In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DAWN QUANG TRAN,

Defendant and Appellant.

Case No. S211329

Sixth Appellate District, Case No. H036977
Santa Clara County Superior Court, Case No. 205026
The Honorable Gilbert T. Brown, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
CATHERINE A. RIVLIN
Supervising Deputy Attorney General
KAREN Z. BOVARNICK
Deputy Attorney General
State Bar No. 124162
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5550
Fax: (415) 703-1234
Email: Karen.Bovarnick@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION

Appellant's primary contentions stem from incorrect premises that advisement and waiver of jury are guaranteed by plain and unambiguous statutory language and, due to the liberty and dignity interests at stake, are rights implicit in the California and federal constitutions. (AMB 4-5.) To determine whether a defendant is incompetent to act in his or her own best interests, he asks this Court to sanction, or in effect, legislate the appointment of a guardian ad litem—a procedure authorized in proceedings when a party is already deemed incompetent. (AMB 18.) As to the second issue set forth by this Court, appellant provides a contradictory response contending, on the one hand, that the Court of Appeal's new rule of procedure is dicta and nonbinding (AMB 39) and, on the other, that it is a legitimate rule derived from the Court's inherent power to demand a clear record to protect "fundamental rights." (AMB 5.)

Appellant's contentions ignore uniform precedent stating that the right to jury trial is statutory and not of constitutional dimension, and he fails to adequately distinguish case-law, uncorrected by the Legislature, holding that advisement and waiver may be communicated by a defendant's attorney, i.e., the "Captain of the Ship" who is charged with acting in a defendant's best interest. Stripped to its essence, the crux of appellant's concern is that defense counsel cannot be trusted to advise on the pre-existing right to jury trial nor, after such a consultation, execute a waiver in the defendant's best interest. The Court of Appeal expressed this same concern, essentially, when it ordered a new rule of procedure second-guessing defense counsel's client-communications and questioning tactical trial strategy. This concern and the resulting preemptive rule of procedure is without authority, and unsupported by the record which disclosed neither error nor prejudice.

ARGUMENT

I. THE TRIAL COURT DID NOT PREJUDICIALLY ERR BY FAILING TO ADVISE DEFENDANT OF THE RIGHT TO JURY TRIAL AND TO OBTAIN A PERSONAL WAIVER OF THE RIGHT

A. Appellant's Statutory Analysis is Incorrect

Aside from appellant's novel contention regarding appointment of a guardian ad litem, appellant argues nothing new that would override present authority deeming defense counsel the "captain of the ship," presumed to act in the best interests of the client regarding advisement and waiver of jury trial. As noted in our opening brief on the merits (RMB 7-19), most if not all of his contentions have been considered and rejected by authorities considering extension of commitment for defendants found not guilty by reason of insanity (NGI) or similar commitment schemes.

1. The "Plain Language" is Ambiguous

Appellant's primary contention is that the language of section 1026.5, subdivision (b)(3), regarding advisement of the "default" jury right, and subdivision (b)(4), regarding waiver of jury, is plainly understood and without ambiguity, but only if: (1) the two subdivisions are read together; (2) to the exclusion of all other provisions; but perhaps (3) not excluding subdivision (b)(7) regarding entitlement to constitutional procedural rights in criminal proceedings. (AMB 6-7.) Even within this interpretive prism, he is incorrect.

Assuming, as appellant contends, that "person," under the advisement provision of subdivision (b)(3) means defendant, there is also ambiguity since the statute contemplates appointment of counsel and advisement to the "person," in the same instance, and does not address the situation in which counsel appears and waives the defendant's appearance. (§§ 977.1; 1026.5, subds. (b)(5), (b))(6).) Indeed, the strict reading appellant claims is required by the advisement provision is belied by his implicit

acknowledgment that a routine waiver of appearance before trial represents a defendant's best interest. (AMB 40.)

