No. S271877

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

DAJAH BROWN,
Defendant and Appellant.

Sixth Appellate District, Case No. H048462
Santa Clara County Superior Court, Case Nos. AP002184, C1646865
The Honorable Cynthia C. Lie, Judge

OPENING BRIEF ON THE MERITS

ROB BONTA (SBN 202668)
Attorney General of California
LANCE E. WINTERS (SBN 162357)
Chief Assistant Attorney General
JEFFREY M. LAURENCE (SBN 183595)
Senior Assistant Attorney General
SETH K. SCHALIT (SBN 150578)
Supervising Deputy Attorney General
*BRIDGET BILLETER (SBN 183758)
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3763
Fax: (415) 703-1234
Bridget.Billeter@doj.ca.gov
Attorneys for Plaintiff and Respondent

March 8, 2022

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

COURT RULES

OTHER AUTHORITIES

ISSUE PRESENTED

Whether the superior court can deny a continuance for the failure to establish good cause pursuant to Penal Code section 1050 if such a denial will causally result in dismissal of a criminal charge.

INTRODUCTION

Penal Code section 1050 contains several provisions governing how a party may request, and under what circumstances a court may grant, a continuance of a criminal proceeding. Penal Code section 1050.5 authorizes certain sanctions for noncompliance with some of those provisions, particularly those requiring advance written notice.

Longstanding case law limits the trial court's authority to deny a motion to continue a criminal trial if the denial would result in a dismissal of the case prior to the speedy trial limitations in Penal Code section 1382. In 2003, the Legislature amended Penal Code section 1050 to codify this principle, providing that the requirements of section 1050, including the good cause requirement, are directory only. *People v. Ferrer* (2010) 184 Cal.App.4th 873, 886, applied this principle to limit the court's authority to deny a continuance of a hearing on a motion to suppress evidence if it is "reasonably foreseeable that denial of the prosecutor's request for a continuance would result in dismissal of the case."

In this case, the prosecutor moved to continue, without good cause, a hearing on a motion to suppress evidence. The trial court, relying on *Ferrer* and the prosecutor's representation that

the People would not be able to proceed without the evidence that appellant sought to suppress, granted the motion to continue, denied suppression, and found appellant guilty. The Court of Appeal reversed, concluding that *Ferrer* was wrongly decided and holding that a trial court has the authority to deny a prosecutor's requested continuance for lack of good cause even if the denial will likely result in dismissal of the matter for lack of evidence.

This Court should reject the Court of Appeal's holding and adopt *Ferrer*'s, as to do otherwise would conflict with established case law limiting a trial court's authority to deny a continuance in a criminal case where such a denial would result in a dismissal of the charges prior to the statutory time limitations in section 1382. However, this Court should also clarify that *Ferrer*'s rule does not require a speculative determination by the trial court as to the foreseeability of a dismissal. The rule should require an express statement by the prosecutor that a denial of a continuance and the suppression of the evidence will result in an inability to proceed to trial.[1]

In disagreeing with *Ferrer*, the Court of Appeal's analysis ignored the well-settled rule that a dismissal after a denial of a continuance is not in the in the "furtherance of justice." (Pen. Code, § 1385.) It also confused the statutory provisions limiting the court's authority to dismiss a case as a remedy for the failure to comply with the good cause requirements of Penal Code section

[1] This clarification is a refinement of the position the People advanced in the Court of Appeal.

1050 with the provisions providing an exception to those good cause requirements. Finally, the court's practical concerns—which the court believed supported rejecting the *Ferrer* rule—overlooked the constitutional and statutory speedy trial provisions that guide the trial court's discretion in determining the length of a requested continuance and protect the court's ability to manage its own trial calendar.

STATEMENT OF THE CASE

In 2016, the Santa Clara County District Attorney charged appellant with misdemeanor loitering with intent to commit prostitution (Pen. Code, § 653.22, subd. (a)). (CT 21.)[2] The charges were based on observations made by San Jose Police Officer Yasin as well as incriminating statements made by appellant to Officer Yasin. (CT 22.) On January 19, 2017, appellant filed a motion to suppress her statements as the fruit of an unlawful detention, pursuant to section 1538.5. (CT 16.)

On February 17, 2017, the date set for hearing the motion, the People orally moved for a continuance. (2/17/17 RT 4.) The prosecutor explained that Officer Yasin was under subpoena, but during the lunch recess, Officer Yasin had informed the prosecutor that he was the only gang unit officer available to interview a percipient witness to a shooting and the interview was scheduled at the same time as the hearing. (2/17/17 RT 4-5.) The prosecutor told Officer Yasin to go to the interview and that

[2] All further references are to the Penal Code unless otherwise noted.

he would explain to the court the reason for Officer Yasin's absence. (2/17/17 RT 4-5.) Appellant objected to the continuance. (2/17/17 RT 5.)

The trial court denied the motion to continue because there was no good cause for a continuance. (2/17/17 RT 6, 8.)[3] Because the prosecution was unable to proceed with the hearing without Officer Yasin's testimony, the court granted appellant's motion to suppress her statements. (2/17/17 RT 11-12.)

The prosecutor stated that the People needed additional time to determine whether they would be able to proceed without the suppressed evidence. (2/17/17 RT 12.) Appellant withdrew her previously entered time waiver, thereby requiring the trial to begin by March 20, 2017. (2/17/17 RT 12-13.) The court set jury trial for March 6, 2017. (2/17/17 RT 13.)

On March 2, 2017, relying on *People v. Ferrer*, *supra*, 184 Cal.App.4th 873, the People moved to reconsider the rulings on the motions to continue and to suppress. (CT 32.) The prosecutor represented that the People would be unable to proceed to trial without the suppressed evidence. (3/2/17 RT 302-304.) The trial court vacated its previous rulings and set the suppression hearing for March 17 and trial for March 20. (CT 45.)

On March 17, after hearing the testimony of Officer Yasin and appellant, the court denied appellant's motion to suppress.

---

[3] The court did not deny the motion to continue based on the lack of written notice. (See § 1050, subd. (b).)

