

# Supreme Court Copy

S175307

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Appellant,

v.

FIRME HASSAN HAJJAJ,  
Defendant and Respondent.

ANSWER BRIEF ON  
THE MERITS SUPREME COURT  
**FILED**

MAR 10 2010

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Deputy

Fourth Appellate District, Division One, No. D054754  
Riverside County Superior Court No. SWF024102

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**ANSWER BRIEF ON THE MERITS**

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FIRME HASSAN HAJJAJ,  
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CASE NO. S175307

ANSWER BRIEF ON  
THE MERITS

**TO: THE HONORABLE RONALD M. GEORGE, CHIEF  
JUSTICE, AND HONORABLE ASSOCIATE JUSTICES OF  
THE SUPREME COURT OF CALIFORNIA:**

**INTRODUCTION**

A person accused of committing a felony in California must generally be “brought to trial” within 60 days from the day of his arraignment in the superior court. The court system within each county protects a defendant’s speedy trial rights by making sure there are courtrooms and judges available to begin trying the defendant’s case within the statutory timeframe.

However, if a criminal defendant is on his or her statutory last day for trial—and there are no courtrooms or judges available in the county to begin trying the case—then the court does not have “good cause” to continue the trial to the following day. The case must be dismissed.

Here, there was a courtroom and a judge available in Riverside County to begin trying the defendant’s case on his statutory last day for trial. But simply because the parties could not reach the available

courtroom by the end of that day, the master calendar court ruled that “good cause” did not exist to continue the matter to the following day.

Regrettably, the master calendar court judge dismissed the defendant’s criminal charges. But contrary to the defendant’s argument, his alleged crimes were not dismissed because of “chronic court congestion”—there was a courtroom and a judge available in Riverside County to try defendant’s case. Rather, the court dismissed the defendant’s case simply because of geography. That is, Riverside County is large and its courtrooms are widely dispersed.

Recognizing the practical realities of time and distance, the Court of Appeal pronounced a logical rule: “good cause” exists for continuing a trial to the next day when a courtroom becomes available within the county on the statutory last day, but the parties cannot safely travel there by the end of that day.

The People respectfully ask this Court to adopt the common sense holding of the Court of Appeal.

## STATEMENT OF FACTS

In November 2007, the defendant, Firme Hajjaj, was driving on a freeway in Riverside County and was arrested for transporting an illegal alien by an agent of the United States Border Patrol. (CT 46-52, 75.) During an inventory search of the vehicle, the agent found .15 grams of methamphetamine. (CT 53-54, 59, 61.)

## STATEMENT OF THE CASE

On December 27, 2007, the Riverside County District Attorney filed a felony complaint charging defendant with the sale or transportation of methamphetamine. (CT 1; Health & Saf. Code, § 11379, subd. (a).) The complaint also alleged a prior prison term. (CT 1; Pen. Code, § 667.5, subd. (b).)<sup>1</sup>

### *Proceedings prior to the statutory last day for trial.*

Following a preliminary hearing, defendant was held to answer. (CT 35.) Defendant remained out of custody during all of the proceedings in this matter. (CT 2-4, 6, 25, 82-90, 99.)

On May 2, 2008, the People filed an information alleging the same offense and enhancement filed in the earlier complaint, but added an additional allegation for a prior narcotics conviction. (CT 78-79; Health & Saf. Code, § 11370.2, subd. (a).) On May 6, 2008, defendant pleaded not guilty and denied the special allegations.

Following various continuances (one of which was at the defendant's request), the statutory last day for trial became July 28, 2008. (CT 86.)

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<sup>1</sup> Further undesignated statutory references will be to the Penal Code.

***Proceedings on the statutory last day for trial.***

On July 28, 2008, at a 4:04 p.m., the defendant's case was called in the master calendar courtroom at the Riverside Hall of Justice located at 4100 Main Street in the City of Riverside. (RT 1; *People v. Hajjaj* (2009) 175 Cal.App.4th 415, 420, fn. 7, review granted Sept. 30, 2009, S175307 (*Hajjaj*).)

