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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA

15 Plaintiff,

16 vs.
17 [REDACTED]

18 Defendant.
19

CASE NO.: [REDACTED]

NOTICE OF MOTION AND MOTION
TO SET ASIDE INFORMATION (PENAL
CODE § 995); MEMORANDUM OF
POINTS AND AUTHORITIES

Date: [REDACTED]
Time: [REDACTED]
Dept: [REDACTED]

20 TO: THE HONORABLE NEETU S. BADHAN-SMITH, JUDGE OF THE LOS
21 ANGELES COUNTY SUPERIOR COURT AND TO THE LOS ANGELES COUNTY
22 DISTRICT ATTORNEY:

23 NOTICE IS HEREBY GIVEN that on the above date and time, or as soon thereafter as
24 counsel may be heard, the defendant [REDACTED] will move this Court for an order setting
25 aside the Information in the above-captioned case, pursuant to California Penal Code § 995. This
26 motion seeks to dismiss Count 1 (Attempted Murder, Pen. Code §§ 664/187(a)) and Count 2
27 (Robbery, Pen. Code § 211) – including the special allegations under Pen. Code §§ 12022.7(c)
28 (personal infliction of great bodily injury on a person 70 years of age or older) and 667.9(a)

1 (offense against an elder) – on the ground that *the evidence produced at the preliminary hearing*
2 *was legally insufficient* to establish reasonable or probable cause that the defendant committed
3 those offenses and enhancements.

4 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
5 the preliminary hearing transcript and other discovery provided in this case, the records on file, and
6 any further evidence or argument as may be presented at the hearing.

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10 Dated: June 4, 2025

Respectfully submitted,

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13 _____
14 [REDACTED]
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I. INTRODUCTION

A criminal defendant may move to set aside an information when “the defendant had not been legally committed by a magistrate” or “had been committed without reasonable or probable cause.” (Pen. Code, § 995, subd. (a)(2)(A)–(B).) “Probable cause” in this context means “such a state of facts as would lead a person of ordinary caution and prudence to believe, and conscientiously entertain a strong suspicion, of the guilt of the accused.” *Rogers v. Superior Court*, 46 Cal. 2d 3, 7–8 (1955).

Section 872 imposes the same standard at the preliminary hearing: the magistrate must hold a defendant to answer only if “a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof.” (Pen. Code, § 872, subd. (a).) “Sufficient cause” is the functional equivalent of probable cause. *People v. Green*, 70 Cal. 2d 654, 663 n.7 (1969); *Perry v. Superior Court*, 57 Cal. 2d 276, 283 (1962).

A magistrate’s task is thus to “weed out groundless or unsupported charges and relieve the accused of the degradation and expense of a criminal trial.” *Jaffe v. Stone*, 18 Cal. 2d 146, 150 (1941); accord *Williams v. Superior Court*, 71 Cal. 2d 1144, 1147 (1969). Where the evidence presented at the preliminary hearing fails to establish *each essential element* of the charged offense the commitment is unlawful and must be set aside on a section 995 motion. *Rideout v. Superior Court*, 67 Cal. 2d 471, 474–75 (1967); *Garaogian v. Superior Court*, 59 Cal. 2d 124, 127 (1963). Although reasonable inferences must be drawn in the prosecution’s favor, speculation cannot substitute for proof. *People v. Slaughter*, 35 Cal. 3d 629, 638 (1984).

Here, the transcript of the [REDACTED] March 2025 preliminary hearing reveals no competent evidence that [REDACTED] acted with the *specific intent to kill* required for attempted murder (Count 1).¹ Absent express malice—or any conduct from which such malice can reasonably be inferred—the holding order on Count 1 is unsupported and must be vacated.

