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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| NICHOLAS NEEDHAM,<br><br>Petitioner,<br>v.<br><br>THE SUPERIOR COURT OF ORANGE COUNTY,<br><br>Respondent,<br><br>PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Real Party in Interest. | Case No. S<br><br>(DCA Case No. G060670)<br><br>(Orange County Superior Court Case No. M-16870) |

# PETITION FOR REVIEW

Following the Published Opinion of the
California Court of Appeal
Fourth Appellate District, Division Three,
Granting the Petition for Writ of Mandate/Prohibition
The Honorable Elizabeth Macias, Judge Presiding
Department C-38 [(657) 622-5238]

Todd Spitzer, District Attorney
County of Orange, State of California
By: Yvette Patko
Senior Deputy District Attorney
Email: yvette.patko@ocdapa.org
State Bar No. 161892
Post Office Box 808
Santa Ana, California 92702
Telephone: (714) 347-8780
Fax: (714) 834-5706

Attorneys for Petitioner
The People of the State of California

**CERTIFICATE OF INTERESTED PARTIES**
[California Rules of Court, rules 8.208 and 8.488]

The potential interested entities or persons to the appeal are:

| Name of Interested Entity or Person | Nature of Interest |
|---|---|
| Nicholas Needham | Petitioner: Represented by the Orange County Public Defender's Office, Deputy Public Defender Elizabeth Khan |
| Superior Court of Orange County<br>Hon. Elizabeth Macias | Respondent |
| People of the State of California | Real Party in Interest: Represented by the Orange County District Attorney's Office, Senior Deputy District Attorney Yvette Patko |
| California Attorney General | Statutory Construction |

The People certify that the above-listed persons or entities have an interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in California Rules of Court, rule 8.208(e)(2).

Dated this 15th day of September, 2022.

Respectfully submitted,

Todd Spitzer, District Attorney
County of Orange, State of California

BY: /s/ *Yvette Patko*
Yvette Patko
Senior Deputy District Attorney

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| NICHOLAS NEEDHAM,<br><br>Petitioner,<br>v.<br><br>THE SUPERIOR COURT OF ORANGE COUNTY,<br><br>Respondent, | Case No. S<br><br>(DCA Case No. G060670)<br><br>(Orange County Superior Court Case No. M-16870) |
| PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Real Party in Interest. | |

To the Honorable Tani G. Cantil-Sakauye, Chief Justice and the Associate Justices of the California Supreme Court:

A copy of the Court of Appeal's opinion is attached.

## INTRODUCTION

In a published opinion, a divided panel of the Court of Appeal held that (1) the Civil Discovery Act's[1] expert witness provisions do not apply to proceedings under the Sexually Violent

[1] Code of Civil Procedure section 2016.010, et seq.

Predator Act (SVPA)[2]; and, (2) the People have no right to "retain an expert witness to testify at trial" in an SVPA proceeding. (*Needham v. Superior Court* (2022) 82 Cal.App.5th 114 [2022 WL 3152460, *1].) These rulings contradict the opinion of the same division of the Court of Appeal in *People v. Landau* (2013) 214 Cal.App.4th 1, as well as this Court's opinion in *People v. Superior Court* (*Smith*) (2018) 6 Cal.5th 457.

The SVPA creates a statutory framework for the involuntary commitment of "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

**The Civil Discovery Act Ruling**

The Court of Appeal's ruling that the Civil Discovery Act does not apply to SVPA cases denies both parties' expert witness discovery. SVPA proceedings are civil in nature, not criminal. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1178-1179.)

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[2] Welfare and Institutions Code section 6600, et seq.

Criminal discovery under Penal Code section 1054, et seq. does not apply. (Pen. Code, § 1054, subd. (e) ["no discovery shall occur in criminal cases except as provided by this chapter[]"].) The only available discovery is through the Civil Discovery Act in SVPA proceedings. (*People v. Superior Court* (*Cheek*) (2001) 94 Cal.App.4th 980, 988.) In *Landau,* the Court of Appeal affirmed the application of the Civil Discovery Act when it upheld the trial court's order compelling an alleged Sexually Violent Predator (SVP) to participate in a mental examination by the People's retained expert pursuant to Code of Civil Procedure section 2032.020. (*People v. Landau, supra*, 214 Cal.App.5th 1, 26.) The Court of Appeal's holding in this case squarely contradicts *Landau*.

The Court of Appeal's holding that the expert witness provisions of the Civil Discovery Act are inapplicable to SVPA proceedings results in both parties losing the right to obtain discovery about experts, including the identities, reports, and depositions of those experts. Without the Civil Discovery Act, there is no legal process for obtaining information about experts in SVPA cases. The ruling puts the People at a particularly

unfair disadvantage. Both parties get copies of the evaluations from the Department of State Hospitals and the alleged SVP has access to his own medical records. Without the ability to discover the identity and reports of opposing experts, the People are left with inadequate information to prepare effective cross-examination. "A key way in which one party counters an opposing expert's opinion is to uncover and challenge the expert about the bases of his or her opinion. [Citations.]" (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 471.) The Court of Appeal's ruling in this case forces the People to proceed to trial with no discovery about opposing experts and no way to effectively challenge their opinions.

**The Expert Witness Ruling**

The Court of Appeal's ruling that the People cannot call a retained expert to testify also contradicts the holdings in *Smith* and *Landau*. The majority and dissenting opinions in this case gave different meanings to this Court's opinion in *People v. Superior Court* (*Smith*). In *Smith*, the court found that the

People may share an SVP's medical records with their retained expert. (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 462) The Court also explained that "[a]n expert would also need to examine the relevant records to offer an opinion about the potential SVP's mental health. [Citation.]" (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 471-472.) The majority found no significance to this language. (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7].) In his dissent, Justice Goethals found the language implies that "a *testifying* expert may also access such records." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7] (dis. opn. of Goethals, J.), emphasis added.) He noted another reading of this language in *Smith* would make "much of the *Smith* opinion ... mere dictum." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *8] (dis. opn. of Goethals, J.).) Without the ability to call the expert witness to testify, the People would have limited use for an opinion about the alleged SVP's mental health.