The court noted it was the statutory last day to begin the defendant's trial. However, the court informed both parties that, "I seem to be out of courtrooms." Defendant's counsel objected to any further delay and asked the court to set a hearing on a defense motion to dismiss the case. The court said that it was inclined to grant the request the following morning. (RT 1.)

At about 4:15 p.m., the court indicated that a courtroom and a judge had become available in Indio, about 76 miles from the Riverside Hall of Justice. (RT 7-8; *Hajjaj* at p. 420, fn. 8.) The court said: "[W]e've been checking with Judge Hawkins throughout the day, because he was doing closing arguments in a murder case, and it didn't look like he would open before the end of the day. Now it's 4:15 in the afternoon and he just now opened. And it takes an hour and 20 minutes if you were already in the car. And I just don't think that solves anything." (RT 7-8.)

The People's representative said that he could have a deputy district attorney "in the courtroom within the next five minutes in Judge Hawkins' court." (RT 8.) The People argued that there was good cause to continue the case "beyond the statutory period, and [we] would object to setting the matter over for dismissal for tomorrow." (RT 9.)

The court ruled that good cause for a continuance did not exist and set the matter for a dismissal motion the following morning. (RT 15.)



***Proceedings on the motion to dismiss.***

On July 29, 2008, defendant filed a motion to dismiss under section 1382, subdivision (a)(2)(B). Defendant asserted that he had not been brought to trial within the statutory period. (CT 91-98.)

The People opposed the motion. The prosecutor argued that “several courtrooms” were available the previous day and a judge from one of the civil courtrooms in the county “could have come over.” Referring to the availability of Judge Hawkins and the courtroom in Indio, the prosecutor also argued the case should not be dismissed because “a courtroom did become available yesterday, late afternoon; . . . the People announced ready, and . . . a courtroom was available out in Indio.” (RT 20.)

The court explained that with respect to utilizing a civil judge, “the Administrative Office of the Court[s] has given us three retired judges specifically for purposes of handling civil cases and reducing the civil backlog, this trial Court will not do that.” (RT 21.)

The court further stated: “With respect to the courtroom that became available at 4:[15] in Indio, as I understand the law, we don’t start a trial by having a prosecutor appear in Indio when the defense lawyer can’t be there and the defendant can’t be there, when we hear at 4:[15] that a courtroom is available in Indio. It would have been highly artificial to say that the trial started just because the prosecutor assigned to the Indio office, knowing nothing about the particular trial, showed up in court and said, ‘I’m a prosecutor,’ and . . . it’s not the same as starting a trial. [¶] So, if that courtroom had been available an hour and a half prior, then you know, I would have had people on the road.” (RT 21.)

The court then granted defendant’s motion to dismiss. (RT 22.)

***Proceedings following the motion to dismiss.***

On June 29, 2009, the Court of Appeal, Fourth District, Division One, reversed the trial court's order granting defendant's motion to dismiss. The Court of Appeal held that physical remoteness of an available courtroom from the criminal calendar court was "good cause" to bring defendant to trial beyond the statutory speedy trial period. (*Hajjaj* at p. 428.)

On September 30, 2009, this Court granted review.

## DISCUSSION

1. **The superior court abused its discretion when it failed to continue defendant's trial date for "good cause" when, on the afternoon of the last day for trial, a courtroom became available for trial, but the parties could not travel there in time.**

Generally, a defendant charged with a felony must be brought to trial within 60 calendar days after the filing of an information. (§ 1382, subd. (a)(2).) If the defendant requests or consents to a trial date beyond the initial period without a time waiver, then the defendant must be brought to trial on that date or within 10 calendar days thereafter. (§ 1382, (a)(2)(B).)

A court can continue a case beyond the date set for trial when there is "good cause" shown for the continuance. (§ 1050.) That is, under the statutory framework, a court can only dismiss a criminal case when the defendant is not brought to trial within the required time frame without a showing of "good cause." (§ 1382, subd. (a).)

