IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	
Plaintiff and Appellant,	No. S176983
v.	
TERRION MARCUS ENGRAM,	
Defendant and Respondent.	

Fourth Appellate District, Division Two, No. E047015
Riverside County No. RIF125429
The Honorable Helios J. Hernandez, Judge Presiding

ANSWER BRIEF ON THE MERITS

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ANSWER BRIEF ON THE MERITS

In its opening brief on the merits ("OBM" herein), appellant asserts the superior court committed legal error and abused its discretion when dismissing the instant matter, and that Penal Code section 1050[1] mandated the utilization of non-criminal departments to avoid the dismissal of this last day criminal matter. Respondent contends the superior court committed neither legal error, nor abused its discretion, and thus, the decision of the Court of Appeal must be affirmed.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

STATEMENT OF PROCEEDINGS

Respondent was originally found guilty of residential burglary (§ 459) on March 1, 2006, and acquitted of attempted murder (§§ 664/187, subd. (a)). Following an appeal from his conviction, the Court of Appeal reversed the judgment, finding "the jury was not properly instructed as to the elements of burglary." The matter was remanded for a new trial. (See Opn., E040549, filed July 23, 2007.)[2]

Retrial commenced on May 20, 2008, and a mistrial was declared on May 27, 2008, when the jury was unable to reach a unanimous verdict. Thereafter, respondent's motion to dismiss was denied, and a new jury trial was set for July 14, 2008. (Clerk's Transcript (C.T.) pp. 26-30.)

On July 14, 2008, appellant's motion to trail the jury trial to July 15, 2008, was granted. (C.T. pp. 31-34.) On July 15, 2008, the court granted appellant's motion to trail the matter to July 28, 2008. (C.T. p. 38.)

Subsequently, on July 28, 2008, respondent's motion to continue the jury trial to August 28, 2008, was granted. The motion to continue was based on counsel's inability to complete discovery and investigation pending receipt of the trial transcripts from the second trial. (C.T. pp. 39-42.)

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[2] On February 9, 2009, the Court of Appeal granted appellant's request for judicial notice of the prior appeal in Case No E040549.

On August 28, 2008, appellant's motion to trail the trial to September 8, 2008 was granted. (C.T. pp. 43-45.) Thereafter, on September 8, 2008, jury trial was continued to September 17, 2008, at appellant's request. (C.T. pp. 46-49.)

On September 17, 2008, the court again granted appellant's motion to trial the jury trial to September 29, 2008, at which time both counsel stipulated the last day for trial was September 29, 2008. (C.T. pp. 50-53.) On September 29, 2008, when the court determined there were no courtrooms available for trial, counsel for respondent moved for dismissal under section 1382, over objection by the People. After argument, the court set the matter for a dismissal hearing the following day. On September 30, 2008, the court dismissed the matter in the interests of justice pursuant to section 1385, at which time, the prosecution indicated it did not intend to refile the charges. (C.T. pp. 54-55; Reporter's Transcript (R.T.) p. 32.)[3]

Following the prosecution's appeal from the dismissal, the Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment of dismissal in Case No. E047015. This Court granted review on December 2, 2009.

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[3] Seventeen other matters were also dismissed that day, including one other felony and sixteen misdemeanor matters. (R.T. pp. 12, 22-32.)

STATEMENT OF THE FACTS

Based on the unpublished opinion of the Court of Appeal in Case No. E040549, in August, 2005, respondent went to the home of his former girlfriend in an attempt to reconcile. After an altercation ensued, she went back into the house and locked the door. When respondent was unable to open the door, he pulled off the screen in an effort to unlock the window. (See Opinion in Case No. E040549, filed July 23, 2007.)

ARGUMENT

THE COURT OF APPEAL PROPERLY AFFIRMED THE SUPERIOR COURT'S ORDER OF DISMISSAL

Appellant asserts the legislative directive giving precedence to criminal cases over any civil matters or proceedings requires the use of civil courtrooms in order to avoid dismissal of those criminal matters under Penal Code section 1382, without any consideration to the effect on those civil matters. Respondent contends his statutory speedy trial rights required dismissal; and further contends the superior court properly considered the use of other courtrooms prior to that dismissal. As such, the decision by the Court of Appeal must be affirmed.