As for waiver, the Court of Appeal (Opn. 14-15) and other courts have found ambiguity when the Legislature conferred authority to waive upon the "person." (*Powell* (2004) 114 Cal.App.4th 1153, 1157 (*Powell*); *People v.* Givan (2007) 156 Cal.App.4th 405, 410; see *People v. Otis* (1999) 70 Cal.App.4th 1174, 1176 (*Otis*) [interpreting nearly the identical provision under the MDO statutory scheme]; *People v. Fisher* (2006) 136 Cal.App.4th 76, 81 (*Fisher*)[approving *Otis* under the MDO scheme]; *People v. Montoya* (2001) 86 Cal.App.4th 825, 831 & fn. 4 (*Montoya*) [approving *Otis* under the MDO scheme].) The plethora and longevity of cases disputing appellant's version of the "plain-language" requirements of the statute demonstrates the existence of ambiguity.

Appellant's contention that "any doubt or statutory ambiguities should be resolved in favor of securing the right to jury trial," relies on cases that are easily distinguished and not applicable in special commitment proceedings. *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 956, and *Byram v. Superior Court* (1977) 74 Cal.App.3d 648, 654 involved interpretation of the statutory waiver provision pertaining to the right of jury in civil trials, a right guaranteed by the California Constitution. (Cal. Const., art I, § 16.) They are distinguishable since the right to jury in this case is statutory and thus one of many elements considered in discerning legislative intent within a statutory scheme. (*People v. Ledesma* (1997) 16 Cal.4th 90, 95.) *Maldonado v. Superior Court* (1984) 162 Cal.App.3d 1259, 1268, is also distinguishable. In *Maldonado*, the Court of Appeal found no ambiguity in a statute providing for jury in unlawful detainer actions to recover real property, regardless of whether the action arose on de novo appeal from a small claims judgment. (*Ibid.*) In dicta, the Court stated, "we see no reason why the policy of resolving doubts in favor of trial by

jury should apply any less in the case of statutory guarantees," but acknowledged its comments were of limited import as they were based on *Byram*, *ante*, which addressed a constitutional right to jury. (*Id.* at pp. 1266-1267.)

Jury rights in commitment proceedings are statutory and thus require a resolution that interprets legislative intent within a statutory scheme. (See *People v. Superior Court* (*Williams*) (1991) 233 Cal.App.3d 477, 485, 488 [no constitutional or statutory authority to apply double-jeopardy].) As the Court in *Otis* noted when it interpreted jury rights in the context of commitment proceedings, "we cannot mechanically apply rules of statutory construction to reach a result that is at odds with the intention of the Legislature. We must view the legislation in light of its context and purpose." (*Otis*, *supra*, 70 Cal.App.4th at p. 1177.) Indeed, as the Court of Appeal noted in this case, appellant's narrow interpretation of the statute would lead to consequences that "are illogical and anomalous and therefore, to be avoided." (Opn. 15, citing *People v. Martinez* (1995) 11 Cal.4th 434.)

Appellant similarly relies on criminal cases[1] that are also distinguishable because the source of the jury right is constitutional. Moreover, in criminal trials, distinct from special proceedings involving extension of commitment, a defendant must be competent to stand trial. (§ 1368; (*People v. Angeletakis* (1992) 5 Cal.App.4th 963, 970 [due process does not include the right to be mentally competent during a commitment extension hearing]; *Juarez v. Superior Court* (1987) 196 Cal.App.3d 928, 931-932 [no right to competency determination in NGI commitment proceedings to determine length of treatment and not punishment].) Thus,

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[1] *People v. Koonz* (2002) 27 Cal.4th 1041, 1071 [*Faretta* advisements linked to intelligent waiver of counsel]; *People v. Ames* (1975) 52 Cal.App.3d 389, 392 [California Constitution requires personal express consent to waive trial by less than 12 jurors in criminal case].)

his contention that advisement and waiver are linked so as to demonstrate that a waiver is knowing and voluntary (RMB 9) is based on a standard of review not applicable in NGI-commitment proceedings which proceed without regard to whether a defendant is competent. (*Angeletakis*, *supra*, 5 Cal.App.4th at p. 970.) Rather, our courts have reasonably interpreted commitment statutes as having vested defense counsel with the authority to represent a defendant's "best interest." (*People v. Barrett*, (2012) 54 Cal.4th 1081, 1102, *People v. Masterson* (1994) 8 Cal.4th 965, 971.)