(CT 57; 3/17/17 RT 59.) On March 20, 2017, appellant entered a "slow plea" pursuant to *Bunnell v. Superior Court* (1975) 13 Cal.3d 592. (CT 58.) The court found appellant guilty, suspended imposition of sentence, and placed appellant on probation for three years. (CT 58.)

Applying *Ferrer*, the appellate division affirmed the judgment. (Opn. 5) In a concurring opinion, Judge Saban urged the Court of Appeal to reconsider and disagree with *Ferrer*. (Opn. 6.) The Court of Appeal granted appellant's petition to transfer pursuant to California Rules of Court, rule 8.1006.

The Court of Appeal announced that it would "decline to follow *Ferrer*." (Opn. 2.) The court disagreed with *Ferrer*'s "construction of sections 1050 and 1050.5" and held that "if the trial court finds that the request for a continuance of a motion to suppress lacks good cause, the court has the authority to deny the requested continuance for lack of good cause under section 1050, subdivision (e), even if this decision may foreseeably result in a dismissal of the matter for lack of evidence." (Opn. 9, 20.) Based on the parties' agreement that the admission of the challenged evidence at the *Bunnell* trial was not harmless beyond a reasonable doubt, the court reversed the judgment, ordered the trial court to reinstate its orders denying the prosecution's request for a continuance and granting the motion to suppress, and remanded for further proceedings, including possible retrial. (Oct. 12, 2021, order modifying opn.)

ARGUMENT

I. THE TRIAL COURT HAS NO AUTHORITY TO DENY A CONTINUANCE IF DOING SO WILL CAUSALLY RESULT IN DISMISSAL OF A CRIMINAL CHARGE

Well-settled case and statutory law limits the trial court's authority to deny a continuance if the denial will causally result in a dismissal of the charges. The Court of Appeal's rejection of this legal principle does not survive close scrutiny, and its judgment should be reversed.

A. Legal background

The Court of Appeal's holding focused solely on the rule announced in *Ferrer* without considering the legal underpinnings of its rule, which dated back to this Court's opinion in *Malengo v. Municipal Court* (1961) 56 Cal.2d 813. A discussion of the relevant case and statutory law is useful to properly understand the Court of Appeal's erroneous reasoning.

1. Relevant statutory provisions

The Legislature recognized that "[t]he welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time." (§ 1050, subd. (a).) To that end, section 1050 provides that continuances in a criminal case must be requested in writing with two days' notice (§ 1050, subd. (b)) and may be granted only upon a showing of good cause (§ 1050, subd. (e)). Notwithstanding the notice requirements of section 1050, subdivision (b), "a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose

sanctions as provided in Section 1050.5." (§ 1050, subd. (c).) Section 1050.5 authorizes either or both a fine or a report to a disciplinary committee (§ 1050.5, subd. (a)) "in addition to any other authority or power available to the court, except that the court or magistrate shall not dismiss the case" (*id.*, subd. (b)). Similarly, section 1050 is "directory only and does not mandate dismissal of an action by its terms." (§ 1050, subd. (*l*).)

Unlike section 1050 (which is expressly directory) and section 1050.5 (which prohibits dismissal), section 1382, governing the time of trial, does authorize dismissal. It provides that "unless good cause is shown," a court shall dismiss a criminal case when the defendant is not brought to trial within 60 days of arraignment on a felony case, within 45 days of arraignment on a misdemeanor case where the defendant is out of custody, or within 30 days of arraignment on a misdemeanor case when the defendant is in custody. (§ 1382, subd. (a)(2), (3).) Whenever a case is set for trial beyond the 60-, 45-, or 30-day time period "by request or consent, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter." (§ 1382, subd. (a)(2)(B), (3)(B).)

In addition to the timing-specific power to dismiss in section 1382, section 1385, subdivision (a) provides a broader but still circumscribed power to dismiss. It states, "The judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." (§ 1385, subd. (a).)

2. Case law consistently held that dismissal of a criminal case was not a remedy for a violation of section 1050

Decades of case law—beginning with this Court's 1961 *Malengo* opinion—has uniformly held that a trial court may not dismiss a case to remedy a violation of section 1050.

In *Malengo v. Municipal Court*, *supra*, 56 Cal.2d at pp. 814-815, the superior court granted, over the defendant's objection, the People's motion for a one-week continuance of a misdemeanor trial. The defendant petitioned for a writ of prohibition. (*Id.* at p. 815.) This Court rejected the defendant's contention that dismissal was required by section 1382 because the continuance request, even if unsupported by good cause, was for a date within 10 days of the last date for trial to which defendant had consented. (*Id.* at pp. 815-816.) This Court also rejected the defendant's contention that a violation of section 1050 required dismissal:

> Section 1050 . . . provides: ". . . No continuance of a criminal trial shall be granted except upon affirmative proof in open court, upon reasonable notice, that the ends of justice require a continuance. . . . No continuance shall be granted for any longer time than is affirmatively proved the ends of justice require."
>
> Defendant argues that this provision is mandatory and therefore that since there was an absence of proof in open court that the ends of justice required a continuance, respondent court lost jurisdiction to proceed with the trial of the case.
>
> This contention is devoid of merit, for the reason that section 1050 of the Penal Code, providing for the time for trial of criminal cases, is directory only and contains no provision of the dismissal of a case when its terms are not complied with.

(*Id.* at p. 816.)

In *People v. Flores* (1978) 90 Cal.App.3d Supp. 1, 6, the People moved for a seven-day continuance of trial. The requested trial date fell within the 45-day time limit in section 1382. (*Ibid.*) The trial court denied the continuance and dismissed the case. (*Ibid.*) The appellate division held that dismissal was not permitted pursuant to section 1382 because the requested continuance date fell within the 45-day time limit. (*Id.* at p. Supp. 7.) The court also rejected under *Barker v. Wingo* (1972) 407 U.S. 514 the defendant's claim that the one-week continuance violated the defendant's right to a speedy trial. (*Id.* at pp. Supp. 7-8.)