In *Landau*, the same Court of Appeal upheld a compelled mental health examination by the People's retained expert in an SVP case. (*People v. Landau, supra*, 214 Cal.App.5th 1, 26.) That retained expert also testified at the trial in *Landau* without rebuke by the Court of Appeal. (*Id.* at pp. 13-15.) The entire purpose of the compelled mental health examination is to obtain expert testimony for trial. The Court of Appeal's ruling excluding the People's retained expert contradicts its own opinion in *Landau*.

The impact of the Court's decision will be substantial, impacting numerous SVPA cases in Orange County alone. Once two Department of State Hospital evaluators submit "negative" opinions that the person no longer qualifies as an SVP, the People would have no mechanism by which to proceed to trial. In the "battle of expert witnesses" (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *8] (dis. opn. of Goethals, J.)), the People would have no ammunition. This renders cases holding that an SVP petition is not subject to dismissal even when Department of State Hospitals evaluators no longer support their previous opinion moot, and eviscerates the

preference for resolutions by jury trial. (See, e.g., *Reilly v. Superior Court* (2013) 57 Cal.4th 641, 648.)

This Court needs to settle the conflict between *Smith* and *Landau*, on the one hand, and the Court of Appeal's opinion in this case, on the other, and settle the law. The majority in this case stated it reached its decision "[i]n the absence of any clear guidance from our high court[.]" (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7].) In order to afford the necessary "clear guidance" to the divided lower court, this Court should grant review pursuant to California Rules of Court, rule 8.500(b)(1), because it is necessary to secure uniformity of decisions and to settle important questions of law as to the applicability of the Civil Discovery Act and the People's right to call a retained expert to testify at trial in SVPA proceedings.

## ISSUES PRESENTED

I. **DO THE CIVIL DISCOVERY ACT'S EXPERT WITNESS PROVISIONS APPLY TO SEXUALLY VIOLENT PREDATOR ACT PROCEEDINGS?**

II. **DOES THE SEXUALLY VIOLENT PREDATOR ACT PERMIT THE PEOPLE TO CALL A RETAINED EXPERT TO TESTIFY AT TRIAL?**

## STATEMENT OF THE CASE

On November 17, 2016, the People filed a civil action "Petition for Commitment as a Sexually Violent Predator" pursuant to Welfare and Institutions Code section 6602 against Nicholas Needham. The petition was supported by evaluations of Drs. Jeremy Coles and Michael Mussaco, who both found Needham met the criteria for commitment under the SVPA. (Writ Petn., Exh. A, p. 6; Writ Petn., Exh. B, p. 31.)

In January 2018, Dr. Coles opined that Needham no longer met the criteria as a SVP. (Writ Petn., Exh. B, p. 32.) Given the divergence of opinion, two different evaluators, Drs. Korpi and Yanofsky, were assigned to evaluate Needham. (Writ Petn., Exh. B, p. 32.) Dr. Yanofsky opined that Needham met the

criteria as an SVP and Dr. Korpi opined that he did not. (Writ Petn., Exh. B, p. 32.)

In April, 2019, Dr. Yanofsky found that Needham no longer met the criteria as an SVP, leaving the People with no experts to testify about Needham's mental health status at trial. (Writ Petn., Exh. B, p. 32.)

In July 2019, the People requested a protective order pursuant to *People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 462, so that the their retained expert, Dr. Craig King, could be provided with Needham's medical records for purposes of conducting an SVP evaluation. (Writ Petn., Exh. B p. 32.) Protective Orders were issued by the trial court for that purpose. (Writ Petn., Exh. A, p. 17; Writ Petn., Exh. B, p. 32.) Further, on August 30, 2019, the court issued an order authorizing Dr. King access to the Orange County Jail and Needham's medical records at the jail. (Writ Petn., Exh., D, pp. 59-60.)

Dr. King met with Needham on September 6, 2019, at which time Needham gave his signed consent to be interviewed. (Writ Petn., Exh, B, p. 32; Writ Return, Supporting Document 1, p. 48.)

Needham filed two motions to exclude Dr. King's testimony on September 23, 2019, (Writ Petn., Exh. E) and February 10, 2021 (Writ Petn., Exh. F). The People filed a response to the motions on February 24, 2021. (Writ Petn., Exh. B.) Needham filed a reply on March 2, 2021 (Writ Petn., Exh. G), and then a third motion to exclude Dr. King on June 1, 2021 (Writ Petn., Exh. H).

On July 7, 2021, the court collectively heard and denied all of Needham's Motions to Exclude Dr. King. (Writ Petn., Exh. I, p. 316.)

Needham filed a Petition for Writ of Mandate/Prohibition seeking to overturn the trial court's ruling on September 7, 2021. The Petition was summarily denied by the Court of Appeal on September 30, 2021. Needham filed a Petition for Review with this Court on October 5, 2021. On December 15, 2021, this Court granted the petition and transferred the matter to the Court of Appeal. After full briefing in the Court of Appeal on August 8, 2022, the Court issued its opinion overturning the decision of the trial court. The People petition for review of that order.

## STANDARD OF REVIEW

Neither the trial court nor the Court of Appeal made factual determinations in this case. The issues presented are purely questions of law which are "are reviewed under the de novo standard of review. [Citation.]" (*People v. Whaley* (2008) 160 Cal.App.4th 779, 792; see also *People v. Galvan* (2008) 168 Cal.App.4th 846, 852.) Specifically, the meaning and construction of statutes are questions of law, which the appellate courts decide independently. (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 189; see also *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) "[T]he construction of a statute is purely a question of law and is subject to de novo review on appeal. (*People v. Zeigler* (2012) 211 Cal.App.4th 638, 650, 149 Cal.Rptr.3d 786.)" (*People v. Faranso* (2015) 240 Cal.App.4th 456, 461.)

## ARGUMENT

### I. THE COURT OF APPEAL'S OPINION IS INCONSISTENT WITH ITS OWN DECISION IN *PEOPLE v. LANDAU*.

In *People v. Landau, supra*, 214 Cal.App.4th 1, Landau appealed his SVP commitment on the grounds that the trial court improperly ordered that he be examined by the People's privately retained expert pursuant to Code of Civil Procedure 2032.020, who then testified at trial about his SVP status. (*People v. Landau, supra*, 214 Cal.App.4th 1, 24.) Like Needham herein, Landau argued that a privately retained expert for the People was not permitted under Welfare and Institutions Code section 6603. (*Ibid*.) The Court of Appeal disagreed. (*Id*. at p. 26.)