A. Proceedings below.

On September 17, 2008, following the court's grant of the prosecution's motion to continue, both the prosecution and defense stipulated the last day for trial in this matter was September 29, 2008. (C.T. p. 53.) On September 29, 2008, when the case was called, counsel for respondent announced "ready" and objected to any further delay. The court indicated: "I have no more courtrooms. We've been checking and we just don't have any courtrooms and this does appear to be the last day." Counsel for respondent thereupon moved

for dismissal pursuant to section 1382. (R.T. p. 1.)

The court advised the prosecution it was tentatively prepared to set this matter for a dismissal hearing the following morning, along with one other felony and sixteen misdemeanor matters which were also on the last day. Thereafter, the court gave the prosecutor an opportunity to address the issue. (R.T. pp. 11-12.) In response thereto, the prosecutor argued:

> ". . . the essential basis of my argument is if the Court doesn't have sufficient resources to try these cases and the Court has done everything that the Court can do to find courtrooms for these cases, that should amount to good cause to continue each of these matters at least one day.
>
> "I would ask the Court to consider a number of options and the Court can indicate whether the Court has considered doing these things, but I would ask the Court to consider using juvenile courtrooms, whether for the entire day or only for afternoons when those courtrooms are less busy than other courtrooms. I would ask the Court to use probate and family law courtrooms under similar circumstances.
>
> "I would ask the Court to consider consolidating the number of VCDs [vertical calendar departments] currently in operation in order to find the capacity to try a few more of these cases. Obviously, the Court has made a decision to expand the number of VCDs. The Court could, likewise, make a decision to shrink somewhat the number of VCDs to open up the total number of courts available.
>
> "I would ask the Court to consider using pro tem type judicial officers to sit on the VCD calendars so that courtrooms which do not now have judges could have the VCD or calendar judges to sit in those departments to hear these criminal jury trials while the pro tem judges sit and oversee the calendar matters." (R.T. pp. 12-13.)

In response to those comments, the court referred to the *Gurdian* case (*People v. Cole and Gurdian* (2008) 165 Cal.App.4th Supp. 1) in which it was determined that the lack of sufficient courtrooms is not "good cause" to extend the deadline. (R.T. p. 14.) As to the use of juvenile courtrooms, the court believed "that Section 1050 of the Penal Code does not only authorize, but directs this Court to weigh out how to allocate it's business in light of the social values that we must consider in administering a court." In particular, the court thought "[i]t would be an injustice to those children, to their parents and to society to close down juvenile court in order to try other cases, important as these cases are . . . . We will not be closing down juvenile court in order to squeeze out one or two more trials. On a practical note, they don't have jury boxes anyway." (R.T. p. 14.)

As to the use of probate and family law courtrooms, the court found those courtrooms deal with important social issues, including the welfare of children and incompetent adults. Also, the court determined such matters were frequently handled by commissioners "who would not be able to handle trials," and "[t]hose courtrooms don't have jury boxes." (R.T. pp. 14-15.)

The Court found "the question of how many VCD courts there should be and whether we could carve out another trial court here or there by consolidating VCDs" presented "a more difficult argument or point to

analyze." (R.T. p. 15.) It concluded:

> "Pro tems and freeing up the VCD judge for trial is not practical, because the essence of the VCD court is to settle cases where it can be done with justice to the victim, to society, and to the defendant. And commissioners no matter how skillful and intelligent don't have the power that judges have. Sometimes you need actual judicial power to cause settlements to occur. And anyway our pro tems are all burned out. The excellent lawyers who we have serve as pro tems, sure, we can move a commissioner to VCD, put a pro tem in misdemeanor court, and then settle fewer felonies and misdemeanors things get worse not better. For all of those reasons the prosecution['s] objection is overruled, and all of those cases are set for tomorrow morning for dismissal hearing." (R.T. pp. 16-17.)

The following day, respondent's case was dismissed pursuant to section 1382 on the basis of a "lack of courtrooms." (R.T. p. 32.)