The *Flores* court further rejected the defendant's contention that section 1050 required dismissal:

> The applicable language of Penal Code section 1050 . . . was "Continuances shall be granted only upon a showing of good cause." This section is not mandatory, but is directory only and contains no provision for the dismissal of a case when its terms are not complied with. (*Malengo v. Municipal Court, supra.*) "We have previously observed that the provisions of section 1382 . . . are intended to implement a broader policy clearly expressed in the . . . language of Penal Code section 1050 . . . . [Citation.]" [Citation.] The strong language of Penal Code section 1382 that an action "shall not be dismissed under this subdivision" when a defendant is brought to trial within *some* of its time limits, leads us to interpret it to mean that its provisions are controlling over those of Penal Code section 1050 to the extent that an action shall not be dismissed if the defendant is brought to trial within *any* of its applicable time limits unless the defendant establishes a favorable balance under the ad hoc

> balancing test of *Barker v. Wingo*, *supra*, i.e., the federal constitutional standards.

(90 Cal.App.3d at pp. Supp. 8-9, some edit marks added by *Flores*.)

Finally, the *Flores* court held that the dismissal pursuant to section 1385 was an abuse of discretion:

> Failure to bring a defendant to trial within the applicable time limits of Penal Code section 1382 requires dismissal of the action unless good cause is shown by the People. No affirmative showing of prejudice to the defendant by the delay is required. [Citation.] "On the other hand, appellate courts have shown considerable opposition to the granting of dismissals under 1385 . . . in instances where the People are thereby prevented from prosecuting defendants for offenses of which there is probable cause to believe they are guilty as charged. Courts have recognized that society, represented by the People, has a legitimate interest in 'the fair prosecution of crimes properly alleged.' [Citation.] '"[A] dismissal which arbitrarily cuts those rights without a showing of detriment to the defendant is an abuse of discretion" [Citations]' [citation]." (*People v. Orin* (1975) 13 Cal.3d 937, 946-947 [120 Cal.Rptr. 65, 533 P.2d 193], italics added.)

(90 Cal.App.3d at p. Supp. 9; see also *People v. Hernandez* (1979) 97 Cal.App.3d 451, 455 ["the Legislature has specifically determined in section 1382 that 10 days is a reasonable time in which to bring to trial a defendant who has consented to a postponement beyond the original 60-day period. A dismissal within the 10-day period would be contrary to legislative policy and thus not in furtherance of justice"]; *People v. Arnold* (1980) 105 Cal.App.3d 456, 459 [same].)

In *People v. Rubaum* (1980) 110 Cal.App.3d 930, the prosecutor requested, on the date set for trial, a five-day continuance because the sole witness for the People was on vacation. (*Id.* at p. 932.) The new trial date was within the 45-day time limit in section 1382. (*Ibid.*) The superior court "denied the motion to continue, no good cause having been shown as required by section 1050. The judge then dismissed the case for the inability of the prosecutor to proceed, relying on section 1385." (*Id.* at p. 933.)

The appellate court held that the superior court erred in dismissing the case. "Section 1385 requires that the dismissal of an action be 'in furtherance of justice' and that the court set forth its reasons for dismissal in an order entered upon the minutes. The cases of *Hernandez* and *Arnold* have specifically held that a dismissal within the 10-day grace period set forth in section 1382 is against legislative policy and thus *not* in furtherance of justice. . . . Obviously a continuance date within the specified time limits should not render the case subject to dismissal if a continuance within the 10-day grace period does not do so." (110 Cal.App.3d at p. 935.)

The *Rubaum* court also rejected the argument that dismissal was permitted pursuant to section 1050:

> [Section 1050] is contained in title 6, part 2, chapter 8, which in turn is entitled "Formation of the Trial Jury and the Calendar of Issues for Trial." The only reference to dismissal of an action is simply a requirement to notify the "Chairman of the Judicial Council" whenever it appears that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to section 1382 of this code.

> Section 1050 is directory only and does not mandate any dismissal of an action by its terms. (*Malengo v. Municipal Court*, *supra*, 56 Cal.2d 813, 815-816.) [¶] By contrast sections 1382 and 1385 appear in title 10, part 2, chapter 8, entitled "Dismissal of the Action for Want of Prosecution or Otherwise."

(110 Cal.App.3d at p. 935.)

In *People v. Ferguson* (1990) 218 Cal.App.3d 1173, the trial court denied the People's same-day request to continue a jury trial to the afternoon to accommodate the prosecutor's morning appearance in another courtroom. (*Id.* at p. 1177.) The trial court dismissed the case pursuant to section 1385 because the prosecution was unable to proceed in the absence of the assigned prosecutor. (*Id.* at p. 1178.) The appellate court held that the trial court abused its discretion in dismissing the case even though the People had not complied with the notice and good cause requirements of section 1050 when requesting the continuance. "Section 1050 governs continuances and is based on the premise that criminal proceedings shall be set for trial and heard and determined at the earliest possible time." (*Id.* at p. 1181.) Section 1050 "'is directory only and does not mandate any dismissal of an action by its terms.'" (*Ibid.*) The court further held that a dismissal pursuant to section 1385, where dismissal was not otherwise required by the speedy trial provisions of section 1382, was an abuse of discretion. (*Ibid.*)

3. The Legislature codified the rule that dismissal is not an authorized remedy for a violation of section 1050

In 2003, Assembly Bill No. 1273 (2003-2004 Reg. Sess.) amended section 1050 to add subdivision (*l*), which provides:

"This section is directory only and does not mandate dismissal of an action by its terms." The bill also amended subdivision (b) of section 1050.5 by adding the italicized limitation: "The authority to impose sanctions provided for by this section shall be in addition to any other authority or power available to the court, *except that the court or magistrate shall not dismiss the case*." (Italics added.)