Appellant incorrectly overstates the People's position as contending that an advisement becomes moot once an attorney is appointed. (AMB 7-8.) Rather, we contend that the statutory language assumes that the committee defendant is unrepresented at the first appearance, and thus charges the trial court with providing this basic notice of an existing right. Once an attorney appears, especially when waiving a defendant's appearance, then the attorney is charged with advising the defendant of his or her panoply of rights. (RMB 8.) This presents a situation no different from waiving reading of an information required in section 988 in a criminal case. (e.g., *People v. Jackson* (1950) 36 Cal.2d 281, 283.) Even in criminal matters, moreover, where the right to jury is constitutional, there is no mandate that the trial court, rather than defense counsel, provide notice of the jury right to a represented defendant at arraignment. (§ 988.) Rather, the trial court must inquire about knowledge of this right at the time the right is waived, i.e., when taking a plea. (*In re Tahl* (1969) 1 Cal.3d 122, 131-132 (*Tahl*).) But even when taking a plea, the trial court does not inquire how the defendant acquired knowledge of the right, or prophylactically assure itself of the details the attorney discussed with the defendant prior to waiver. (See *People v. Howard* (1992) 1 Cal.4th 1132, 1178 (*Howard*) [rejecting former rule that absence of express admonitions and waivers requires reversal regardless of prejudice]; *People v. Mosby*

(2004) 33 Cal.4th 353, 360-361 [review record to determine if plea was voluntary and knowing even if explicit admonition absent].)

Thus appellant's claim of error in notice must be rejected.

2. Appellant's Competence to Waive is Not at Issue

Appellant contends, as a factual matter, he was capable of understanding an advisement and deciding whether to execute a waiver. (AMB 11.) Thus, he claims, he is different from the defendants in *Masterson*, 8 Cal.4th at p. 968 [§ 1368 competency to stand trial] and *Barrett, supra*, 54 Cal.4th at p. 1094 [Welf. & Inst. Code § 6500, developmentally disabled and dangerous].)

This contention, however, still does not demonstrate error. Assuming appellant was competent to waive jury, the record provides no indication that he was dissatisfied with his attorney's waiver or his attorney's representation, and even now, he does not challenge trial counsel's professional competence. As the Court of Appeal noted:

> [T]he record does not show that defendant was unaware of his right. On the contrary, it suggests otherwise. This was defendant's fourth extension trial. In the appeal from his second extension order, defendant claimed that he was denied his right to a jury trial because he did not personally waive it. (*People v. Tran, supra*, H031976.) Moreover, he had a jury trial on his third extension. (*People v. Tran, supra*, H034743.)

(Opn. 7.)

Appellant argues, in theoretical terms nonetheless, that incompetency "is very different from insanity," relying on *People v. Hofferber* (197) 70 Cal.App.3d 265, 269, which found the defendant competent to refuse to enter an NGI plea, against the advice of counsel and noted that competency involves a present evaluation of mental health based on different standards than that involved when assessing whether a defendant was insane at the time of the crime. This misses the point. As we have explained, the

petition itself, supported by reports and evaluations of mental health experts raises the issue whether appellant could consistently act in his best interest independent of an attorney "captain." (AMB 10-13.) The Legislature has not provided for a second proceeding to measure his individual competence level nor second-guess the factors weighed by appellant's attorney in the tactical decision to waive jury. Appellant is not entitled to seek such a procedure through reviewing courts.