B. The Court of Appeal opinion correctly determined the use of other available courtrooms was an exercise of discretion.

The basis of appellant's challenge is that the calendar judge refused "to give actual consideration to the use of numerous noncriminal courtrooms to prevent the dismissal of this last-day criminal trial matter." Appellant continues by asserting the calendar judge "took absolutely no action to determine the importance of any pending civil matters or to determine if any of those civil matters would have been actually prejudiced had a criminal matter been assigned to one of those courtrooms for trial." Relying on this

Court's opinion in *People v. Waidla* (2000) 22 Cal.4th 690, 730, appellant then states that the determination of whether courtrooms are available "is a determination of fact following [an] interpretation of the law," and thus, "is primarily an error of law, which must be reviewed de novo based on the uncontradicted facts presented in the court below." (OBM at pp. 7-8.)

When disputed factual issues arise in a given case, a reviewing court's role is to determine if substantial evidence supports the trial court's findings of fact. "'As to the trial court's conclusions of law, however, review is de novo; a disposition that rests on an error of law constitutes an abuse of discretion. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, . . .; *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 742. . .) The trial court's "application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi, supra*, at p. 712. . . .)'" (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159.)

Further, as the court in *People v. Cooper* (2007) 148 Cal.App.4th 731, 742, so held, a ruling which rests on a demonstrable error of law constitutes an abuse of discretion. However, the applicable standard is abuse of discretion. (*People v. Johnson* (1980) 26 Cal.3d 557, 570.)

Respondent contends there was neither an error of law, nor an abuse of discretion, as set forth below.

C. Assuming the availability of courtrooms is an exercise of discretion, the Court of Appeal opinion did not incorrectly hold such discretion can be exercised without regard to the facts of pending cases.

Appellant claims that in this case, "[t]he calendar judge refused to assign this last-day criminal trial matter to family law, probate or any other specially-designated civil courtrooms because of the importance of work *generally* done in those courtrooms." Appellant continues by stating that "[d]espite the calendar judge's agreement that the pending criminal matters were serious and the dismissals would have serious implications for the public (RT 13), the opinion affirmed the actions and dismissals as appropriate exercises of discretion despite the lack of any record demonstrating that discretion by the calendar judge was actually exercised." (OBM at p. 8.)

In essence, appellant disputes the reasoning of the trial court and claims the calendar judge failed to consider "any actual facts or values," and failed to exercise any independent discretion by relying on the determinations of the presiding judge. (OBM at p. 9.) Appellant concludes the Court of Appeal "was simply wrong" when determining the calendar judge provided valid reasons for its actions in not assigning this case to a civil or special civil proceeding courtroom, thus giving precedence to unspecified civil matters. (OBM at p. 9.)

However, as the Court of Appeal so found, the record reflects the

calendar judge did consider assigning the case to available civil and special civil proceeding courtrooms. (Slip Opn. at p. 7.)

Section 1050, subdivision (a) provides that criminal cases are to be given precedence over civil matters, and states:

> "The 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. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set forth trial and heard without regard to the pendency of, any civil matters or proceedings. . . ."

The Legislature has declared that this section is "directory only." (§ 1050, subd. (a); see *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 20.)

The precedence in section 1050, subdivision (a) for criminal cases over civil matters is not mandatory, but instead gives courts discretionary authority to allocate resources in a manner consistent with the ends of justice. (*People*

v. Cole, supra, 165 Cal.App.4th Supp. at pp. 12, 14.) In *Cole*, the court determined that in a county so overburdened by criminal cases, it had abandoned traditional civil trials, the court did not abuse its discretion in refusing to assign two misdemeanor cases, subject to dismissal for delay, to courtrooms handling family law, probate, traffic, small claims and juvenile law. The *Cole* case involved the same county as the instant case, and advanced most of the same arguments asserted by the very prosecuting agency in this case. The only difference between *Cole* and the instant case was that the appeal was to the Appellate Department of the Superior Court. However, a different result is not warranted merely because *Cole* involved a misdemeanor and the instant case involves a felony. Dismissal was required because the People could not bring respondent's case to trial within the time parameters of section 1382, because there were no available courtrooms.