### A. The *Landau* court found that the Civil Discovery Act applied to Sexually Violent Predator Act proceedings and relied on its expert witness provisions for its ruling.

Courts have found that the Civil Discovery Act (CDA) applied to SVPA proceedings because SVPA commitment trials are " 'special proceeding[s] of a civil nature ....' [Citation.]" (*People v. Superior Court* (*Cheek*) (2001) 94 Cal.App.4th 980, 988.)[3] "Accordingly, unless otherwise indicated on the face of the statute, rules of civil procedure will operate. [Citations.]" (*People v. Superior Court* (*Preciado*) (2001) 87 Cal.App.4th 1122, 1128.) Consistent with this precedent, the *Landau* court also found that the CDA applied to SVPA cases. (*People v. Landau, supra,* 214 Cal.App.4th 1, 25, citing *People v. Angulo* (2005) 129 Cal.App.4th 1349, 1368.) *People v. Jackson* (2022) 75 Cal.App.5th 1, 8 reiterated that the CDA applied.

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[3] The Civil Discovery Act applies to special proceedings of a civil nature. Code of Civil Procedure section 2016.020, subdivision (a) defines "action" as a "civil action and a special proceeding of a civil nature." Discovery is broadly available in a pending action. "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ...." (Code Civ. Proc., § 2017.010.)

The majority's broad conclusion in our case that the "expert-witness provisions of the Civil Discovery Act do not apply" (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *1]) is in conflict with *Landau*, which found no abuse of discretion in ordering a compelled mental health examination of an alleged SVP under Code of Civil Procedure 2032.020 of the Civil Discovery Act. The majority's decision leaves the People with no way of obtaining information about expert witnesses who may testify on behalf of alleged SVPs, without a way to discover the basis for opinions to be admitted, and without an avenue to obtain the documentation reviewed by the experts to ensure the ability to effectively cross-examine them.

The importance of this cross-examination cannot be overstated. Because SVP cases must be proven beyond a reasonable doubt (Welf. & Inst. Code, § 6604), the People must demonstrate the errors in any defense expert's opinions at trial. As this Court explained, "[a] key way in which one party counters an opposing expert's opinion is to uncover and challenge the expert about the bases of his or her opinion. [Citations.]" (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 471.)

Challenging the expert's opinion requires that the cross-examining attorney be knowledgeable about the information on which the expert relied and any reports the expert prepared. All of this can only be obtained as part of expert witness discovery pursuant to Code of Civil Procedure section 2034.210, which provides for the exchange of expert witness information before trial. (Code Civ. Proc., § 2034.210.)

The Court of Appeal's ruling that the expert witness provisions of the Civil Discovery Act do not apply in this case deprives the parties of the expert witness exchange that has been utilized in SVPA cases throughout the state, including in this case (Writ Petn., Exh. E, p. 70), and deprives the People of the ability to compel mental health examinations when necessary, a practice that was permitted by *Landau* for nearly 10 years. (*People v. Landau, supra*, 214 Cal.App.4th 1, 26.) These contradictions of prior precedent and practice need to be clarified by this Court so that litigants know their discovery rights in SVPA cases.

### B. The Court of Appeal contradicted its prior holding in *People v. Landau* when it found the People cannot call a retained expert to testify at trial.

The Court of Appeal also contradicted its own *Landau* decision when it found that the SVPA prevents the People from calling a retained expert at trial. (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7].) Contrary to the majority our case (*id*. at pp. *4-*5), the *Landau* court did not interpret the availability of the updated or replacement evaluations described in Welfare and Institutions Code section 6603, subdivision (c), to be the exclusive means for the People to obtain current mental health evaluations of an alleged SVP. The court recognized that examination by other experts was possible, just unaddressed in the SVPA. (*People v. Landau, supra*, 214 Cal.App.4th 1, 25.)

> Neither is there anything in section 6603, subdivision (c)(1) to support appellant's argument that the court cannot order an alleged SVP to submit to a mental examination by an expert retained by the district attorney. That section speaks to the issue of examinations by initial evaluators and their replacements. While it provides the exclusive procedure for updated or replacement evaluations of initial evaluators and requires the DMH to perform the updates requested by the district attorney, **the section does not address examination by other experts.**

(*People v. Landau, supra*, 214 Cal.App.4th 1, 25, emphasis added.) Thus, the *Landau c*ourt found no error in the trial court's order compelling a mental health examination by the People's retained expert under Code of Civil Procedure 2032.020 on the eve of trial. (*Id*. at p. 27.) The expert evaluator testified about his opinion in detail without disapproval by the Court of Appeal. (*Id*. at p. 13.)

The majority in this case did not address the contradiction between its opinion and *Landau*. It inexplicably failed to cite the *Landau* opinion at all. (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *4-*7].) In his dissent,

however, Justice Goethals referenced *Landau* when he observed that "[s]everal courts, including this one, seem to have assumed that such a right [to call expert witnesses] exists." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7] (dis. opn. of Goethals, J.).) He then reconciled his opinion with *Landau* by finding that from the application of the CDA, "it follows logically and legally that both sides in an SVPA action have such a right [to a retained expert]. No published opinion has held to the contrary." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7] (dis. opn. of Goethals, J.).)

The contradiction between the court's holding in this case and *Landau* cannot be reconciled. Without the right to call retained experts, compelled mental health examinations would have to be an abuse of discretion. Given that the Court of Appeal found no such abuse, it impliedly upheld the application of the CDA. Litigants are now left with two lines of cases reaching irreconcilable results. Clear guidance from this Court is necessary.

## II. THE COURT OF APPEAL'S OPINION ALSO CONTRADICTS THIS COURT'S OPINION IN *PEOPLE v. SUPERIOR COURT* (*SMITH*).

In *Smith,* this Court decided that the People may share an SVP's confidential medical records with their retained experts. (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 462.) The *Smith* court reasoned that a knowledgeable expert was necessary to cross-examine opposing experts, to assist with the "prosecuting the SVP petition[]" (*ibid.*) and "**to examine the relevant records to offer an opinion about the potential SVP's mental health.** [Citations.]" (*id.* at p. 472, emphasis added). The majority and the dissent in our case disagreed on the meaning of this language in *Smith*.