3. Appellant Misconstrues the Cases

Appellant attempts to distinguish *Otis*, *Powell*, and *Montoya*, arguing that, as a factual matter, the defendants were incompetent to make decisions, and in *People v. Givan* (2007) 156 Cal.App.4th 405, that the defendant had provided the attorney with express instructions to execute a waiver. (RMB 15-16.) The undisturbed precedent established in *Otis* and affirmed by subsequent authorities, however, was based on statutory interpretation of legislative intent "view[ed] . . . in light of its context and purpose," not tied to particular or extraordinary facts. (*Otis*, *supra*, 70 Cal.App.4th at p. 1177.)

Appellant argues that there is no "presumption" of incompetency based on the allegations of the petition, relying on *People v. Allen* (2008) 44 Cal.4th 843, 869-870, *In re Watson* (1979) 91 Cal.App.3d 455, 460-462, and *Barrett*, *supra*, 54 Cal. 4th at p. 1108. In *Allen*, this Court held that under the commitment scheme pertaining to Sexually Violent Predators (SVP), a defendant had a due process right to testify over objection of counsel—not because he was competent, but rather, because of the significant liberty interest at issue and, among other things, because it enhanced the reliability of the outcome, *even to the defendant's detriment.* (*Allen*, *supra*, 44 Cal.4th at pp. 866, 869-870.) Similarly, in *In re Watson*, the Court of Appeal held that due process required the personal appearance at trial under the commitment scheme for a developmentally disabled defendant. (Welf. & Inst. Code § 6600, et seq.) As in *Allen*, the Court

noted that "the nature of the proceeding is such that the personal conduct of the alleged mentally retarded person may more surely affect *the reliability of the judgment and thus, the fairness of the proceeding*, than does the courtroom conduct of one accused of crime in a criminal proceeding." (*In re Watson*, *supra*, 91 Cal.App.3d at p. 462, italics added.) The holdings in neither *Allen* nor *In re Watson* rested on competency nor even serving a defendant's best interests but rather, focused on reliability of the judgment.

In *Barrett*, the defendant similarly characterized the absence of express advisement and personal waiver as an improper presumption of the mental issue, i.e., mental retardation, to be determined at trial. (*Barrett*, *supra*, 54 Cal.4th at p. 1104.) This Court disagreed with that description stating, "no section 6500 proceeding is brought or pursued in an evidentiary vacuum or without competent support." (*Ibid.*) Rather than a "presumption" of incompetency, a better analogy in describing the threshold showing made by the sworn statements and evaluations of mental-health experts supporting the petition is that they present a prima facie case that a defendant suffers some degree of continued impairment. (*Barrett*, *supra*, 54 Cal.4th at pp. 1101, 1106.) The degree of impairment pertaining to waiver of a statutory jury right does not implicate due process concerns affecting the reliability of the judgment or the fairness of the proceedings as in *Allen* or *In re Watson*, since appellant was represented by an attorney—the *person* charged with the obligation to act in appellant's best interests, and the *person* in the best position to consider all circumstances to make a tactical decision whether to waive this statutory right. (Bus. & Prof. Code § 6068, subd. (c); see *Barrett*, *supra*, 54 Cal.4th at p. 1105; see also *In re Conservatorship of John L.*(2010) 48 Cal.4th 131, 149-152.)

4. Requiring Appointment of a Guardian Ad Litem is Without Authority and Inapposite

Appellant argues that if there is a doubt about "whether an NGI defendant has the capacity to exercise the right to a jury trial," the trial court could appoint a guardian ad litem and that "[f]or the purposes of the civil commitment proceeding the guardian ad litem can be trial counsel." (RMB 18.) As a threshold matter, neither the plain language nor a reasonable interpretation of that language of section 1026.5 contemplates such a procedure for defendants committed as insane. The procedure, moreover, does not serve appellant's purpose of determining competency for purposes of waiving jury. The Legislature provides for appointment of a guardian ad litem—not to determine competence, but rather, to make decisions for a party already deemed incompetent. (Code of Civ. Proc. §§ 372, 373.) Appellant's novel proposal merely echoes *Masterson* and subsequent authorities that already establish that a defendant's attorney is "captain of the ship" in commitment proceedings, but with a layer of process not contemplated by the Legislature. (*Angeletakis*, *supra*, 5 Cal.App.4th at p. 970.)

