not) contend that the California Supreme Court's approach to interpreting ambiguous Section 1385 dismissals violates due process.

In any event, this is not a case where *Hatch*'s interpretive instructions could have affected the outcome. Even setting aside California's requirement that a Section 1385 dismissal order must "clearly indicate[] 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" for it to constitute an acquittal, *Hatch*, 22 Cal. 4th at 273, there would be no sound basis for concluding that the 1996 dismissal order was a determination about the legal sufficiency of the evidence. Among other considerations, the same judge that entered that order had recently denied Woodward's motions under Section 1118.1 to find the evidence legally insufficient at the close of evidence in both trials. *See supra* p. 3. The Section 1385 dismissal order did not suggest that those prior rulings were wrong, or that the jurors who voted to convict in the first two trials did so without a permissible basis. *See* Pet. App. 72a-77a. Instead, the order suggested that the trial court "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," which include considerations "not relevant to a dismissal for legal insufficiency of the evidence." Pet. App. 31a, 38a; *see supra* pp. 3-4.[5]

3. None of the other considerations bearing on this Court's exercise of certiorari supports granting this petition.

Woodward does not allege that the decision below conflicts with any decision of another lower court. *See generally* Pet. 5-13. And the State is not aware of any relevant conflict on the constitutional question Woodward seeks to present; instead, courts have consistently applied the rule announced in *Tibbs* to distinguish between orders dismissing charges based on legally insufficient evidence and orders dismissing charges based on the weight of the evidence. *See* 457

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[5] Applying the Ninth Circuit's decision in *Mannes v. Gillespie*, 967 F.2d 1310 (9th Cir. 1992), would not lead to a different outcome. *See* Pet. App. 37a-38a. In *Mannes*, the Section 1385 dismissal order repeatedly found that there was "insufficient evidence in this case" about specific elements of the charged offense and did "not refer at all to the 'weight' of the evidence." 967 F.2d at 1314, 1315. In the absence of any clear indication that the trial judge was weighing the evidence himself, the Ninth Circuit "assume[d] the trial judge intended" the repeated invocation of the phrase "insufficient evidence" to "mean[] that 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.'" *Id.* at 1315. Here, the record *does* provide "clear indication" that the trial court was weighing the evidence and did not intend to dismiss the murder charge based on legal insufficiency of the evidence. *See* Pet. App. 38a; *see also id.* at 31a-35a. Moreover, although the decision below characterized *Hatch* and *Mannes* as articulating "presumption[s]" that "differ[]," Pet. App. 37a, neither of those decisions actually described their approach in terms of a presumption.

U.S. at 44 (noting that "trial and appellate judges commonly distinguish between the weight and the sufficiency of the evidence"); *see also, e.g.*, *United States v. Dodd*, 391 F.3d 930, 935-936 (8th Cir. 2004) (holding that an order granting a motion for a new trial was not based on a finding of legally insufficient evidence, and thus the Double Jeopardy Clause did not bar retrial); *Wilcox v. State*, 342 Ark. 388, 396-397 (2000) (similar); *United States v. Robertson*, 110 F.3d 1113, 1117-1118, 1120 (5th Cir. 1997) (similar); *United States v. Campbell*, 977 F.2d 854, 860 (4th Cir. 1992) (similar).

This case also would be a poor vehicle for resolving the issues Woodward now seeks to raise. Woodward's trial-court and court-of-appeal briefs did not contest that *Tibbs*' analytical framework applied to the 1996 dismissal order, and those briefs did not claim that *Evans* and *McElrath* established new standards for judging the double jeopardy implications of such an order. Nor did they argue that the methodology described in *Hatch* for interpreting ambiguous Section 1385 orders is unconstitutional. *See, e.g.*, Pet. App. 8a, 12a-13a; Woodward Mandate Answer 18-30; Mandate Pet. Exs. 51-59. Instead, Woodward argued that the trial and appellate courts *should* apply *Hatch*, and that he ought to prevail under a faithful application of that precedent. *See* Pet. App. 24a-40a (discussing and dismissing each of Woodward's arguments on appeal); *id.* at 53a, 58a-67a (discussing Woodward's trial-court arguments); *see also* Woodward Mandate Answer 24 (arguing that the trial court's "dismissal . . . satisfies the *Hatch* standard"); Mandate Pet. Exs. 55 (claiming that the dismissal order "bars retrial under . . . the rules set forth in *Hatch*" (emphasis omitted)).

Woodward did not raise the arguments he seeks to present here until he filed his petition for review in the

California Supreme Court—when it was too late. *See* Cal. R. Ct. 8.500(c)(1) (California Supreme Court "normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal"); Pet. App. 83a-111a (petition for review). That deprived the lower courts of an opportunity to consider how his current arguments about the Double Jeopardy Clause apply in the context of California's statutory scheme and the unique record below. And Woodward offers no compelling reason why this Court should address those case-specific arguments in the first instance. *See OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 398 (2015) ("Absent unusual circumstances . . . we will not entertain arguments not made below."); *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."]).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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