The majority recognized this language but labeled it "an acknowledgment that, in order to properly assist a prosecutor in preparing for trial, a retained expert would need sufficient information to form an opinion of his or her own." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *7].) But, the opinion of a non-testifying expert is not necessary for the People's preparation for trial. While a retained expert

may be needed so the People's attorney may "grasp the scientific nuances underlying another expert's opinion[]" (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 469) or to determine "whether the evaluator has 'accurately understood the statutory criteria[] [Citation.]" (*id.* at p. 471), the only purpose of obtaining an expert opinion about a subject's SVP status is to admit the opinion at trial. Simply having an inadmissible second opinion offers no benefit to the People or the jury. As Justice Goethals correctly concluded, with the majority's interpretation, "much of the *Smith* opinion becomes mere dictum." (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *8], (dis. opn. of Goethals, J.).)

Justice Goethals, on the other hand, reached the logical conclusion from *Smith*. If "[a]n expert would also need to examine the relevant records to offer an opinion about the potential SVP's mental health[] [Citation.]" (*People v. Superior Court* (*Smith*), *supra*, 6 Cal.5th 457, 471), then "a testifying expert may also access such records" (*Needham v. Superior Court, supra*, 82 Cal.App.5th 114 [2022 WL 3152460, *8] (dis. opn. of Goethals, J.)).

The dissent's interpretation is supported by cases which hold that the opinions of experts from the Department of State Hospitals after the initial filing of an SVPA petition are not controlling on the issue of whether the People may proceed to trial. (*Reilly v. Superior Court, supra*, 57 Cal.4th 64, 648; *Gray v. Superior Court* (2002) 95 Cal.App.4th 322, 329 [People may proceed to trial in spite of multiple negative opinions because a jury should be the final arbiter of SVP status].) This Court has also held that "[m]andatory dismissal is not required where one or both of the later evaluators conclude the individual does not meet the criteria for commitment. [Citation.]" (*Reilly v. Superior Court, supra*, 57 Cal.4th 641, 648.) This is based on the policy that the "People are entitled to have the trier of fact resolve conflict in the evidence when there are conflicting professional opinions .... [Citation.]" (*Id.* at p. 655, fn. 2.)

However, the unnatural limitations read into *Smith* by the majority unnecessarily tie the People's hands at trial. There are many qualified experts in the SVP area including a pool of independent experts the Department of State Hospitals uses

when independent opinions are required under Welfare and Institutions Code section 6601, subdivision (e). The same experts can be retained by the People to testify at trial when necessary. As Needham admits, Dr. King is exactly that kind of expert. (Petitioner's Reply to Real Party's Return to Petition for Writ of Mandate/Prohibition, p. 7, ¶ II, § 1.) In some cases, a retained expert is the only method by which the People can proceed. Yet, in the battle of the experts, the majority ruled that the People do not get one.

The implications of this ruling area significant. Without the People's ability to call retained experts at trial, two negative Department of State Hospitals evaluations are determinative on whether an alleged SVP can be committed under the SVPA in spite of the policy preference that such determinations be made by a trier of fact under *Reilly* and *Gray*. Ultimately, the People would be unable to proceed on many cases before trial, resulting in the release of alleged SVPs where the court had found probable cause to proceed. Applying the court's decision in this case leads to illogical results and contradicts the reasoning of other

California Supreme Court decisions. The petition for review should be granted to address these contradictions.

## CONCLUSION

The Court of Appeal erroneously ruled that CDA did not apply in SVPA proceedings and that the People cannot call a retained expert to testify at trial. These rulings contradict a prior ruling of the same division of the Court of Appeal and opinions of this Court. Therefore, the People respectfully request this Court grant review to secure uniformity of decisions and to settle an important area of law.

Dated this 15th day of September, 2022.

Respectfully submitted,

Todd Spitzer, District Attorney
County of Orange, State of California

/s/ *Yvette Patko*

By:_____
Yvette Patko
Senior Deputy District Attorney

## CERTIFICATE OF WORD COUNT

[California Rules of Court, rule 8.504(d)]

The text of the Petition for Review consists of * words as counted by the word-processing program used to generate this brief.

Dated this 15th day of September, 2022.

Respectfully submitted,

Todd Spitzer, District Attorney
County of Orange, State of California

/s/ *Yvette Patko*

By:_____
Yvette Patko
Senior Deputy District Attorney

ATTACHMENT

Filed 8/8/22

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

| | |
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| NICHOLAS NEEDHAM,<br>Petitioner,<br>v.<br>THE SUPERIOR COURT OF ORANGE COUNTY,<br>Respondent;<br>THE PEOPLE,<br>Real Party in Interest. | G060670<br>(Super. Ct. No. M-16870)<br>O P I N I O N |

Petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Elizabeth G. Macias, Judge. Petition granted.

Martin Schwarz, Public Defender, and Elizabeth Khan, Deputy Public Defender, for Petitioner.

Todd Spitzer, District Attorney, and Yvette Patko, Deputy District Attorney, for Real Party in Interest.

* * *

The People filed a petition against Nicholas Needham seeking to commit him under the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.[1]) (SVPA), which authorizes the involuntary civil commitment and treatment of sexually violent predators (SVP) at the conclusion of their prison term. Preparing for trial on the petition, the district attorney retained a psychological expert to evaluate Needham and testify at trial that he qualifies as an SVP. Needham moved to exclude the expert's testimony at trial, but the trial court denied his motion.

Needham asks this court for a writ of mandate/prohibition declaring that the SVPA does not permit the People to call a privately retained expert to testify at trial. We grant his petition.