In *People v. Osslo* (1958) 50 Cal.2d 75, 106, this Court concluded the decision of whether a criminal case takes precedence over a civil case must not be arbitrary. Section 1050 vests the trial court with discretionary authority to make such decisions. In *Osslo*, the defendant claimed his case was erroneously continued after the date set for trial and that civil cases were given precedence over his case under section 861a. (*Ibid.*) The trial court in that case found several judges to be out on assignment, the juvenile courts were

congested and another department was handling a case of a person confined as mentally ill. (*Id.* at pp. 105-106.)

At the time *Osslo* was decided by this Court, section 681a was in effect and was subsequently repealed in 1959 by the Legislature, with section 1050 amended to include the language contained in section 681a.[4] Section 681a provided: "The welfare of the people of the state of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice."

While this Court also referred to section 1050 in its opinion, but did not define "civil matters and proceedings" in that case, it was determined that the policy of section 681a and 1050 was not disregarded by the trial court, and that the trial court's "explanation of the condition of the calendar shows that defendants were not being deprived of precedence over civil cases for any arbitrary reason . . . . Rather, it appears that the orderly administration of a crowded calendar required the continuances to enable trial of the case in a proper department. The precedence to which criminal cases are entitled is not

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[4] Stats. 1959, ch. 1693, §§ 1, 2, pp. 4092-4092.

of such an absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned." (*Id.* at p. 106.)

Since the *Osslo* decision, other courts have determined section 1050, subdivision (a) merely establishes a policy, is not absolute, and does not require criminal proceedings be given precedence over civil proceedings irrespective of the circumstances and without consideration of the ends of justice. (See e.g., *People v. McFarland* (1962) 209 Cal.App.2d 772, 777.)

Respondent asserts the holding of *Osslo* remains viable and that trial courts should remain vested with the discretion to determine if select criminal cases should be given precedence over civil matters.

Appellant concludes by claiming that with knowledge of the felony nature of the charge, and while having possession of the court file, "the calendar judge was determined to give precedence to unspecified civil matters because of the apparent inflexible policies mandating that decision," thus "ignoring the nature of pending criminal matters." (OBM at pp. 9-10.)

However, while the charge, i.e., burglary, in this case may have been before the calendar judge, the facts of the case were never related to the court by the prosecutor to assist the court in assessing the matter. In failing to do so, the court was without the means necessary to determine whether this case should have been given some form of priority. As noted by the *Cole* court,

'[b]ecause the policy of criminal case precedence expressed in section 1050, subdivision (a), is based on the welfare of the citizens of the State of California," if this case was of such significance then it was incumbent on the prosecution to apprise the court thereof. (*People v. Cole, supra*, 165 Cal.App.4th Supp. at p. 16.)

It should be noted that the very Court of Appeal deciding this case below declined to exercise its discretion to transfer *Cole* for further consideration. Additionally, this Court denied the writ of review and request for depublication in *Cole* for which appellant has requested judicial notice in this case. (OBM at p. 1, fn. 1.) No different result should occur here.

Further, of note, after the *Cole* decision, in *People v. Flores, supra*, the same judge who handled *Cole*, handled the *Flores* matter, with similar results, i.e., there were no courtrooms in the county available, and most of the civil courtrooms were already engaged in criminal trials, and the case was subsequently dismissed. (*People v. Flores, supra*, 173 Cal.App.4th at pp. 13, 16.) On appeal to the appellate department, the *Flores* court expanded its earlier decision in *Cole,* concluding that civil matters and proceedings in section 1050, subdivision (a), included any civil action or special proceeding of a civil nature which was not clearly a criminal action, but that a precise definition was not necessary. (*Id.* at p. Supp. 20, fn. omitted.) The *Flores*

court found section 1050, subdivision (a) was not absolute, and required granting precedence in a criminal case if it was just to do so, agreeing with *Cole* that family, probate and juvenile departments should not open their doors to criminal matters. (*Id.* at p. Supp. 22.)