The purpose of the bill was "to codify existing case law which provides that the courts may not dismiss a case due to a failure to meet the good cause requirements for a continuance, before the expiration of the 60-day statutory limit." (Sen. Com. on Pub. Saf., Analysis of Assembly Bill No. 1273 (2003-2004 Reg. Sess.) as amended May 1, 2003, p. 2.) As explained in the bill analysis:

> Penal Code section 1050 allows for the continuance of a criminal proceeding upon a showing of good cause. According to the sponsor, courts have apparently dismissed cases after the prosecutor failed to establish good cause to continue the trial of the matter even though it was still within the 60-day statutory speedy trial period. In People v. Ferguson [*sic*] (1990) 218 Cal.App.3rd 1173, the Court of Appeal stated, "Section 1050 governs continuances and is based on the premise that criminal proceedings shall be set for trial and heard and determined at the earliest possible time. Section 1050 is directory only and does not mandate any dismissal of an action by its terms." This bill codifies this principle. *Thus, under this bill a case could not be dismissed as a sanction for failing to comply with the rules governing continuances if the statutory time for a speedy trial has not run.*

(*Id*. at pp. 5-6, italics added.)

4. Cases have applied the codification to prohibit dismissal arising from preliminary hearings and suppression hearings

Applying the then-recent amendments to sections 1050 and 1050.5, *People v. Henderson* (2004) 115 Cal.App.4th 922 held that the trial court lacked authority to dismiss an action based on the prosecutor's failure to show good cause for a continuance of the preliminary hearing, so long as the hearing would still be conducted within the timelines for a preliminary hearing set forth in section 859b. (*Id.* at p. 927.) The Court of Appeal considered whether dismissal was authorized pursuant to sections 859b, 871 (dismissal of a complaint for want of probable cause), 1050, or 1385. The court held that "[b]ecause section 859b does not require a showing of good cause for a continuance when the defendant has waived his right to have a preliminary hearing within 10 days of his arraignment or plea, if the prosecution requests a continuance and fails to show good cause, nothing in section 859b requires a dismissal of the complaint." (*Id.* at p. 932.) Sections 1050 and 1050.5, the court observed, were "directory only" and had been specifically amended to provide that the trial court may not dismiss a case for a failure to meet the good cause requirement for a continuance, so long as the statutory time for a speedy trial had not run. (*Id.* at pp. 934-935.) A magistrate's power under section 871 not to hold the defendant to answer was inapplicable where probable cause existed but the evidence was simply unavailable at the time of the scheduled hearing. (*Id.* at pp. 941-942.) Finally, the court observed that case law had "rejected the application of section 1385 to dismiss cases before trial after a failed request for a continuance made

within the statutory period." (*Id.* at p. 936.) "Unless the prosecutor's conduct rises to the level of depriving defendant of his constitutional right to a fair trial, the trial court may not dismiss an action under section 1385 after finding no good cause for a continuance under section 1050, when the requested date falls within the statutory time limits established by the Legislature in section 859b." (*Id.* at p. 940.)

Henderson recognized that its conclusion placed trial courts in a "difficult situation where, after finding no good cause to justify a continuance, they are compelled to deny the continuance under section 1050, but cannot dismiss the case when the prosecutor is not ready to proceed." (115 Cal.App.4th at p. 939.) The court, however, emphasized that "other sanctions under section 1050.5" exist to deter unsupported continuance requests (*id.* at p. 939), such as a fine or filing a report with an appropriate disciplinary committee (§ 1050.5, subd. (a)(1) & (2)). The court also observed that where the prosecutor fails to establish good cause, the trial judge "is not required to reschedule the hearing to the requested date" and retains inherent authority to control its calendar and manage all the proceedings before it. (*Henderson*, at p. 940.)

Ferrer extended *Henderson*'s reasoning to hearings on motions to suppress evidence pursuant to section 1538.5. In *Ferrer*, the prosecution moved to continue the hearing on the motion to suppress evidence due to a "'mix up'" which resulted in the failure to subpoena the witnesses. (184 Cal.App.4th at p. 878.) The trial court found no good cause, denied the motion to

continue, and granted the defendant's motion to suppress. (*Ibid.*) The People announced that they were unable to proceed to trial without the suppressed evidence, and the court dismissed the information. (*Ibid.*)

The *Ferrer* court reversed. The court noted that "[s]ections 1050, subdivision (*l*), and 1050.5, subdivision (b), are ambiguous." (184 Cal.App.4th at p. 880.) "Although section 1050, subdivisions (d) and (e), prohibit[] the granting of continuances in the absence of good cause, did the Legislature, in prohibiting dismissals, intend to prohibit courts from refusing to continue cases in certain circumstances? If so, did the Legislature only intend to prohibit denial of a continuance where a dismissal would inevitably result, or did the Legislature also intend to prohibit denial of a continuance where the probable consequence of the denial would be dismissal of the case?" (*Id.* at p. 880.) The court noted that in *Henderson*, "the direct consequence of the failure to show good cause was denial of the motion for a continuance; it was the prosecution's inability to proceed with the preliminary hearing that resulted in dismissal of the case." (*Id.* at p. 882.) Likewise, in *Ferguson*, "it was the prosecution's inability to proceed with trial that resulted in dismissal of the case." (*Ibid.*) *Ferrer* concluded that the denial of the continuance of the suppression hearing was "analogous" to the continuance denied in *Ferguson* because "it was clear at the time that denial of the request to continue the hearing was likely to lead to dismissal of the case." (*Ibid.*) *Ferrer* held that "[w]here it is reasonably foreseeable that granting a motion to suppress will result

ultimately in dismissal of the case, the fact that the dismissal is not inevitable or immediate does not create a material distinction from the circumstances involved in *Henderson* and *Ferguson*." (*Id*. at p. 883.)

The *Ferrer* court recognized:

> [O]ur decision restricts the options available to the trial court in responding to a motion for continuance that is not properly noticed and is unsupported by good cause. However, other sanctions, including fines and the filing of reports with appropriate disciplinary committees, are available under section 1050.5, subdivision (a), when a prosecutor fails to comply with the notice requirements of section 1050, subdivision (b). (*Henderson*, *supra*, 115 Cal.App.4th at p. 939.) Moreover, the specified sanctions are "in addition to any other authority or power available to the court." (§ 1050.5, subd. (b).) As the *Henderson* court explained, "dismissal 'is not appropriate, and lesser sanctions must be utilized by the trial court, unless the effect of the prosecution's conduct is such that it deprives the defendant of the right to a fair trial. [Citation.]'" (*Henderson*, at p. 940, fn. omitted.) And, of course, the trial court may exercise its discretion in selecting the length of a continuance; it need not necessarily accede to the prosecutor's preferred date. (*Ibid*.)