The SVPA represents an extraordinary deprivation of a person's liberty: it enables the state to indefinitely detain a person, not for a crime actually committed, but for a crime that may be committed in the future. To be sure, the clear and present danger posed by sexually violent predators warrants such a scheme. But given the obvious dangers to essential liberty interests inherent in the SVPA, it must be carefully implemented and applied only where there is a high degree of certainty that it is warranted. Balancing these competing interests, the Legislature has prescribed a detailed process that centers around multiple evaluations by *independent* experts—as many as eight of them. The statutory scheme deliberately limits when an SVP petition may be filed and brought to trial, as well as the evidence available to the prosecution. In light of this system, we conclude that the expert-witness provisions of the Civil Discovery Act do not apply and that the People have no right to retain an expert witness to testify at trial.

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[1] All further undesignated statutory references are to this code.

## STATUTORY OVERVIEW

Before discussing the proceedings below or the merits of Needham's petition, we begin with the overall context and structure of the SVPA. The purpose of the SVPA is to confine and treat a limited group of convicted sex offenders who, if released, represent a danger to the health and safety of others in that they are likely to engage in acts of sexual violence. (*People v. Superior Court* (*Ghilotti*) (2002) 27 Cal.4th 888, 919.)

The SVPA sets forth a multistage procedure for pursuing the involuntary commitment of a potential SVP. (See § 6600 et seq.; *Reilly v. Superior Court* (2013) 57 Cal.4th 641, 646-647 (*Reilly*); *Moore v. Superior Court* (2010) 50 Cal.4th 802, 815 (*Moore*).) As set forth below, that procedure includes an initial screening process of potential SVP's, a full evaluation of targeted individuals by multiple mental health professionals, the filing of the petition in cases deemed appropriate, a probable cause hearing, additional evaluations as needed, and finally, a jury trial.

1. *Initial Screening and Full Evaluation*

First, if the Secretary of the Department of Corrections and Rehabilitation determines an inmate might qualify as an SVP, the inmate is referred for an initial screening based on his or her social, criminal, and institutional history and whether he or she committed a sexually violent predatory offense. (§ 6601, subds. (a)(1) & (b).) If, as a result of that screening, it is determined that the inmate is likely an SVP, the inmate is referred to the State Department of State Hospitals (DSH) for a full evaluation. (*Id.*, subd. (b).)

The evaluation is conducted by two mental health professionals, either psychologists or psychiatrists, designated by the Director of the DSH (the Director). (§ 6601, subd. (d).) Each mental health professional must evaluate the inmate in accordance with a standardized assessment protocol to determine whether the inmate is an SVP—that is, someone "who has been convicted of a sexually violent offense against

one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1); 6601, subds. (c) & (d).)

If the two evaluators agree the inmate has a diagnosed mental disorder and is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director forwards a request to the county that imposed the inmate's sentence to file a petition for commitment in superior court. (§ 6601, subd. (d), (h)(1).)

If, however, the two evaluators disagree on whether the inmate qualifies as an SVP, the Director facilitates further examination of the inmate by two "independent professionals" who are not state employees and who have at least five years of experience diagnosing and treating mental disorders. (§ 6601, subds. (e), (g).) A petition for commitment may only be filed if both of those independent professionals agree the inmate meets the criteria for commitment. (*Id.*, subd. (f).)

2. *The Petition and Probable Cause Hearing*

If the county's designated counsel (in this case, the district attorney) concurs with the Director's recommendation to file a petition for commitment, counsel then files such a petition in superior court. (§ 6601, subd. (i).) The superior court must then determine "whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release." (§ 6601.5.) If the court determines the petition on its face supports a finding of probable cause, it orders the inmate to be kept in a secure facility until a probable cause hearing is conducted. (*Ibid*.)

Within the next 10 days (§ 6601.5), the trial court is directed to hold a hearing to determine whether there is probable cause to believe the inmate is likely to engage in sexually violent predatory criminal behavior upon his or her release. (*Ibid.*;

§ 6602, subd. (a).) If the judge finds there is not probable cause, the commitment petition is dismissed. (*Ibid*.) If the judge finds there is probable cause, the matter is set for trial. (*Ibid*.)

3. *Additional Evaluations*

Resolution of the SVP petition often stretches over months or years. (See *People v. Superior Court* (*Smith*) (2018) 6 Cal.5th 457, 462 (*Smith*).) Commitment under the SVPA must nonetheless be based on a "'*current*' mental disorder." (*Reilly, supra,* 57 Cal.4th at p. 647, italics added.) Thus, if the district attorney determines updated evaluations are necessary to properly present the case for commitment, he or she may ask the DSH to perform updated evaluations. (§ 6603, subd. (d)(1).) Additionally, if either of the original evaluators is no longer available to testify, the district attorney may ask the DSH to appoint a different expert to perform a replacement evaluation. (*Ibid.*)

If an updated or replacement evaluation results in a split of opinion as to whether the inmate meets the criteria for commitment, the petition need not be dismissed, as the new evaluations are intended primarily for evidentiary and informational purposes. (*Reilly, supra,* 57 Cal.4th at p. 648; *Gray v. Superior Court* (2002) 95 Cal.App.4th 322, 328 (*Gray*).) However, in the event of a split of opinion, the DSH must obtain two additional evaluations by independent professionals. (§ 6603, subd. (d)(1); see § 6601, subd. (e), (f).)

Those additional evaluations are not binding; if one or both of the independent professionals conclude the inmate does not meet the SVPA's criteria for commitment, the district attorney may nevertheless elect to proceed to trial. (*Gray, supra,* 95 Cal.App.4th at p. 329.) "[O]nce a petition has been properly filed and the court has obtained jurisdiction, the question of whether a person is a sexually violent predator should be left to the trier of fact *unless* the prosecuting attorney is satisfied that

proceedings should be abandoned." (*Ibid*.) "[I]t is not the number of opinions that matters, but their persuasiveness." (*Ibid*.)

4. *Trial*

At trial on a commitment petition under the SVPA, the People must prove three elements beyond a reasonable doubt: (1) the defendant has suffered a conviction of at least one qualifying "sexually violent offense"; (2) the defendant has "a diagnosed mental disorder that makes the person a danger to the health and safety of others"; and (3) the mental disorder makes it likely the defendant will engage in future predatory acts of sexually violent criminal behavior if released from custody. (§§ 6600, 6604.)