Respondent asserts the findings made here by the trial court, and subsequently, by the Court of Appeal, were supported by this Court's earlier decision in *Osslo* and the plain language of section 1050. Trial courts are in the best position to determine their day-to-day functioning, and should determine if criminal cases take precedence over civil matters. There is no error as long as that decision is not arbitrary. (*People v Swain* (1995) 33 Cal.App.4th 499, 504.)

D. There should be no requirement of actual prejudice to a pending civil matter prior to the dismissal of a last-day criminal trial matter.

Appellant claims that based upon section 1050, a court's discretion to dismiss a last day criminal matter cannot be exercised without first ascertaining the actual prejudice to a pending civil matter. (OBM at p. 11.) In support thereof, appellant cites a portion of California Rules of Court, rule 4.115. Subdivision (b) of that rule provides that "[a]ctive management of trial calendars is necessary to minimize the number of statutory dismissals." To that end, that subdivision continues by stating that the "[c]ourt must implement

calendar management procedures, in accordance with local conditions and needs, to ensure that criminal cases are assigned to trial departments before the last day permitted for trial under section 1382." However, that provision does not require that as a part of the "calendar management procedures," a finding of actual prejudice to a pending civil matter be made.

In *Perez v. Superior Court* (1980) 111 Cal.App.3d 994, cited by appellant, the defendant's petition for writ of mandate was granted requiring the trial court to dismiss the information. It was determined that a superior court's congested calendar did not excuse the failure to bring the defendant to trial within the statutorily mandated 60-day time period. (*Id.* at p. 999.) Relying on this Court's opinion in *People v. Johnson, supra,* 26 Cal.3d 557, the *Perez* court determined "'[t]he purpose of the statutory constitutional protection of the right to a speedy trial is "to protect those accused of a crime against possible delay, caused either by willful oppression, or by the neglect of the state or its officers." "[T]he state or its officers," we must observe, includes not only the prosecution, but the judiciary and those whom the judges assign to represent indigent defendants; "oppression" or "neglect" may include the failure to provide the facilities and personnel needed to implement the right to speedy trial. [¶] A defendant's right to a speedy trial may be denied simply by the failure of the state to provide enough courtrooms or judges to enable

defendant to come to trial within the statutory period. . . . "[U]nreasonable delay in run–of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and that each case must await its turn." [Citation.]' (*People v. Johnson* (1980) 26 Cal.3d 557, 571. . . .)" (*Perez v. Superior Court, supra*, 111 Cal.App.3d at p. 999.)

Further, in *Tudman v. Superior Court* (1972) 29 Cal.App.3d 129, on July 7, the judge determined there were no courtrooms available, and ordered the case trailed. The Court of Appeal found that based on section 1050, the fact civil cases were sent out for trial on July 7 eliminated any legal ground for refusing to send out the defendant's case for trial in one of the departments in the civil pool. (*Id.* at p. 132.) In the instant case, there was no evidence that civil cases were sent out prior to criminal cases. The calendar judge indicated that it had been checking and there were no available courtrooms. (R.T. p. 1.)

Again, as noted by this Court in *People v. Osslo, supra*, 50 Cal.2d 75, the provisions of section 1050 are not absolute and a trial court is afforded the discretionary authority to determine if a particular criminal case should be heard before a civil case. In that case, this Court also approved the practice of providing separate departments for civil and criminal trials. This Court's opinion did not state that a trial court was required to consider the particular

cases being heard in the various departments, including traditional civil courtrooms or juvenile courts.

Thus, under the *Osslo* directive, the presiding judge and court administrators could designate separate civil departments that need not be considered to try criminal matters. Therefore, respondent asserts the trial court exercises its discretionary authority by prioritizing cases in the available courtrooms. Nothing in section 1050 requires more, and there should be no requirement of actual prejudice to a pending civil matter prior to the dismissal of a last-day criminal trial matter.

Further, there was nothing in the record to indicate there were, in fact, any civil courtrooms available to hear this last-day matter, or that any civil cases had been assigned that day. Appellant seeks to require the calendar judge to inquire of all matters occurring in other non-criminal courtrooms. Such a task would impose on the particular calendar judge a requirement that he or she review each and every case in every department, which is neither mandated by section 1050, nor by California Rules of Court, rule 4.115, nor by this Court's opinion in *Osslo*. The provisions of section 1050 require only that the trial court's decision as to the precedence of a criminal matter over any type of civil case not be arbitrary. In this case, the court's decision was not arbitrary and therefore, must be upheld.