Appellant's reliance on *In re James F.* (2008) 42 Cal.4th 901, 910-911 and *In re Sara D.* (2001) 87 Cal.App.4th 661, 667 does not compel appointment of a guardian ad litem to waive jury in NGI commitment proceedings. Both cases involved the protection of constitutional rights of due process owing parents in dependency proceedings who were alleged to be incompetent. (*In re James F.*, *supra*, 42 Cal.4th at p. 911 [due process error was harmless and structural error standard did not apply]; *In re Sara D.*, *supra*, 87 Cal.App.4th at p. 671-672 [parent had constitutional due process right to notice and to be heard on appointment of guardian ad litem to represent her].) Determining the competency of a parent to participate as a party, an issue of constitutional dimension, separate and distinct from the

issues determined in the dependency proceeding, is not analogous to determining whether a defendant, whose mental capabilities are already in issue, has the precise capability of waiving a statutory right of jury. If the Legislature had intended to provide for two such proceedings with different standards for mental capability, it would have said so. (*Barrett, supra*, 54 Cal. 4th at p. 1106.)

5. Liberty and Dignity Interests Are Not Impeded by Existing Interpretation of these Statutory Rights

Appellant argues that criminal protections apply because the liberty and dignitary interests at issue in NGI commitment proceedings are significant. (RMB 20.) As discussed in sections I.A. 1and 2, *ante*, he is incorrect.

B. Counsel's Waiver of Jury was not a violation of Due Process

Appellant reframes all his previous arguments to contend he was denied a jury trial in violation of his constitutional rights of due process. Right to jury in commitment proceedings is a statutory right. (*People v. Powell* (2004) 114 Cal.App.4th 1153, 1157 [an extension trial is civil in nature and directed to treatment, not punishment].) As noted by the Court of Appeal, "Every court that has analyzed the scope of this provision has concluded that it does not incorporate all federal and state constitutional procedural rights." (Opn. 17.)

Appellant's contention that jury was dispensed with in this case "to save money" is absurd. Jury was dispensed with because defense counsel executed a waiver on appellant's behalf.[2] As discussed in our opening

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[2] There is no indication here, nor incentive generally, for defense counsel to consider cost as a reason to waive jury. On review, however, administrative burdens are a relevant concern in performing a due process analysis. (*Barrett, supra*, 54 Cal.4th at p. 1106.) Indeed, the Legislature (continued...)

merits brief, the weighty threshold showing required to support the petition and the controlling principles discussed in *Masterson*, as discussed at length in *Barrett*, dispel any potential due process concerns. (*Barrett*, *supra*, 54 Cal.4th at pp. 1099-1106.)

C. The Trial Court's Failure to Provide a Personal Advisement and Defense Counsel's Waiver of Jury Did Not Violate Equal Protection

Appellant contends that the trial court's failure to provide a personal advisement or accept a personal waiver of jury violated his right to equal protection. (RMB 24.) He contends that he thus received treatment disparate from similarly situated defendants subject to commitment under the Lanterman–Petris–Short Act (LPS) (Wel. & Inst. Code § 5303), as Mentally Disordered Offenders (MDO) (§ 2972), or the commitment scheme for juvenile offenders (Welf. & Inst. Code § 1800 et seq.). (RMB 24-26.) He has cited no authority, however, showing disparate treatment between himself and the offenders in these commitment schemes. (*Montoya*, *supra*, 86 Cal.App.4th at p. 829 [MDO]; cf. *In re Conservatorship of Person of John L.* (2010) 48 Cal.4th 131, 148 [LPS defendant may waive presence at hearing through counsel].) Indeed, the People contend that based on the rationale discussed in *Barrett*, a threshold showing of mental impairment allows defense counsel to execute a waiver on behalf of a defendant in each of those schemes. (*Barrett*, *supra*, 54 Cal.4th at p. 1106.)