SVPA trials are special proceedings of a civil nature and are not punitive in purpose or effect. (*Moore, supra*, 50 Cal.4th at p. 815.) Although, generally speaking, the Civil Discovery Act applies to such proceedings (*People v. Angulo* (2005) 129 Cal.App.4th 1349, 1368), in light of the unique nature of such proceedings it "must be applied in each SVPA proceeding on a case-by-case basis." (*People v. Superior Court (Cheek)* (2001) 94 Cal.App.4th 980, 994.) Further distinguishing itself from a standard civil trial, the SVPA "contains a number of procedural safeguards commonly associated with criminal trials, including the alleged SVP's right to a jury trial (§ 6603, subd. (a)), to assistance of counsel (*ibid*.), and to a unanimous jury finding that he or she is an SVP beyond a reasonable doubt before he or she may be committed (§ 6604)." (*Reilly, supra*, 57 Cal.4th at p. 648.) A defendant in an SVPA proceeding is also entitled to certain due process protections because civil commitment involves a significant restraint on liberty. (*Moore, supra,* 50 Cal.4th at p. 818.)

"The bulk of the evidence at trial [in an SVPA commitment proceeding] typically focuses on whether the person has a diagnosed mental disorder that makes it likely he or she will engage in sexually violent behavior. [Citation.] Accordingly, the civil commitment trial usually turns on the quality and credibility of the expert witnesses

and the extent to which their evaluations are persuasive." (*Smith*, *supra,* 6 Cal.5th at pp. 470-471.)

If the jury or court finds the defendant is an SVP, the defendant is committed for an indeterminate term to the custody of the DSH. (§ 6604.) Following commitment, the SVP is subject to annual mental examinations to determine whether he or she continues to meet the definition of an SVP. (§ 6604.9.) The SVP may also file a petition for unconditional discharge. (See § 6605.)

**FACTS**

This brings us to the present case. In 2016, two DSH evaluators, Dr. Coles and Dr. Musacco, evaluated Needham and opined he qualified as an SVP. Based on their evaluations, in November 2016, the district attorney filed a petition to commit Needham as an SVP.

In January 2018, Dr. Coles changed his opinion and found Needham no longer met the legal criteria to be an SVP. Since the two DSH evaluators now disagreed regarding Needham's status as an SVP, two additional independent evaluators were asked to evaluate Needham—Dr. Korpi and Dr. Yanofsky. Dr. Korpi opined Needham did not meet the criteria for commitment; Dr. Yanofsky opined he did.

All four evaluators testified at Needham's probable cause hearing. The trial court found there was probable cause to believe Needham was likely to engage in sexually violent predatory criminal behavior upon his release. After the probable cause hearing, however, Dr. Yanofsky changed his opinion and found Needham no longer met the criteria of an SVP.

Rather than obtaining an updated or replacement evaluation from the DSH independent experts, in July 2019, the People informed the trial court they had privately retained Dr. King as an expert witness and requested a protective order so the People could provide Dr. King with Needham's confidential records. At the People's request

and over Needham's objection, the court issued a protective order allowing the People to provide Needham's records to Dr. King and allowing Dr. King to interview Needham at the jail.

Between July 2019 and June 2021, Needham filed three motions to exclude Dr. King from testifying as an expert witness at trial, asserting the SVPA does not permit the People to privately retain an expert witness to testify at trial. The trial court denied Needham's motions in July 2021, finding the People may privately retain their own expert in SVPA commitment proceedings which would including testifying at trial.

In September 2021, several months before the trial date, Needham filed the instant petition for writ of mandate/prohibition, asking this court to order that Dr. King may neither perform a supplemental evaluation of Needham nor testify at trial. The petition posed the issue for review as follows: "When multiple doctors, who were chosen by the [DSH] under the [SVPA] including the doctors who have performed the most recent evaluations, have examined Defendant and opined he is not a [SVP], can the People privately retain evaluators to perform a non-DSH SVP supplemental 'evaluation' and testify at trial to their opinion that Defendant is an SVP despite never being sanctioned by the DSH to do so?"

This court initially denied Needham's petition. Needham then filed a petition for review in the California Supreme Court, which granted the petition and transferred the matter back to this court. The Supreme Court directed us to vacate our previous order denying mandate and to issue an order directing the trial court to show why the requested relief should not be granted. We now reach the merits of Needham's petition.

## DISCUSSION

Needham contends the SVPA does not permit a district attorney to retain a mental health expert to testify at trial. He contends the SVPA only allows a district attorney to use the DSH evaluators appointed under section 6601 and 6603 to testify at trial, not privately retained experts. In light of the detailed statutory scheme for the provision and testimony of independent experts in an SVPA proceeding, we agree.

The SVPA's statutory scheme focuses on independent experts. Once the Secretary of the Department of Corrections and Rehabilitation determines that an SVP petition may be necessary, no petition may be filed until two independent experts agree that the defendant is a sexually violent predator. (§ 6601, subd. (d).) In conducting that assessment, the experts must evaluate the person in accordance with a standardized assessment protocol developed by the DSH. (§ 6601, subd. (c).) That protocol, which comprises 10 pages of singled-spaced text, is very detailed in how the independent experts are to conduct their evaluations.[2]

If the two independent experts do not agree, the DSH must arrange for a further examination by two more independent experts. (§ 6601, subd. (e).) Those experts cannot be employees of the state, must have at least five years' experience in treating mental disorders, and must be either a psychologist or psychiatrist. (§ 6601, subd. (g).) A petition may not be filed unless both of those experts agree that the person qualifies as a sexually violent predator. (§ 6601, subd. (f).)

Once a petition is filed, the SVPA expressly addresses the retaining of experts: it says the *defendant* may hire an expert to participate in the trial. (§ 6603, subd. (a).) There is no similar provision for the prosecutor. This provision invokes the "principle, commonly known under the Latin name of *expressio unius est exclusio*

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[2] The protocol is available at https://www.dsh.ca.gov/Publications/docs/Regulations/2019_01_17/protocoltext.pdf (accessed August 2, 2022).

*alterius,* . . . that the expression of one thing in a statute ordinarily implies the exclusion of other things." (*In re J.W.* (2002) 29 Cal.4th 200, 209.) Although this principle does not apply invariably (*Ibid.*), here it supports a common sense reading of the statute. If the Legislature envisioned *both* parties retaining testifying experts, why only say defendant? The clear inference is that this is a one-sided right.