Here, the defendant's case was set for trial on its statutory last day. An outlying courtroom in the county became available late in the afternoon, but the parties could not reach it from the master calendar court before the end of the day. Rather than finding good cause to continue the case until the next morning, the calendar court dismissed the case. The calendar court abused its discretion; the availability of a courtroom in the county to try a criminal case on its last day—as a matter of law—constitutes "good cause" for a continuance.

***A. There are restrictions on a court's discretion when it decides whether or not there is "good cause" for a continuance.***

A court can only continue a criminal case when there is "good cause" for the continuance. (§ 1050, subd. (e).) And whether "good cause" exists is generally a question for the trial court's discretion. (*People v.*

*Doolin* (2009) 45 Cal.4th 390, 450.) However, a trial court's discretion is not without limits: "[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russell* (1968) 69 Cal.2d 187, 195.)

Here, the defendant argues that a trial court only abuses its discretion when it acts in an "arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice." (OBM 6.) But a court's conduct does not have to be totally irrational to constitute an abuse of discretion. "This pejorative boilerplate is misleading since it implies that in every case in which a trial court is reversed for an abuse of discretion its action was utterly irrational. Although irrationality is beyond the legal pale it does not mark *the legal boundaries which fence in discretion.*" (*Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297, italics added.)

"The courts have never ascribed to judicial discretion a potential without restraint." (*People v. Russel, supra*, 69 Cal.2d at p. 194.) In fact, where the facts are undisputed, the issue is one of law. (See *Frank E. Beckett Co. v. Bobbitt* (1960) Cal.App.2d Supp 921, 927.) When there is no ambiguity or uncertainty as to the facts, the reviewing court is "equally clothed" with judicial discretion. (*Ibid.*)

Moreover, in a variety of situations, the boundaries of a trial court's discretion have been routinely defined or limited by reviewing courts. (See *People v. Russel, supra*, 69 Cal.2d 187, 194 [trial court abused its discretion by excluding psychiatric testimony based on an examination that lasted only 20 minutes]; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 525 [trial court abused its discretion by setting aside a default judgment where defendant's attorney did not file motion for more than three months]; *Westside Community for Independent Living v. Obledo* (1983) 33 Cal.3d 348, 355 [trial court abused its discretion where there was no reasonable

basis to award plaintiff's motion for attorney's fees]; *Baggett v. Gates* (1982) 32 Cal.3d 128, 143[trial court abused its discretion where there was no reasonable basis to deny plaintiff's motion for attorney's fees].)

More specifically, the boundaries of a court's discretion in determining whether or not "good cause" exists to grant a continuance have also been routinely defined; either by case law, by statute, or by a combination of the two.

For instance, when a defendant's attorney has an unavoidable trial commitment that conflicts with his current trial, then good cause for the defendant's request for a continuance is generally established. (See e.g. *People v. Manchetti* (1946) 29 Cal.2d 452, 458 [trial court should not prejudice a defendant by denying him a continuance when he is not responsible for counsel's absence and did not have sufficient time to obtain other counsel]; see also *Ali v. Heinze* (1964) 230 Cal.App.2d 585, [absence of criminal defendant's counsel due to illness is compelling ground for continuance].) In fact, it would be reversible error to force a defendant to trial without effective representation. (*People v. Manchetti, supra*, 29 Cal.2d at p. 458.)

The same rationale does not generally apply to prosecutors, but there are certain "vertical" prosecutions in which the Legislature has directed that courts must find "good cause" when a prosecutor requests a continuance. (See § 1050, subd. (g)(2).) Indeed, the Legislature severely restricts the court's discretionary authority in this area. First, the subdivision only applies to seven types of crimes: murder, sexual assault, child abuse, domestic violence, stalking, hate crimes, and career criminal prosecutions. (§ 1050, subd. (g)(2).) Second, any continuance under the subdivision is limited to a maximum of 10 court days. (§ 1050, subd. (g)(2).) Third, there is only one continuance allowed for three of the seven types of crimes: stalking, hate crimes, and career criminal prosecutions. (§ 1050, subd.

(g)(3).) And finally, the length of the continuance is further limited to the “shortest time possible” not to exceed 10 court days for just two types of crimes: those involving stalking and career criminal prosecutions. (§ 1050, subd. (g)(3).)