Appellant's relies on *Barrett* to argue that there are compelling reasons for disparate treatment between the developmentally disabled

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(...continued)
expressed its concern with costs in the MDO statutory scheme when noting that the proceedings would be considered civil, but rules of criminal discovery would apply "in order to reduce costs." (§ 2972, subd. (a).)

considered in that case, and defendants under LPS proceedings who, like defendants in NGI proceedings, are subject to a statutory advisement of jury. (RMB 25.) Before analyzing the "distinct 'mentality'" that would justify disparate treatment, this Court made clear that its analysis was dicta and that it was not deciding whether personal advisement and personal waiver were required under the LPS Act. (*Barrett*, *supra*, 54 Cal.4th at p. 1108.) The People contend that the Court's rationale, i.e., that reliable evidence of mental health issues is required to support a petition and that procedural safeguards are in place through appointed counsel, suggests that the "controlling principles" of *Masterson* which place the attorney at the helm should apply to advisement and waiver under all these schemes. (*Id.* at p. 1100-1102.)

D. There was No Prejudice

Appellant claims that the errors he complains of were prejudicial because they deprived him of trial by jury, and notice from a court that he had a jury right. (AMB 29-30.) Under the false premise that he was denied a constitutional right to jury, he claims that the trial court committed structural error. He is incorrect since, even assuming a prejudice analysis is required, it involved a statutory right requiring a determination whether it was reasonably probable the outcome of the case would have yielded a different result. (*People v. Cosgrove* (2002) 100 Cal.App.4th 1266, 1276-1277; *People v. Epps* (2001) 25 Cal.4th 19, 29.) As the Court of Appeal noted, all evidence supported extension of the commitment. (Opn. 6-8.)

Appellant's claim that he might have done something different if he had received a personal advisement of his rights from the trial court is contrary to all inferences in the present record showing, as the Court of Appeal found, that he was well-aware of this right from prior proceedings. (Opn. 7.)

II. THE COURT OF APPEAL DID NOT HAVE INHERENT AUTHORITY TO ESTABLISH THIS NEW RULE OF PROCEDURE

Notwithstanding his contention that the issues here involve constitutional rights and structural error or present a statutory procedure that requires strict compliance, appellant ends his brief on a pragmatic note, acknowledging that the Court of Appeal's "substitute process" may address the practical problems resulting from the harm caused by requiring a defendant to appear in court to be advised and waive rights. (AMB 40.) Ignoring our claim that the Court of Appeal imposed a new rule to address concerns not raised by the facts in this particular case, appellant argues the source of the Court of Appeal's authority to impose a new rule is its "inherent judicial authority" to make a clear record, no different than the procedure imposed in *In re Tahl*, *supra*, 1 Cal.3d at p. 132, *In re Yurko* (1974) 10 Cal.3d 857, and *Howard*, *supra*, 1 Cal.4th at p. 1179. (RMB 36-39.) He argues on the one hand that the rule is binding, citing *Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455, (RMB 36), and, on the other hand appears to concede it has no more force than dicta. (RMB 39.) His reliance on *Boykin/Tahl* admonition[3] and waiver principles is incorrect.