Two further provisions reinforce this reading. First, the very next subdivision says, "The attorney petitioning for commitment under this article has the right to demand that the trial be before a jury." (§ 6603, subd. (b).) Thus, immediately after specifying what the defendant's rights at trial are, the statute addresses the People's rights at trial and makes no mention at all of retaining an expert. Second, at a much later stage of the proceeding, in the context of a petition by the defendant for conditional release from custody, the SVPA provides that the "[t]he [district] attorney . . . shall represent the state and may have the committed person evaluated by *experts chosen by the state*." (§ 6608, subd. (g), italics added.) The fact that the Legislature expressly authorized the People to retain an expert at a later stage of the proceeding demonstrates that the omission of that right earlier in the proceeding was intentional.

But that is not all. Returning to the initial trial, the SVPA expressly addresses what the prosecutor is to do if the prosecutor deems the original expert reports inadequate: "request the [DSH] to perform updated evaluations." (§ 6603, subd. (d)(1).) If one of the original evaluators is not available, the People may request "replacement evaluations," "[h]owever, updated or replacement evaluations *shall not be performed* except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to

whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601." (*Ibid.*, italics added.) The language "shall not be performed" is mandatory language that prohibits any replacement evaluations except on the terms specified in the statute. (*Ibid.*) If the People could retain their own expert at that stage, they would essentially be providing a replacement evaluation free of the restrictions the Legislature imposed in subdivision (d)(1).

Yet two more provisions support the proposition that the People are not entitled to retain their own experts to testify at trial.

First, section 6603, subdivision (e), states, "This section does not prevent *the defense* from presenting otherwise relevant and admissible evidence." (Italics added.) There is no similar provision for the state's case. Under the principle of *expression unius est exclusio alterius*, this provision undermines the dissent's rationale. The dissent's rationale is, essentially, the SVPA does not prohibit the state from retaining experts, and thus anything otherwise available in the Civil Discovery Act is permitted. But the statute expressly addresses that very rationale and applies it only to a defendant. This strongly suggests that the People, by contrast, are confined to the evidence that the SVPA carefully designates.

Finally, section 6603, subdivision (k)(3), provides, "This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article." Two aspects of this are noteworthy. First, the Legislature applies this provision to "a party," meaning either party, which demonstrates that its prior delegations specifically to the defendant were intentional. Second, the provision entitles either party to "obtain other records," not to retain other witnesses.

The Legislature, therefore, has carefully circumscribed the options available to the People in retaining experts for trial. And it was generous in the possibilities: by this point in the proceeding, as many as *eight* independent experts may

have weighed in (the two original experts, two more if they disagreed, two more for updated/replacement reports, and two more if the updated reports disagree). Importantly, all eight of those experts are independent experts.

Taken as a whole, the above provisions evince a carefully calibrated and limited procedure to ensure that an extraordinary deprivation of liberty has as many safeguards as possible. Virtually the entire scheme revolves around the *independent* experts who evaluate the defendant and testify concerning defendant's mental state. It would largely undermine those safeguards if the People could bypass them by presenting testimony from their own retained expert who had to do no more than satisfy the basic expert witness requirements of the Civil Discovery Act. To permit the People to retain a testifying expert would create the possibility that an expert with a clear bias—an expert hired to support the People's view, rather than provide an independent analysis—could lead to the deprivation of a person's liberty even where some independent experts find it unwarranted, or for reasons independent experts find unconvincing. That result is inconsistent with the design of the SVPA procedure.

Beyond the statutory scheme, case law has not directly addressed the issue before us, though the dissent contends *Smith, supra,* 6 Cal.5th 457 provides it some support. Although the dissent acknowledges that *Smith* did not directly address the issue before us, the dissent contends the entire *Smith* opinion would become "mere dictum" if the Supreme Court did not at least implicitly agree that a district attorney may privately retain experts. We disagree.

In *Smith* the issue was whether the People could share the mental health records of a defendant with a *consulting* expert, subject to an appropriate protective order. The court concluded the People may do so. The court's rationale was that a district attorney will need the assistance of an expert to understand and effectively cross-examine a hostile expert witness: "Cross-examination may assist the trier of fact in determining whether the evaluator has 'accurately understood the statutory criteria.'

[Citation.] But that opportunity would be a hollow one if the district attorney does not have the assistance of an expert to interpret and explain the significance of the specialized information at issue." (*Smith, supra,* 6 Cal.5th at p. 471.) "Without an expert's assistance in preparing the cross-examination of adverse witnesses, 'the risk of an inaccurate resolution . . . is extremely high.'" (*Ibid.*) "So it is not surprising to find that nothing in the text of the SVPA bars the government from sharing otherwise confidential information in its possession with the expert it has retained *for the purpose of assisting in an SVP proceeding*." (*Id.* at p. 472 (italics added).)

Amidst the court's heavy focus on the need for the People to retain an expert to assist in trial preparation, we acknowledge the *Smith* opinion contains a single line that could be interpreted to support the dissent. The court stated, "An expert would also need to examine the relevant records to offer an opinion about the potential SVP's mental health." (*Smith, supra,* 6 Cal.5th at pp. 471-472.) In context, we do not interpret this single line as an endorsement of the notion that the People may call a privately retained *testifying* expert. Instead, we view this simply as an acknowledgement that, in order to properly assist a prosecutor in preparing for trial, a retained expert would need sufficient information to form an opinion of his or her own. Indeed, if the *Smith* court had envisioned the People calling a *testifying* expert, the court's rationale should have been that the expert needs to see the reports in order to testify. But the court never said that; in fact, it seems to have studiously avoided saying that.

In the absence of any clear guidance from our high court, and given the detailed and carefully calibrated scheme of independent experts set forth in the SVPA, we hold that the People may not call a privately retained expert witness to testify at trial.

## DISPOSITION

The petition for a writ of mandate is granted. Let a peremptory writ of mandate issue directing the Superior Court of Orange County to vacate its ruling denying Needham's motions to exclude the testimony of the People's expert witness, and instead to issue a new order excluding the testimony of the People's privately retained expert witness.