(*Id*. at pp. 885-886.)

The *Ferrer* court concluded that because "it was reasonably foreseeable that denial of the prosecutor's request for a continuance would result in dismissal of the case, we conclude the trial court erred in denying the requested continuance of defendant's section 1538.5 motion." (*Id*. at p. 886.)

5. Clarification of the *Ferrer* rule in determining when a denial of a continuance will causally result in a dismissal

The Court of Appeal noted the "difficulties" of applying *Ferrer*'s standard of reasonable foreseeability of a dismissal and opined that "it is hard to see how [the trial court] could have made any independent assessment of the strength of the People's evidence." (Opn. 19-20.) Concededly, *Ferrer*'s reasonable foreseeability standard does not provide any specific guidance for determining when a denial of a continuance may result in a dismissal. For a court or magistrate to conduct an "independent review" of the evidence would inject an unnecessary level of uncertainty into the proceeding because the court or magistrate does not typically possess the requisite knowledge of the case required to determine whether a case can proceed without the suppressed evidence.

If, for example, a defendant seeks to suppress cocaine found on a certain date and the only charge is possession of cocaine on that date, the cascade from denying a continuance of a hearing on a motion to suppress, to granting the motion, to dismissing the case is easily determined. If, however, the cocaine is only one piece of circumstantial evidence in a complex murder case, suppression of the cocaine might weaken the case, but not enough for the prosecutor to state an inability to proceed to trial. For the court to decide that the denial of a continuance will foreseeably result in a dismissal could lead to the unjustified granting of continuances where, if asked, the prosecution would not express an inability to proceed to trial.

For these reasons, the test—to the extent the language of *Ferrer* should be clarified—is whether, if the continuance is denied and the evidence is suppressed, the prosecutor expresses an inability to proceed to trial. If so, the continuance must be granted. If not, the court can exercise its discretion to deny the continuance and, if appropriate, suppress the challenged evidence.[4]

The prosecutor's assessment of the case without the challenged evidence must necessarily be the determinative factor in deciding whether denial of the continuance will lead to dismissal of the entire action. The prosecutor is an officer of the court, and absent some other evidence casting doubt on the prosecutor's proffer, it is proper for the court to rely on the prosecutor's representations. (*People v. Thoi* (1989) 213 Cal.App.3d 689, 700 ["representations as an officer of the court are accepted in the absence of proof to the contrary"].) Likewise, the ultimate determination as to whether there remains sufficient evidence to proceed after the granting of a suppression motion can and should be vested in the prosecutor. (See *People v. Clancey* (2013) 56 Cal.4th 562, 574 ["The charging function is the sole province of the executive"]; *People v. Nelson* (2008) 43 Cal.4th 1242, 1256 ["'A prosecutor abides by elementary standards of fair play and decency by refusing to seek

---

[4] Such a clarification would not affect the outcome in *Ferrer*, because prior to the dismissal the "People announced that without the suppressed evidence they were unable to proceed against defendant." (184 Cal.App.4th at p. 878.)

indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt'"].)

Importantly, under this test, which requires the prosecutor to affirmatively express an inability to proceed to trial, the trial court still performs an important gatekeeping function. The test eliminates any guesswork by the trial court regarding either the strength of the case or the intentions of the prosecutor but still permits the court to conduct whatever inquiry is needed so that the court is assured of the prosecutor's inability to proceed. By requesting an express, on-the-record representation by the prosecutor, the trial court can independently evaluate all relevant factors that might support or dispute that representation. If the court doubts the prosecutor's representations, it can request an in camera offer of proof or exercise its inherent authority to impose other sanctions for potential misconduct. (See, e.g., Code Civ. Proc., § 128, subd. (a).)

B. The Court of Appeal's reasoning for departing from settled law is unsound

Ferrer applied longstanding statutory and case law to conclude that a trial court cannot deny a continuance and grant a motion to suppress evidence for the failure of the prosecutor to comply with section 1050 if the suppression will causally result in a dismissal of the criminal case. The trial court here properly relied on *Ferrer* to grant the continuance of the suppression hearing based on the prosecutor's representation that the People could not proceed to trial if the challenged evidence were suppressed. (3/2/17 RT 302-304.) The Court of Appeal "declined

to follow the rule announced in *Ferrer*" and held that the trial court erred by granting the continuance. (Opn. 20-21.) The court's reasoning for disagreeing with *Ferrer* is flawed and should be rejected by this Court.

1. The Court of Appeal failed to explain why a dismissal after the denial of a continuance would be in the interests of justice

The Court of Appeal held section 1050, subdivision (*l*)—stating that section 1050 is directory only and does not mandate dismissal—did not by its terms limit the court's authority to exercise its discretion under other statutes to dismiss a criminal case. "We understand the use of the characterization 'directory' in section 1050(*l*) to mean that the trial court is not *required* to dismiss an action because of a party's failure to comply with section 1050 but it can hardly stand for the proposition that the trial court has no authority—for example, under section 1385 (authorizing dismissal of an action on application of the prosecuting attorney, or on the trial court's own motion)—to dismiss an action in the first place." (Opn. 11-12, fns. omitted.)

As the Court of Appeal implicitly recognized by referencing section 1385, section 1050, in and of itself, does not provide the court with any authority to dismiss a case. Rather, if the moving party fails to establish good cause, the only authority granted in section 1050 is to deny the continuance. (§ 1050, subd. (d) ["If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted"]; see also § 1050, subd. (e) ["Continuances shall be granted only upon a showing of good cause"].)

Moreover, if the People are unable to proceed to trial because the court has granted a motion pursuant to section 1538.5 to suppress evidence, the court's authority to dismiss the case derives from section 1385, not section 1050. (*People v. Bonds* (1999) 70 Cal.App.4th 732, 738 [if the superior court "'grants a motion to suppress evidence, and the prosecution announces that it is unable to proceed without the suppressed evidence, the court on its own motion should dismiss the action under [section] 1385'"].)