The Supreme Court's authority to require a clear record in *Tahl*, *Yurko*, and *Howard* stems from "the exercise of [its] supervisory powers." (*Howard*, *supra*, 1 Cal.4th at p. 1175.) Those powers, as we discussed in our opening brief, are limited to unusual circumstances of "necessity where, in the absence of any previously established procedural rule, rights would be lost or the court would be unable to function." (*People v. Uribe* (2011) 199 Cal.App.4th 836, 883) (AMB 25-26.) When exercised by the Supreme Court, moreover, those powers or "necessity" present no danger of a lack of uniformity, unlike the rule here, issued by a divided panel from a single

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[3] *Boykin v. Alabama* (1969) 395 U.S. 238, 242.

district of an intermediate court of review. Appellant's reliance on numerous Supreme Court cases, is thus distinguishable for this reason alone.[4]

The only authorities appellant cites from intermediate courts of review, are also distinguishable. In *Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288, the Court of Appeal held that the trial court had the inherent power to exclude evidence as a discovery sanction, consistent with its discretion to admit or exclude evidence generally, and its power "to curb abuses and promote fair process." In *People v. Costello* (1998) 65 Cal.App.4th 1242, 1247-1250, the Court of Appeal found that the trial court has inherent constitutional power to reconsider its interim rulings. Thus, appellant's cited cases discuss a court's authority to exercise discretion and apply it to determine a present

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[4]Aside from distinguishable facts and legal concepts, these Supreme Court cases are also distinguishable as they involved ripe controversies and did not establish new rules to resolve controversies there might arise in the future. Particularly in the cases involving discovery, the Courts use the term, "inherent authority," synonymous with the concept of discretion. *Hays v. Superior Court* (1940) 16 Cal.2d 260, 264 [trial court had discretionary authority to delay deposition pending appeal], *Bank of America v. Superior Court* (1942) 20 Cal.2d 697, 702 [amendment after reversal of dismissal upon demurrer permitted but subject to Law of the Case]; *Millholen v. Riley* (1930) 211 Cal.29, 33-34 [Court of Appeal had authority to appoint and set salary of its employees in absence of legislation]; *Joe Z. v.Superior Court* (1970) 3 Cal.3d 797, 801-802 [Inherent power to develop procedures for discovery in juvenile procedings]; *Powell v. Superior Court* (1957) 48 Cal.2d 704, 708 [trial court has inherent power over pretrial discovery of defendant's statements]; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267 [statutory procedure permitting transfer of civil action from superior to municipal court did not violate due process and superior court has inherent discretionary authority to hold hearings to determine if case falls within its jurisdiction].)

controversy. They do not establish new rules to govern potential controversies, not presented, that might conceivably arise in the future.

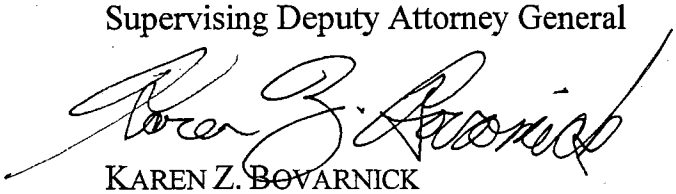
CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: January 17, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
CATHERINE A. RIVLIN
Supervising Deputy Attorney General



KAREN Z. BOVARNICK
Deputy Attorney General
Attorneys for Respondent

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 4,018 words.

Dated: January 17, 2014

KAMALA D. HARRIS
Attorney General of California

KAREN Z. BOVARNICK
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Tran**
No.: **S211329**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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.

On January 17, 2014, I served the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope 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:

Carl A. Gonser
Attorney at Law
P. O. Box 151317
San Rafael, CA 94915-1317

The Honorable Gilbert T. Brown
Judge
Santa Clara County Superior Court
Hall of Justice (East Wing)
190 West Hedding Street
Department 32
San Jose, CA 95110-1706

The Honorable Jeffrey F. Rosen
District Attorney
Santa Clara County District Attorney's Office
70 W. Hedding Street
San Jose, CA 95110

Sixth District Appellate Program
Sixth District Appellate Program
100 N. Winchester Blvd., Ste 310
Santa Clara, CA 95050

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 17, 2014, at San Francisco, California.

B. Zuniga
Declarant

Signature

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