Thus, the boundaries of a trial court’s discretion are certainly not without limit. And the boundaries can be specifically limited or defined, either by reviewing courts or by the Legislature.

***B. When a courtroom is available within a county on the statutory last day for trial, “good cause” exists for a continuance.***

“Good cause” is a difficult phrase to define with precision. (*Ex Parte Bull* (1871) 42 Cal. 196, 199.) However, when “related to the context of [a] statute, ‘good cause’ takes on the hue of its surroundings, and it . . . must be construed in the light reflected by its text and objectives.” (*Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board* (1960) 178 Cal.App.2d 263, 273.) “‘Good cause’ must be so interpreted that the fundamental purpose of the legislation shall not be destroyed.” (*Id.* at p. 272.)

Section 1050 generally encourages criminal trials to be held at “the earliest possible time.” (§ 1050, subd. (a).) According to the Legislature, “[e]xcessive continuances contribute substantially” to the congestion of the criminal courts. (§ 1050, subd. (a).) In order for either party to be granted a continuance, they must generally submit a written motion and the court must find “good cause” in order to grant it. (§ 1050, subs. (b) & (e).) And under section 1382, a criminal defendant must be “brought to trial” under its time frames, unless “good cause” is shown. (§ 1382, subd. (a).)

Criminal cases are distributed among a county’s courtrooms as directed by the rules of the Judicial Council. (See 5 Witkin & Epstein, *Cal. Criminal Law* (3d ed. 2000) Criminal Trial, § 329, p. 487.) If a county has

more than three judges, the presiding judge may designate a supervising judge over a criminal division: one or more departments primarily designated to hear criminal cases. (Cal. Rules of Court, rule 10.950.) The supervising judge of the criminal division must assign “cases requiring a trial to a trial department.” (Cal. Rules of Court, rule 10.951(a).)

“In every multi-judge court it is necessary to have some procedure whereby a presiding judge or supervising judge transfers and retransfers cases in order to distribute the business of the court. It is common to refer to the department of the presiding judge or the supervising judge as the ‘master calendar department.’” (*Villarruel v. Superior Court* (1973) 35 Cal.App.3d 559, 563.)

Here, on the last day for trial, there was a courtroom and judge available in Riverside County to try the defendant. The trial courtroom was about an hour and 20 minutes away from the master calendar courtroom. (RT 8.) However, the parties could not travel to the trial courtroom by the end of the day. The master calendar court did not find “good cause” to continue the case until the next morning and dismissed the charges. (RT 20-22.)

The Court of Appeal reversed the trial court’s ruling, and declared a logical limitation on the trial court’s discretion. The Court of Appeal held that when, on the last day “for commencement of trial in a criminal case, a courtroom becomes ready and available for trial in the late afternoon at a branch court that is physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for trial that day, the *physical remoteness* constitutes good cause within the meaning of section 1382(a) to commence the trial the next day at the branch court.” (*Hajjaj* at p. 428, italics added.)

The Court of Appeal's common sense rule advances the fundamental purpose of section 1382: to ensure a defendant's right to a speedy trial, while not allowing dismissals if there is "good cause" for a continuance.

Many of our state's superior courts are organized by way of "master calendar" courts. Many of the courtrooms within each county are widely dispersed from each other. And many of our counties are subject to the vagaries of traffic. Thus, the Court of Appeal's rule ensures that a defendant will be brought to trial in a safe and expeditious manner—the *following morning*—when "physical remoteness" is the only impediment that exists under section 1382.

***C. The defendant's reliance on Rhinehart is misplaced.***

The defendant argues that the "underlying cause" of his case being dismissed was "court congestion," and that the Court of Appeal has strayed from this Court's holding that "absent exceptional circumstances, a trial court's congested calendar does not constitute good cause to avoid a dismissal under section 1382." (OBM 8, quoting *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 784 (*Rhinehart*)). The defendant is mistaken.

What the defendant fails to appreciate or recognize is that while the facts in *Hajjaj* are readily distinguishable from *Rhinehart*, the Court of Appeal's "physical remoteness" rule falls squarely within its holding.

In *Rhinehart*, a defendant's case was on its statutory last day for trial on Friday, November 27th. The case had been assigned to a courtroom, a jury was impaneled and sworn, but the court was actually unable to conduct the trial on that day because it was engaged in another trial. In fact, the judge admitted that the only reason that jury was impaneled was to avoid a dismissal. The jury was instructed to return to the court several days later, on Thursday, December 3rd, apparently because another judge would then be available after returning from vacation. (*Rhinehart*, at p. 775.)



The crux of this Court's holding was that the defendant's case was not "brought to trial" within the time limits because, in reality, there was not a courtroom or a judge available or ready to begin trying the case on November 27th, the statutory last day. (*Rhinehart*, at p. 781.)

This Court then went on to consider whether there had been "good cause" to continue Mr. Rhinehart's case to December 3rd—the date the jurors had been told to return. Ultimately, this Court determined that routine court congestion does not constitute "good cause" to continue a case beyond its statutory last day: "Mr. Rhinehart's case was to be delayed for almost a week after his jury was impaneled because the judge was engaged in another trial which took precedence over his trial. That congestion did not constitute good cause under section 1382 unless 'exceptional circumstances' were present. The fact that there was a shortage of judges on November 27th because one judge was on vacation did not constitute such a circumstance." (*Rhinehart*, at p. 793.)

But unlike the facts in *Rhinehart*, here, there *was* a courtroom and a judge available to begin trying the defendant's case on the last day for trial. And, had the parties been able to get to the courtroom in time on that day, the case would have been "brought to trial" within the statutory time limits. However, in this case there was an "exceptional circumstance" that existed: the parties could not physically reach the courtroom by the end of the court day. Geography—not court congestion—was the underlying factor that established good cause for a continuance.

Thus, the Court of Appeal's "physical remoteness" rule falls squarely within the holding of *Rhinehart*. In other words, if there is an available courtroom on the statutory last day, then a defendant can be "brought to trial." However, if the parties cannot reach the courtroom due to "physical remoteness," then that is an "exceptional circumstance" establishing good cause for a continuance under section 1050.

**CONCLUSION**

Chronic court congestion is not “good cause” to continue a criminal defendant’s trial beyond the statutory last day. However, in this case there *was* a courtroom and a judge available in Riverside County to try the defendant’s criminal case on his statutory last day for trial. And but for the “physical remoteness” of the courtroom, the defendant’s trial would have commenced on that day.

The People respectfully ask this Court to adopt the Court of Appeal’s common sense rule: when a courtroom becomes available within the county on the statutory last day for trial, but the parties cannot travel there safely by the end of the day, “good cause” exists to continue the case until the next day.

Dated: March 9, 2010

Respectfully submitted,

ROD PACHECO  
District Attorney

  
MATT REILLY  
Deputy District Attorney

**CERTIFICATE OF WORD COUNT**

**Case No. S175307**

The text of the **ANSWER BRIEF ON THE MERITS** consists of 3,584 words as counted by the Microsoft Word program used to generate the **ANSWER BRIEF ON THE MERITS**.

Executed on March 9, 2010.

Respectfully submitted,

ROD PACHECO  
District Attorney

A handwritten signature in black ink, appearing to read 'M. Reilly', written over a horizontal line.

MATT REILLY  
Deputy District Attorney

**PROOF OF SERVICE BY MAIL**

Case No. S175307

I, the undersigned, say: I am a resident of or employed in the County of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my residence or business address is 3960 Orange Street, Riverside, California.

That on March 9, 2010, I served a copy of the paper to which this proof of service by mail is attached, **ANSWER BRIEF ON THE MERITS**, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Postal Service mailbox, in the City of Riverside, State of California, addressed as follows:

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**APPELLATE DEFENDERS, INC.**  
**555 W. Beech Street, Suite 300**  
**San Diego, CA 92101**

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on March 9, 2010, at Riverside, California.

  
**DECLARANT**