Despite apparently recognizing that the only authority to dismiss a case still within speedy trial limits derives from section 1385, the Court of Appeal ignored the well-settled law that such a dismissal, based only on the failure to comply with section 1050, is an abuse of discretion because the dismissal is not in furtherance of justice. (*People v. Ferguson*, *supra*, 218 Cal.App.3d at p. 1181; *People v. Rubaum*, *supra*, 110 Cal.App.3d at p. 935; *People v. Arnold*, *supra*, 105 Cal.App.3d at p. 459; *People v. Hernandez*, *supra*, 97 Cal.App.3d at p. 455; *People v. Flores*, *supra*, 90 Cal.App.3d at p. Supp. 9; see also *People v. Kessel* (1976) 61 Cal.App.3d 322, 326 ["a dismissal under Penal Code section 1385 would . . . be an abuse of discretion since there was no showing of detriment to [the defendant]. . . .The People's right to be heard cannot be frustrated to accommodate judicial convenience or because of court congestion. A dismissal under section 1385 for such a reason is an abuse of discretion"].)

"[D]ismissing a criminal complaint under section 1385 in a case where there is probable cause that the defendant committed

the offense is a disfavored practice among appellate courts." (*People v. Henderson*, *supra*, 115 Cal.App.4th at p. 936; see also *People v. Orin* (1975) 13 Cal.3d 937, 947 ["Permitting trial judges to make liberal use of section 1385 to avoid criminal prosecutions where probable cause exists to believe conviction is warranted would be contrary to the adversary nature of our criminal procedure as prescribed by the Legislature"]; *People v. Allan* (1996) 49 Cal.App.4th 1507, 1519-1520 [court erred in dismissing strike allegation for failure of proof where prosecutor "indicated that the necessary proof was on its way"].) The Court of Appeal did not address this extensive and uniform case law, nor did it explain *why* permitting a dismissal pursuant to section 1385 as a causal result of the prosecutor's failure to comply with section 1050 *would* be in furtherance of justice.

Indeed, to accept the Court of Appeal's conclusion that the trial court may exercise its discretion to dismiss a case pursuant to section 1385 where the People are unable to proceed due to the denial of a continuance would require this Court to explicitly disapprove of the contrary holdings in *Kessel*, *Flores*, *Hernandez*, *Arnold*, *Rubaum*, *Ferguson*, and *Henderson*. The Court of Appeal attempted to avoid this reality by claiming that *Ferguson* and *Henderson* "analyzed a different question. Neither *Ferguson* nor *Henderson* considered the propriety of the denial of a continuance. Instead, both examined whether the trial court had erred in dismissing the case after the denial of a continuance and found error based in part on section 1385." (Opn. 18-19.) However, as discussed, *Ferguson* and *Henderson* both held that the dismissal

pursuant to section 1385 was improper *because* it was based solely on the prosecution's inability to proceed following the denial of a continuance. (*Ferguson*, *supra*, 218 Cal.App.3d at p. 1183; *Henderson*, *supra*, 115 Cal.App.4th at p. 929.)

There is no principled distinction between (1) a dismissal triggered by the district attorney's inability to proceed to trial because denying a continuance caused suppression of evidence and (2) a dismissal triggered by the district attorney's inability to proceed to trial or to a preliminary hearing because denying a continuance rendered a witness unavailable. Any dismissal that is caused by the denial of a continuance—whether of a trial, a preliminary hearing, or a motion to suppress—must necessarily be a dismissal pursuant to section 1385 (assuming, as the People do throughout this brief, that the desired continuance would have led to a timely proceeding so that the dismissal is not, for example, pursuant to section 1382). And a dismissal pursuant to section 1385 must be in "furtherance of justice." (§ 1385, subd. (a).) As case law already discussed has invariably held, a dismissal caused by the denial of a continuance solely for lack of good cause is not in furtherance of justice.

The Court of Appeal was technically correct that *Ferguson* and *Henderson* "found error based in part on section 1385." (Opn. 18-19.) But *Ferguson* and *Henderson* considered appeals by the People from orders of dismissal under section 1385. The Court of Appeal below did not—for the simple reason that the trial court reconsidered its initial orders denying the continuance and granting suppression. Had it not done so, the next step would

have been dismissal pursuant to section 1385. There is no suggestion in the record that the trial court did not credit the district attorney's representation that the People could not proceed to trial without the suppressed evidence. To the contrary, by reconsidering its orders, the court manifested its acceptance of that representation.

Perhaps the Court of Appeal believed that the proper procedure would have been for the trial court to stand steadfast, refuse to change its orders, reconfirm that the People could not proceed to trial, and dismiss on its own motion under section 1385, after which the People could appeal (§ 1238, subd. (a)(7)). What would happen then is not clear. Either the Court of Appeal (or appellate division in misdemeanor cases) would hold that the dismissal was in furtherance of justice or it would hold (in accordance with *Ferrer*) that the trial court erred and remand for a suppression hearing and potential trial. Neither approach has much to recommend it. The first is flatly inconsistent with this Court's pronouncements and those of every Court of Appeal to consider the matter: Justice is not furthered by dismissing a case because a denied continuance caused the district attorney to be unable to proceed to trial. The second would put the case on a procedural footing equal to that of the cases the Court of Appeal distinguished. But if every case must go through an actual dismissal only to be reversed on appeal, the costs to defendants and the People from delay—the very object of section 1050's limitations—would be significant not to mention the consumption of scarce judicial resources, for precious little gain. It is hard to

fathom the Legislature compelled such a counterintuitive, procedurally obtuse approach to trial court management. (Civ. Code, § 3528 ["The law respects form less than substance"].) And, as discussed next, it did not.