MARKS, J.*

I CONCUR:

O'LEARY, P. J.

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

GOETHALS, J., dissenting:

I dissent. Although I believe the legal question presented here is a close one, and I am sympathetic with many of the concerns expressed by my colleagues (e.g., "[t]he SVPA represents an extraordinary deprivation of a person's liberty"), I disagree with the majority's conclusion that the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.) (SVPA), which authorizes the involuntary civil commitment and treatment of sexually violent predators (SVP) at the conclusion of their prison term, prevents the People from calling an expert privately retained by them to testify at trial.

The SVPA specifically provides that a defendant in a commitment proceeding may "retain experts or professional persons to perform an examination on the person's behalf." (Welf. & Inst. Code, § 6603, subd. (a).) It says nothing about the People's right to do so.

Several courts, however, including this one, seem to have assumed that such a right exists. In *People v. Landau* (2013) 214 Cal.App.4th 1, 25-26 (*Landau*), for example, we found the trial court did not abuse its discretion when it permitted an expert retained by the prosecution to conduct a pretrial evaluation of the defendant. That expert later testified at trial.

It is also well settled that, since SVPA proceedings are civil in nature (*People v. Roa* (2017) 11 Cal.App.5th 428, 443), the Civil Discovery Act of 1986 (Code Civ. Proc., § 2016.010 et seq.) (CDA) applies to them. (See, e.g., *Landau, supra*, 214 Cal.App.4th at p. 25; *Bagration v. Superior Court* (2003) 110 Cal.App.4th 1677, 1686; *People v. Superior Court* (*Cheek*) (2001) 94 Cal.App.4th 980, 983, 988.) Since the CDA permits parties to retain and designate expert trial witnesses (Code Civ. Proc., §§ 2034.210-2034.250, 2034.270, 2034.290), it follows logically and legally that both sides in an SVPA action have such a right. No published opinion has held to the contrary.

I agree with the majority that "case law has not directly addressed the issue before us." But not long ago the Supreme Court came close in *People v. Superior Court* (*Smith*) (2018) 6 Cal.5th 457 (*Smith*). In *Smith*, after reviewing the history of the SVPA, the Supreme Court ruled that the People could share the defendant's mental health records with a mental health expert retained by them as a pretrial consultant. (*Id.* at p. 462.) The court then added that "[a]n expert would also need to examine the relevant records to offer an opinion about the potential SVP's mental health." (*Id.* at pp. 471-472.) To me the court's implication seems clear: a testifying expert may also access such records.

My colleagues acknowledge this language before dismissing its importance. "In context, we do not interpret this single line as an endorsement of the notion that the People may call a privately retained *testifying* expert." On this issue we may agree to disagree. But if their position is well taken, much of the *Smith* opinion becomes mere dictum.

My colleagues advocate for "a common sense reading of the statue." So do I. In *Smith*, the Supreme Court discussed at some length the realities of an SVP trial: "The primary mechanism for identifying an SVP is assessment of the person by psychiatrists or psychologists using a standardized protocol." (*Smith, supra*, 6 Cal.5th at p. 470.) "Accordingly, the civil commitment trial usually turns on the quality and credibility of the expert witnesses and the extent to which their evaluations are persuasive." "A key way in which one party counters an opposing expert's opinion is to uncover and challenge the expert about the bases for his or her opinion. [Citations.] This is particularly true for a mental health professional's assessment of whether an individual qualifies as an SVP." "Cross-examination may assist the trier of fact in determining whether the evaluator has 'accurately understood the statutory criteria.'" (*Id.* at p. 471.)

Today, many civil trials evolve into battles of expert witnesses. The designation and use of such experts are controlled by the CDA. The parties have the opportunity to challenge pretrial the admissibility of their opponent's proposed expert testimony via motions filed pursuant to Evidence Code sections 402 and 405. If the testimony is admitted, the experts are subjected to the crucible of cross-examination. And then the trier of fact decides who to believe. I am not convinced that proceeding in this well-established manner threatens the fairness of future SVP proceedings.

I would affirm.

GOETHALS, J.

**PROOF OF ELECTRONIC SERVICE**

STATE OF CALIFORNIA )
)
COUNTY OF ORANGE )

RE: *Nicholas Needham v. The Superior Court of Orange County*
Case No. S
(DCA Case No. G060670;
Orange County Superior Court Case No. M-16870)

I am a citizen of the United States; I am over the age of 18 years and not a party to the within entitled action; my electronic service address is: appellate@da.ocgov.com; my business address is: Office of the District attorney, County of Orange, 300 North Flower Street, Santa Ana, CA 92703.

On September 15, 2022, I served the PETITION FOR REVIEW on the interested party listed below. I caused a true electronic copy of said document to be E-Filed with the court, via TrueFiling, at the following address:

District Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701
http://www.courts.ca.gov/4dca-efile.htm
(714) 571-2600

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

Executed on September 15, 2022, at Santa Ana, California.

/s/ *Catherine McDorman*

_____

Catherine McDorman
Attorney Clerk II

## PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA )
)
COUNTY OF ORANGE )

RE: *Nicholas Needham v. The Superior Court of Orange County*
Case No. S
(DCA Case No. G060670;
Orange County Superior Court Case No. M-16870)

I am a citizen of the United States; I am over the age of 18 years and not a party to the within entitled action; my electronic service address is: appellate@da.ocgov.com; my business address is: Office of the District Attorney, County of Orange, 300 North Flower Street, Santa Ana, CA 92703.

On September 15, 2022, I electronically served the PETITION FOR REVIEW on the interested parties in said action by transmitting a true copy via electronic mail as follows:

Office of State Attorney General
sdag.docketing@doj.ca.gov
(619) 738-9000

Hon. Elizabeth Macias
EServiceDCAbriefs@occourts.org
(657) 622-5238

Elizabeth Khan
Deputy Public Defender
801 W. Civic Center Drive
Suite 400
Santa Ana, California 92701
elizabeth.khan@ocpubdef.com
(657) 251-6090

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

Executed on September 15, 2022, at Santa Ana, California.

/s/ *Catherine McDorman*

_____

Catherine McDorman
Attorney Clerk II