E. Appellant failed to establish good cause, as a matter of law, to continue the case beyond September 29, 2008, the last day for trial.

As noted by appellant, "[u]nder generally accepted and established case authority, neither the prosecutor's, nor the court's, congested calendars can constitute good cause for continuing a criminal case beyond the statutory speedy trial periods set forth in Penal Code section 1382. (See *Greenberger v. Superior Court* (1990) 219 Cal.App.3d 487, 495.)" Good cause for the delay lies within the sound discretion of the trial court. (OBM at p. 15.) Appellant asserts, however, that under California Rules of Court, rule 4.115, effective January 1, 2008, "court congestion can and has regularly constituted good cause to continue trial matters." (OBM at p. 15.) Appellant fails to cite any authority for that position.

California Rules of Court, rule 4.115 (b) provides as follows:

> "Any request for a continuance, including a request to trail the trial date, must comply with rule 4.113 and the requirement in section 1050 to show good cause to continue a hearing in a criminal proceeding. . . ."

Rule 4.113 provides that "[m]otions to continue the trial of a criminal case are disfavored and will be denied unless the moving party, under Penal Code section 1050, presents affirmative proof in open court that the ends of justice require a continuance."

The "good cause" requirement of section 1050, subdivision (g)(2),

states that "[f]or purposes of this section, 'good cause' includes, but is not limited to, those cases involving murder, . . . allegations that stalking . . ., or domestic violence. . . or a hate crime, . . . has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court." Respondent's matter did not fall within those specifically enumerated crimes and circumstances, and thus, appellant could not establish "affirmative proof in open court that the ends of justice require[d] a continuance."

If this Court determines, as appellant suggests, that criminal cases take precedence over all civil matters, including probate, family law and juvenile, then it appears likely resolution of civil matters will never come to fruition. Had the calendar judge in this instance taken the position suggested by appellant, e.g. construing civil matters to include family law, probate, and juvenile matters, then two felony matters, along with 16 misdemeanor matters, would have displaced 18 civil matters, the displacement of which conceivably would be detrimental to the citizens of the community. (*People v. Cole, supra,* 165 Cal.App.4th at p. Supp. 8.)

F. The appropriate remedy herein is to affirm the decision of the Court of Appeal, and preclude any further refiling of the charges.

While recognizing that statutory speedy trial periods are intended to protect a defendant's constitutional speedy trial rights, appellant contends the appropriate remedy in this case is to reverse the dismissal and order reinstatement of the charges. (OMB at p.18.) According to appellant, because respondent has "been through trial on these charges on two prior occasions, there is no basis to believe that respondent would be improperly prejudiced or that any evidence would be lost due to an additional delay. (OMB at p. 18.)

Appellant overlooks several important factors. First, "[t]he right to a speedy trial is a fundamental right." (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776; *Sykes v. Superior Court* (1973) 9 Cal.3d 83, 88.) That right is guaranteed by the state and federal Constitutions. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) Further, the Legislature has provided for "a speedy and public" trial as one of the fundamental rights that is preserved to a defendant in a criminal action under section 686, subdivision 1. Thus, to implemental an accused's constitutional right to a speedy trial, section 1382 was enacted by the Legislature. (*Rhinehart, v. Municipal Court, supra*, 35 Cal.3d at p. 776; *Owens v. Superior Court* (1980) 28 Cal.3d 238, 249.)

Section 1382, subdivision (a), requires that an action be dismissed where, as here, the defendant is not brought to trial within ten days after the date set forth trial where a case is set beyond the 60-day period, "unless good cause to the contrary is shown." (§ 1382, subd. (a)(2)(B).) "That section 'constitutes a legislative endorsement of dismissal as a proper judicial sanction for violation of the constitutional guarantee of a speedy trial and as a legislative determination that a trial delayed more than [the prescribed period] is prima facie in violation of a defendant's constitutional right.' (*Sykes, supra*, 9 Cal.3d at p. 89, fn. omitted.) Thus, an accused is entitled to a dismissal if he is 'brought to trial' beyond the time fixed is section 1382.' (*Id.* at pp. 88-89.)" (*Rhinehart v. Municipal Court, supra*, 35 Cal.3d at p. 775.)