2. The Court of Appeal misinterpreted the legislative history of Assembly Bill No. 1273

In concluding that the trial court should have denied the motion to continue and granted the motion to suppress evidence, the Court of Appeal relied primarily on the statutory language and legislative history of Assembly Bill No. 1273. (Opn. 18 ["we find no statutory support in either section 1050 or section 1050.5 for the rule announced in *Ferrer*"].) Although recognizing that the language of section 1050, subdivision (*l*) tracks the language of *Rubaum* and *Ferguson*, the court focused on language that was deleted from the initial draft of the bill to support its conclusion that subdivision (*l*) was not intended to prohibit dismissals for violations of section 1050 occurring within the time limits of section 1382. (Opn. 13-17.)

Before Assembly Bill No. 1273 amended section 1050, subdivision (e) of that section had provided that continuances "shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause." (Stats. 2003, ch. 133, § 1.) Assembly Bill No. 1273, as introduced on February 21, 2003, proposed the following addition to subdivision (e):

> The good cause requirement shall not apply to a prosecution or defense motion to continue a felony trial to a date not more than 60 days from the date of the defendant's arraignment on the information, or to a

> date not more than 10 days from a trial date set following the defendant's waiver pursuant to subparagraph (b) of paragraph (2) of subdivision (a) of Section 1382. This exception to the requirement of a finding of good case is intended to codify existing case law.

The bill was amended on May 1, 2003 to remove the proposed language. (Assem. Bill No. 1273 (2003-2004 Reg. Sess.), as amended May 1, 2003.) Based on this amendment, the Court of Appeal concluded that the "intentional deletion of this language undercuts any conclusion that, in enacting Assembly Bill No. 1273, the Legislature adopted the rule that 'courts may not dismiss a case due to a failure to meet the good cause requirements for a continuance, before the expiration of the 60-day statutory limit,' as asserted in the materials accompanying the bill. [Citation.] In fact, the Legislature elected *not* to include the language that would have specified this rule." (Opn. 16.)

The Court of Appeal's conclusion evidences a misunderstanding of the difference between an exception to the good cause requirement and a remedy for its violation. For example, section 1050, subdivisions (g)(2), (h), and (k) provide limited "exceptions" to the "good cause" requirements of subsections (d) and (e) for preliminary hearings, vertical prosecutions, and members of the Legislature, by eliminating the need for any additional showing of good cause. *Rubaum* and *Ferguson* did not establish an *exception* to the good cause requirement of section 1050. Absent an exception pursuant to subdivisions (g) through (i), the parties are still required to establish good cause to justify a continuance in any other

criminal hearing. *Rubaum* and *Ferguson* simply clarified the *remedy* for a party's *failure* to establish good cause.

On the other hand, the deleted language in Assembly Bill No. 1273 provided a wholesale exception to the good cause requirements for any felony case still within the time limits of section 1382. It *incorrectly* stated that the "exception to the requirement of a finding of good cause … codif[ied] existing case law." The Legislature's removal of that language proves nothing more than its recognition that existing case law provided not a wholesale exception to good cause but a limitation on the remedy for a violation of the good cause requirements. The correct understanding of the existing limitation—barring dismissal as a remedy for a good cause violation—was codified by Assembly Bill No. 1273 by adding subdivision (*l*).

Regardless of the holdings in prior cases, the Legislature no doubt *could have* created a broad statutory exception to the good cause requirements of section 1050 for all felony trials. Its decision not to do so, however, does not evidence any intent to abrogate the decades of cases, from *Malengo* through *Ferguson*, that limited the court's authority to dismiss for a violation of the good cause requirements. The Court of Appeal's contrary interpretation of the legislative history is illogical, especially as the purpose of the *amended* bill was "to codify existing case law which provides that the courts may not dismiss a case due to a failure to meet the good cause requirements for a continuance, before the expiration of the 60-day statutory limit." (Sen. Com.

on Pub. Saf., Analysis of Assembly Bill No. 1273 (2003-2004 Reg. Sess.) as amended May 1, 2003, p. 2.)[5]

The Court of Appeal's confusion about the difference between an exception to the good cause requirement and the remedy for its violation permeates its opinion. For example, in discussing section 1050, subdivision (k)'s exception to the good cause provision for preliminary hearings, the court noted that the "legislative history makes clear that the Legislature explicitly declined to expand the list of hearings falling outside of the section 1050 good cause requirement beyond the 10-day preliminary hearing. Under these circumstances, we decline to add an exception for hearings on motions to suppress under section 1538.5." (Opn. 18.) However, *Ferrer* does not create an exception to the good cause requirement, nor do the People seek such an exception in this case. Focusing on a good cause "exception" detracted from the relevant issue: Whether dismissal is an appropriate *remedy* for the failure to establish good cause for a continuance. Because dismissals for violations of the good cause requirement for a continuance are not in "furtherance of justice" (§ 1385, subd. (a)), dismissal is not an appropriate

---

[5] The Court of Appeal's only explanation for this conflict is that the language in the later bill analysis was mistakenly left in the legislative materials after the amendment. (Opn. 17.) However, a presumption of legislative oversight is unwarranted where, as discussed, the deleted language does not address the same rule as that codified by the enacted language. (See *People v. Duran* (2001) 94 Cal.App.4th 923, 941 ["[w]e presume a different legislative intent, not an oversight" from the fact that words used in one section are missing from another"].)

remedy. Instead, the court or magistrates must avoid triggering a dismissal by setting a date for the proceeding that was the object of the continuance and may, in its discretion, remedy the violation of section 1050 by some other means that will not cause a dismissal.

3. The Court of Appeal's concerns about the practical difficulties in implementing the *Ferrer* rule are unfounded

The Court of Appeal rationalized its unsupported departure from settled law on the ground that the "*Ferrer* rule poses distinctive difficulties in application. Under *Ferguson* and *Henderson*, the trial court need only consult the last day for trial or preliminary hearing when deciding whether it must continue the case to avoid ordering an unauthorized dismissal. (See §§ 1382, 859b.) [¶] By contrast, section 1538.5 does not set out a single timeline by which the defendant must bring a motion to suppress." (Opn. 19.) However, section 1382 provides the outside timeline for any and all pretrial motions. The court cannot continue a motion to suppress evidence beyond the final date for trial. Those limitations were recognized in *Ferrer*:

> While the Legislature has provided statutory protection for the rights to a speedy preliminary hearing and trial, it has not provided any independent right to a speedy suppression hearing. And no such right exists in either the state or federal Constitutions. Instead, the statutory and constitutional rights to a speedy trial ensure that a criminal defendant is able to insist on a prompt resolution of any suppression motion. In interpreting section 1050, there is no reasonable basis to conclude the Legislature intended to provide greater protection to a defendant's interest in a prompt section 1538.5 hearing than it provided to a defendant's

> interest in a prompt preliminary hearing and trial. Instead, we conclude the Legislature did not intend for a dismissal to result unless the requested continuance results in violation of a statutory time limit (such as § 859b or § 1382) or defendant's constitutional right to a fair trial.