The same transcript shows that the alleged taking of property was accomplished, if at all, by trickery rather than by force or fear; any later use of force occurred only after the exchange of money was complete. Under well-settled authority, such facts cannot sustain a robbery charge or

1 its attendant great-bodily-injury and elder-victim enhancements (Count 2). See, e.g., *People v.*
2 *Edwards*, 39 Cal. 3d 107, 117–18 (1985); *People v. Cooper*, 53 Cal. 3d 1158, 1165–66 (1991).
3 For these reasons, and as further set forth below, Mr. ██████ respectfully requests that the Court
4 set aside:

- 5 1. Count 1 (Attempted Murder, Pen. Code §§ 664/187(a)); and
- 6 2. Count 2 (Robbery, Pen. Code § 211) together with the Penal Code §§ 12022.7(c) and
7 667.9(a) allegations.

8 II. PROCEDURAL HISTORY

9 On █ **December 2024** the Los Angeles County District Attorney filed Felony Complaint
10 No. 24VWCF02439 charging ██████ with (1) attempted murder (Penal Code §§ 664/187,
11 subd. (a)) and (2) second-degree robbery (§ 211), together with great-bodily-injury and elder-
12 victim enhancements (§§ 12022.7, subd. (c), 667.9, subd. (a)). A warrant was issued the same day,
13 and Mr. ██████ was arrested in Fresno County on █ **December 2024**.

14 A **preliminary hearing** was held on █ **March 2025** before the Hon. Andrea C. Thompson
15 (██████). At the close of the People’s evidence the magistrate found “sufficient
16 cause” under Penal Code § 872 and ordered Mr. ██████ **held to answer** on all counts and
17 enhancements.

18 The **Information** was filed on █ **March 2025** alleging the same charges and special
19 allegations . Mr. ██████ was arraigned on the Information on █ **April 2025** before the Hon.
20 Neetu S. Badhan-Smith in Department █, where he entered pleas of not guilty and denied all
21 enhancements . The Court set the matter for **pre-trial conference on █ June 2025 at 8:30 a.m.**
22 (Dept. █).

23 Pursuant to Penal Code § 995, the defense now seeks to set aside Count 1 (attempted
24 murder), Count 2 (robbery), and the attendant enhancements on the ground that the commitment
25 was made “**without reasonable or probable cause.**”

26 STATEMENT OF FACTS

27 On █ November 2024, at approximately █ p.m., eighty-year-old ██████
28 met a man later identified as ██████ in the parking lot of the ██████

1 [REDACTED], Los Angeles. According to multiple eyewitnesses and the store-security
2 video introduced at the preliminary hearing, Mr. [REDACTED] displayed retail-looking *Apple* boxes
3 (first an iPhone-sized carton, then a larger laptop-sized carton) and offered to sell their contents at a
4 steep discount. Mr. [REDACTED] voluntarily handed Mr. [REDACTED] cash—witness [REDACTED] saw the
5 older man “take out money and hand it over” to the defendant without any threat, force, or
6 intimidation.

7 Immediately after accepting the money, Mr. [REDACTED] walked briskly toward a light-colored
8 Lexus sedan (California license [REDACTED]) parked a short distance away. When Mr. [REDACTED]
9 lifted the shopping bag containing the “laptop” box he had just purchased, it felt suspiciously light;
10 he pursued Mr. [REDACTED], shouting for the return of his money. By that point the defendant was
11 already seated in the driver’s seat with the door still ajar. As the Lexus began to move forward, Mr.
12 [REDACTED] grasped the open doorframe with both hands—placing himself partially inside the
13 moving vehicle.

14 The parking-lot surveillance clip (People’s Ex. 2) shows the [REDACTED] traveling southbound
15 through the aisle faster than surrounding traffic but still within the confines of the lot. The vehicle
16 never swerves toward the victim and never makes impact beyond the victim’s own contact with the
17 doorframe. Seconds later, as the car rolls over a speed bump, Mr. [REDACTED] loses his grip, falls
18 backward, and strikes the pavement. No witness saw the Lexus strike or run over him.
19 Police and paramedics arrived within minutes. Officer [REDACTED] observed a three-inch
20 contusion on the back of the victim’s head; Officer [REDACTED] found the victim initially un-
21 responsive on the ground and later helped him to a seated position. Hospital records later
22 confirmed a subdural hematoma that required emergent craniectomy.

23 Detective [REDACTED] obtained a search warrant for the [REDACTED] and recovered
24 numerous sealed *Apple*-branded boxes that contained dummy electronics or ceramic tiles,
25 corroborating a ruse-sale scheme. Detective [REDACTED] also reviewed recorded jail calls made by
26 Mr. [REDACTED]. In one call on [REDACTED] December 2024 ([REDACTED]), the defendant recounted the incident:
27 “I was leaving because I didn’t want an altercation, but it’s clear that I wasn’t trying to hurt
28 nobody. If he wasn’t jumping on my car, none of that would’ve happened.”

1 In sum, the prosecution’s own evidence depicts (1) a consensual cash-for-property
2 exchange achieved without force or intimidation; (2) the victim’s unexpected decision to latch onto
3 a departing vehicle; and (3) an accidental fall occasioned by the victim’s loss of grip—not by any
4 deliberate maneuver of the Lexus. Even taking the People’s proof at its zenith, the record shows, at
5 most, reckless driving in flight from a dubious property transaction—not the express intent to kill
6 that Penal Code sections 664 and 187 require.

7 **III. ARGUMENT**

8 **A. Count 1 (Attempted Murder) Was Not Supported by Probable Cause**

9 Attempted murder requires proof of **(1) express malice—i.e., the specific intent to kill the**
10 **named victim—and (2) a direct but ineffectual act that goes beyond preparation toward**
11 **accomplishing that killing.** *People v. Smith*, 37 Cal. 4th 733, 739 (2005); *People v. Lee*, 31 Cal.
12 4th 613, 623 (2003). Implied malice or mere conscious disregard for life **never suffices.** *People v.*
13 *Saille*, 54 Cal. 3d 1103, 1114 (1991). Nor may the prosecution rely on transferred or kill-zone
14 theories at the commitment stage unless the evidence shows an identical intent to kill each
15 endangered person. *People v. Bland*, 28 Cal. 4th 313, 331 (2002).

16 At the preliminary hearing the People failed to establish either element.

17 **1. The Record Contains No Evidence of Express Intent to Kill**

18 All eyewitnesses—including Joanna Rivera and Antonia Ku—and the store-security video
19 show only that:

- 20 • Mr. [REDACTED], after a consensual cash-for-merchandise exchange, returned to his car and
21 began driving away through a congested parking lot;
- 22 • Mr. [REDACTED] unexpectedly grasped the open driver-side door and clung to it;
- 23 • The Lexus proceeded in a straight line, neither accelerating toward nor swerving at the
24 victim;
- 25 • Mr. [REDACTED] lost his grip while the vehicle traversed a speed bump and fell to the
26 pavement;
- 27 • The Lexus did not strike or roll over him; and

- In a recorded jail call Mr. ██████ stated, “I wasn’t trying to hurt nobody. If he wasn’t jumping on my car, none of that would’ve happened.”

No threat, weapon, steering maneuver, or statement evincing a desire to kill appears anywhere in the transcript. Express malice cannot be inferred from a defendant’s flight alone. *People v. Thompson*, 50 Cal. 3d 134, 164 (1990). California appellate courts routinely reverse or vacate attempted-murder findings on materially stronger vehicular facts.

- *People v. Canizales*, 7 Cal. 5th 591, 604–605 (2019) (Supreme Court reiterated that an attempted-murder conviction requires an “unequivocal” intent to kill; conduct that merely facilitates escape—even if dangerous—does not satisfy that standard).
- *People v. Perez*, 50 Cal. 4th 222 (2010) (warning shots at close range insufficient to prove intent to kill absent evidence defendant meant to hit victim).
- *People v. Belton*, 105 Cal. App. 3d 376, 381 (1980) (specific intent to murder “cannot be inferred merely from commission of another dangerous crime”).

Compared with cases upholding attempt convictions—point-blank gunfire (*Smith*, 37 Cal. 4th at 739), repeated stabbings (*Lee*, 31 Cal. 4th at 623–24), or deliberately ramming a pedestrian (*People v. Aznavoleh*, 210 Cal. App. 4th 1181, 1185–86 (2012))—the conduct here is categorically different. At most, it supports an inference of reckless flight, not lethal purpose. The magistrate’s contrary conclusion rests on speculation, which *Lee* expressly forbids. 31 Cal. 4th at 626 (“intent must be clearly indicated; it may not be inferred from conjecture”).

2. No “Direct but Ineffectual” Act Toward Killing Was Shown

Even assuming arguendo a homicidal state of mind, the People offered no evidence of an overt act that would “normally result in death but for an intervening circumstance.” *People v. Superior Court (Decker)*, 41 Cal. 4th 1, 8–9 (2007); *People v. Toledo*, 26 Cal. 4th 221, 230 (2001). Moving forward in one’s own lane of travel while an unanticipated bystander clings to the door is not a lethal act directed at the victim; *Decker* holds that, even where intent to kill is clear, the act must be one that “advances the criminal purpose beyond mere preparation”. 41 Cal. 4th at 8-9.

Car-as-weapon cases sustain attempt convictions only where the defendant **aims** the vehicle at the victim, accelerates, or repeats an impact. See, e.g., *Aznavoleh*, 210 Cal. App. 4th at 1185

1 (hard acceleration directly toward victim); *People v. Moore*, 61 Cal. App. 4th 1123, 1129–30
2 (1998) (defendant intentionally reversed into officer). By contrast, the Lexus here decelerated to
3 negotiate a turn, and the fall resulted solely from the victim’s inability to maintain his grip. This
4 scenario is governed by the “escape rule” limiting felony-murder and attempt liability once the
5 underlying offense is complete. *People v. Wilkins*, 56 Cal. 4th 333, 346 (2013) (felony-murder
6 liability ends when the perpetrator reaches a place of temporary safety).

7 Because the People proved neither express malice nor a qualifying overt act, *no rational*
8 *magistrate could reasonably entertain a strong suspicion* that Mr. ██████ attempted to kill Mr.
9 ██████. See *Rideout v. Superior Court*, 67 Cal. 2d 471, 474–75 (1967). Count 1 must therefore
10 be dismissed under Penal Code § 995.

11 **B. Count 2 (Robbery) and Its Enhancements Are Unsupported by Probable Cause**

12 **1. The property was obtained by fraud, not by force or fear**

13 Robbery requires “a felonious taking ... against the victim’s will, accomplished by means
14 of force or fear.” **Penal Code § 211**; *People v. Gomez*, 43 Cal. 4th 249, 254 (2008).

15 Where the victim **voluntarily parts with possession** because of deception, the crime is **theft by**
16 **trick or false pretenses**, not robbery. *People v. Williams*, 57 Cal. 4th 776, 781-82 (2013) (theft by
17 trick “cannot be transformed into robbery retroactively”).

18 At the preliminary hearing every percipient witness—including Rivera—testified that Mr.
19 ██████ **handed cash to Mr. ██████** in what each believed was a consensual purchase of
20 Apple devices. The initial caption therefore lacked the non-consensual element essential to
21 robbery. The magistrate’s holding order ignored Williams and substituted speculation for evidence.

22 **2. “Continuing-robbery” force is absent**

23 The Attorney General may invoke the “continuing robbery” doctrine, under which force
24 used **after** caption but **before** the robber reaches temporary safety can satisfy § 211. The doctrine
25 applies, however, **only when the defendant employs force to carry away or retain the loot**.
26 *People v. Cooper*, 53 Cal. 3d 1158, 1165 (1991). The record shows the opposite:

- 27 • **Victim-initiated contact.** Mr. ██████ alone grabbed the open driver’s door; Mr.
28 ██████ neither threatened nor dragged him.

- **Straight-line flight.** The Lexus proceeded down the traffic aisle, slowing to negotiate a turn. No witness saw steering or acceleration toward the victim.
- **No attempt to reclaim property.** The victim had already relinquished title and possession; the scuffle occurred only because he tried to undo the bargain.

California decisions reject robbery where force arises from a victim’s pursuit rather than from the defendant’s effort to retain property. *People v. Anderson*, 64 Cal. 2d 633, 637-38 (1966). The facts resemble *Anderson*—and the “reverse-Estes” scenario—far more than car-ramming cases that sustain robbery. Accordingly, the magistrate lacked substantial evidence that the later physical encounter was robbery-related force.

3. The elder-victim enhancement (§ 667.9(a)) lacks the knowledge element

Section 667.9(a) adds one year only where the defendant “**knew or reasonably should have known**” the victim was 65+. The preliminary transcript is silent on Mr. [REDACTED]’s knowledge: no witness testified that age was discussed, and no circumstantial evidence (e.g., age-based epithets) appears. Compare *People v. Smith*, 13 Cal. App. 4th 1182, 1184-85 (1993) (defendants calling victim “old lady” established knowledge). Absent proof of awareness, probable cause for the enhancement is missing.

4. The great-bodily-injury allegation (§ 12022.7(c)) fails for lack of personal infliction

Subdivision (c) applies where the defendant personally inflicts GBI on a victim aged 70+. “Personal infliction” requires the defendant to **directly apply the injurious force**. *People v. Cole*, 31 Cal. 3d 568, 572 (1982); *People v. Modiri*, 39 Cal. 4th 481, 493 (2006).

Here the injury resulted when **Mr. [REDACTED] lost his own grip and fell**; the Lexus never struck or ran over him. Courts reverse GBI findings on similar facts where the harm flowed indirectly. *Cole*, 31 Cal. 3d at 571-73 (defendant who ordered—but did not deliver—blows did not “personally inflict” GBI). Because the fatal impact came from pavement, not from a blow or collision administered by Mr. [REDACTED], the § 12022.7(c) allegation is unsupported. And if the robbery count falls, the enhancement—defined as occurring “in the commission of” that robbery—necessarily falls with it. § 12022.7(g).

1 Accordingly, Count 2 and both enhancements were “committed without reasonable or
2 probable cause” and must be dismissed under Penal Code § 995.

3 **IV. CONCLUSION**

4 For the reasons set forth above, the evidence adduced at the ■ March 2025 preliminary
5 hearing failed to establish even a strong suspicion—let alone reasonable or probable cause—that
6 ■:

- 7 • **specifically intended to kill** ■ (Count 1, Pen. Code §§ 664/187(a));
- 8 • **committed a robbery by force or fear** rather than a consensual—but fraudulent—
9 property transfer (Count 2, § 211);
- 10 • **personally inflicted great bodily injury** upon a septuagenarian victim (§ 12022.7, subd.
11 (c)); or
- 12 • **knew or reasonably should have known** the victim’s age (§ 667.9, subd. (a)).

13 Where any element is unsupported, PC § 995 directs that the holding order be vacated.
14 *Rideout v. Superior Court*, 67 Cal. 2d 471, 474–75 (1967); *Williams v. Superior Court*, 71 Cal. 2d
15 1144, 1147 (1969). Here **each count or enhancement lacks at least one essential element**.

16 Accordingly, Mr. ■ respectfully requests that the Court issue an order:

- 17 1. **Setting aside Count 1 (Attempted Murder) in its entirety;**
- 18 2. **Setting aside Count 2 (Robbery) and the attendant Penal Code §§ 12022.7(c) and**
19 **667.9(a) allegations;** and
- 20 3. Directing that he be held to answer, if at all, only on those offenses the magistrate
21 properly found supported by probable cause.

22 Should the People acquire new, competent evidence satisfying every statutory element, they
23 retain the statutory remedy of refiling. On the present record, however, continued prosecution of
24 Counts 1 and 2 would contravene both § 995 and the constitutional guarantee that no person be
25 held to answer absent probable cause.

26 Dated: June 4, 2025

Respectfully submitted,

27
28 _____
■, Esq.

**DECLARATION OF [REDACTED] IN SUPPORT OF § 995
MOTION TO SET ASIDE**

I, [REDACTED], do hereby declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California (State Bar No. 284556) and a partner at The [REDACTED], counsel for defendant [REDACTED] in this action. I have personal knowledge of the matters stated below and could competently testify to them if called.
2. I have reviewed the certified Reporter's Transcript of the preliminary hearing held on 21 March 2025 before the Honorable Andrea C. Thompson (Dept. 105). All transcript citations in the accompanying Memorandum of Points and Authorities ("MPA") refer to that record.
3. The exhibits referenced in the MPA were either introduced at the preliminary hearing or produced to the defense in discovery. True and correct copies are maintained in my office and will be lodged with the Court as requested, including:
 - People's Exhibit 2 – [REDACTED] parking-lot surveillance video (16 Nov 2024);
 - Search-warrant return for [REDACTED] (listing Apple-labeled boxes containing dummy items);
 - Los Angeles Fire Department run sheet and Valley Presbyterian Hospital records for [REDACTED] ([REDACTED] Nov 2024); and
 - Recorded jail telephone call of [REDACTED] Dec 2024 (08:07 hrs.) with verbatim transcript.
4. The Felony Complaint (No. [REDACTED]) was filed on [REDACTED] December 2024. After the preliminary hearing on [REDACTED] March 2025, the magistrate held Mr. [REDACTED] to answer, and the Information was filed on [REDACTED] March 2025. Arraignment occurred on [REDACTED] April 2025 before the Honorable Neetu S. Badhan-Smith (Dept. [REDACTED]).
5. Based on my review of the preliminary-hearing transcript and the discovery identified above, it is my professional opinion that the evidence presented failed to establish reasonable or probable cause for:
 - a. the specific-intent element of attempted murder (Count 1);
 - b. any direct but ineffectual act toward committing murder;

- c. the “force or fear” element of robbery (Count 2);
- d. the knowledge requirement of Penal Code § 667.9(a); and
- e. the personal-infliction requirement of Penal Code § 12022.7(c).

Dated: June 4, 2025

Respectfully submitted,

[REDACTED]

1 [REDACTED]
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8 Attorneys for Defendant
9 [REDACTED]

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA

15 Plaintiff,

16 vs.
17 [REDACTED]

18 Defendant.
19

CASE NO.: [REDACTED]

[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO SET ASIDE
INFORMATION (PENAL CODE § 995)

Date: [REDACTED]
Time: [REDACTED].
Dept: [REDACTED]

20 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED:

- 21 1. Defendant's Penal Code section 995 motion is **GRANTED**.
22 2. **Count 1** (Attempted Murder, Pen. Code §§ 664/187(a)) is **set aside**.
23 3. **Count 2** (Robbery, Pen. Code § 211) and the associated special allegations under Penal
24 Code
25 § 12022.7(c) (personal infliction of great bodily injury on a person 70 years of age or
26 older) and
27 § 667.9(a) (offense against an elder) are **set aside**.
28

4. Defendant shall be held to answer only on any remaining charges, if any, in accordance with this Order.

IT IS SO ORDERED.

Dated: _____

HON. NEETU S. BADHAN-SMITH
JUDGE OF THE SUPERIOR COURT,
COUNTY OF LOS ANGELES