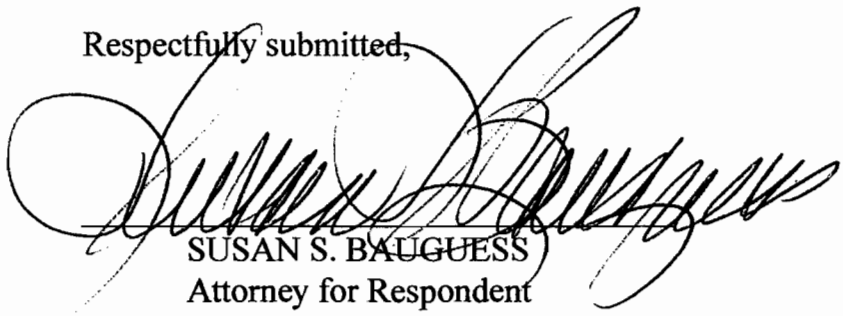
Secondly, when respondent's case was dismissed by the court, the prosecutor informed the court the People did not intend to refile the defendant's case. (R.T. p. 32.) Appellant should be bound by its representation. Therefore, based upon the speedy trial violation, and the trial court's inherent authority to dismiss the matter, an affirmance by this Court will foreclose any refiling of the charges (§ 1238, subd. (a)(8).)

CONCLUSION

Based upon the foregoing, respondent respectfully requests this Court affirm the decision of the Court of Appeal affirming the trial court's dismissal order.

Dated: February 22, 2010

Respectfully submitted,



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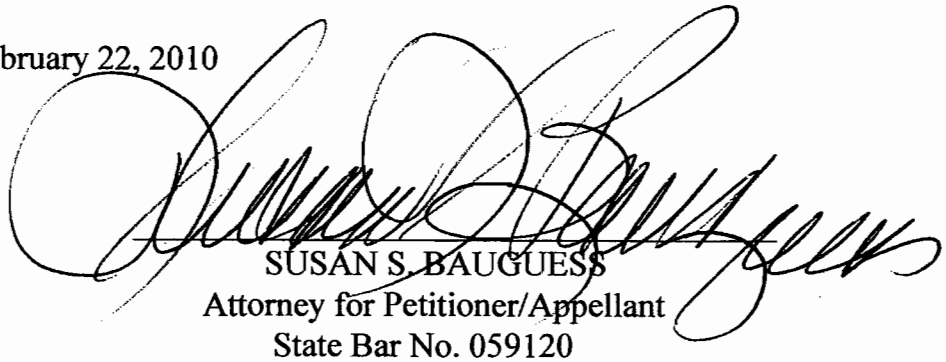
CERTIFICATE OF COMPLIANCE
WITH CALIFORNIA RULES OF COURT, RULE 8.504 (d)(1)

Case Name: People v. Engram Supreme Court No. S176983

I, SUSAN S. BAUGUESS, certify that the attached Answer Brief on the Merits contains 5,201 words.

Dated: February 22, 2010



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PROOF OF SERVICE BY MAIL
(C.C.P., Sections 1031a, 2015.5)

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO:

I am a resident of the county aforesaid; I am over the age of 18 years and not a party to the within action. My business address is: P. O. Box 2381, Running Springs, California 92382.

On February 22, 2010, I served the within ANSWER BRIEF ON THE MERITS on the interested parties in said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at Running Springs, California, addressed as follows:

Clerk, Court of Appeal
Fourth Appellate District, Division Two
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Honorable Helios J. Hernandez
c/o Clerk, Superior Court
4100 Main Street
Riverside, California 92501

Mr. Terrion Marcus Engram
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Office of the Public Defender
4200 Orange Street
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Attn: Eric Isaac, Deputy Public Defender

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of February, 2010, at Running Springs, California.

SUSAN S. BAUGUESS