(184 Cal.App.4th at p. 884.)

Section 1382 provides an appropriate backstop that protects the trial court's ability to manage its calendar and the defendant's speedy trial rights and guards against prosecutors seeking continuances in bad faith. If a prosecutor moves to continue a pretrial hearing without good cause, the hearing cannot be continued beyond 30 or 45 days for a misdemeanor and 60 days for a felony without the consent of the defendant. (§ 1382, subd. (a)(2), (3).) Indeed, in this case, appellant withdrew her time waiver when the People were initially unable to proceed with the suppression hearing, and when the court eventually granted the prosecutor's motion to continue the suppression hearing, the rescheduled hearing had to proceed in less than three weeks.

The Court of Appeal further suggested that the *Ferrer* rule improperly "delegates the trial court's management of its own criminal calendar to a party seeking delay." (Opn. 20.) However, a trial court's ability to manage its own calendar is often limited both by statute and the internal operations of the countywide superior court. For example, a criminal defendant who refuses to waive time for trial necessarily limits the trial court's ability to control its trial calendar. It does not follow that such limitations are improper. (See *Briggs v. Brown* (2017) 3 Cal.5th 808, 846

["'In most matters, the judicial branch must necessarily yield to the legislative power to enact statutes. [Citation] Only if a legislative regulation truly defeats or *materially impairs* the courts' core functions . . . may a court declare it invalid'"].) Nor does a minimal restriction on the trial court's calendar management result in the "delegation" of the calendar to the prosecutor. "[T]he trial court may exercise its discretion in selecting the length of a continuance; it need not necessarily accede to the prosecutor's preferred date." (*Ferrer*, *supra*, 184 Cal.App.4th at p. 886.) There is moreover, more to calendar management than denying continuances unsupported by good cause. There is also the obligation to schedule cases to be tried without dismissing them unless in furtherance of justice. The Legislature and the courts up until this case have recognized the latter is paramount.

The Court of Appeal's practical concerns about the implementation of the *Ferrer* rule do not support its elimination of the rule in conflict with longstanding legal precedents. Moreover, the court misconstrued the legislative history of section 1050 and failed to wrestle with the unstated conclusion of its decision—that a terminating sanction in the form of a dismissal in furtherance of justice under section 1385 is a proper remedy for seeking a continuance without good cause. This Court should reject this first step off the well-trod decisional path that has consistently recognized that the law exclusively prefers other remedies for seeking a continuance without good cause.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

ROB BONTA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JEFFREY M. LAURENCE
Senior Assistant Attorney General
SETH K. SCHALIT
Supervising Deputy Attorney General

/s/ Bridget Billeter
BRIDGET BILLETER
Deputy Attorney General
Attorneys for Plaintiff and Respondent

March 8, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13 point Century Schoolbook font and contains 8,423 words.

ROB BONTA
Attorney General of California

/s/ Bridget Billeter
BRIDGET BILLETER
Deputy Attorney General
Attorneys for Plaintiff and Respondent

March 8, 2022

SF2022400060
43117219.doc

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Dajah Brown**
Case No.: **S271877**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 8, 2022, I electronically served the attached **OPENING BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 8, 2022, a true copy thereof enclosed in a sealed envelope has been placed in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Sixth Appellate District Court of Appeal of the State of California sixth.district@jud.ca.gov *[served via TrueFiling]*	William M. Robinson Senior Staff Attorney Sixth District Appellate Program bill@sdap.org *[served via TrueFiling]*
The Honorable Jeffrey F. Rosen District Attorney Santa Clara County District Attorney's Office *[served via TrueFiling]*	Sixth District Appellate Program Attn: Executive Director servesdap@sdap.org *[served via TrueFiling]*

Santa Clara County Superior Court Criminal Division - Hall of Justice 191 North First Street San Jose, CA 95113-1090 *[served via Mail]*	

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 8, 2022, at San Francisco, California.

N. Kochiya	*/s/ N. Kochiya*
Declarant for eFiling	Signature

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 8, 2022, at San Francisco, California.

H. Truong	*/s/ H. Truong*
Declarant for U.S. Mail	Signature

SF2022400060
43118036.docx

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. BROWN**
Case Number: **S271877**
Lower Court Case Number: **H048462**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **bridget.billeter@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S271877_Opening Brief on the Merits

Service Recipients:

Person Served	Email Address	Type	Date / Time
William Robinson Sixth District Appellate Program 95951	Bill@sdap.org	e-Serve	3/8/2022 4:05:50 PM
Sixth District Appellate Program Sixth District Sixth District Appellate Program	servesdap@sdap.org	e-Serve	3/8/2022 4:05:50 PM
Attorney Attorney General - San Francisco Office Court Added	sfagdocketing@doj.ca.gov	e-Serve	3/8/2022 4:05:50 PM
Seth Schalit Office of the Attorney General 150578	Seth.Schalit@doj.ca.gov	e-Serve	3/8/2022 4:05:50 PM
Bridget Billeter Office of the Attorney General 183758	bridget.billeter@doj.ca.gov	e-Serve	3/8/2022 4:05:50 PM
Sixth Appellate District Court of Appeal	sixth.district@jud.ca.gov	e-Serve	3/8/2022 4:05:50 PM
Santa Clara County District Attorney's Office	DCA@dao.sccgov.org	e-Serve	3/8/2022 4:05:50 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/8/2022
Date

/s/Nga Kochiya
Signature

Billeter, Bridget (183758)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm