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Case No. 219889

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Appellant,

vs.

GERARDO JUAREZ AND EMMANUEL JUAREZ
Defendants and Respondents,

SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

RESPONDENT GERARDO JUAREZ' REPLY BRIEF ON THE MERITS

From the Published Opinion of the Court of Appeal
Fourth District, Division Three, No. G049037

Orange County Superior Court No.: 12CF3528
The Honorable Gregg L. Prickett, Judge, Dept. C-5

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ISSUE PRESENTED

Does California Penal Code[1] section 1387's prohibition on a third, successive felony prosecution for the "same offense" operate to bar a third prosecution of a defendant for precisely the same conduct at issue in two previously dismissed cases where no statutory exception applies, but where the prosecutor has elected to charge the exact same conduct under a different Code section?

REPLY

ARGUMENT

I.

THE NARROW "SAME ELEMENTS" TEST FOR DETERMINING "SAME OFFENSE", SUGGESTED BY THE PROSECUTION, WOULD COMPLETELY UNDERMINE THE POLICIES THAT SECTION 1387 IS MEANT TO PROTECT.

The basic purpose of Section 1387 is to limit improper successive prosecutions which harass a defendant and to protect the speedy trial limits in Section 1382. (*People v. Superior Court (Martinez)* (1993) 19 Cal.App.4th 738, 744; *Alex T. v. Superior Court* (1977) 72 Cal.App.3d 24, 30.)

The right to a "speedy trial" dates back *at least* to the Magna Charta

---

[1] All subsequent references to code sections are to the California Penal Code, unless otherwise indicated.

(1215), which prohibited the king from delaying justice to any person in the realm. (Magna Charta, Chapter 40 (1215).) The United States Supreme Court has held that "the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right.'" (*Klopfer v. North Carolina* (1967) 386 U.S. 213, 223.) Black's Law Online Dictionary defines "speedy trial" as "a trial conducted according to fixed rules, regulations, and proceedings of law, free from vexatious, capricious, and oppressive delays manufactured by the ministers of justice." (*Black's Law Free Online Legal Dictionary, 2nd Ed.*) The basic policy underlying the constitutional provision guaranteeing the right to a speedy trial is to protect the accused from having criminal charges pending against him an undue length of time. (*People v. Wilson* (1963) 60 Cal.2d.139, 148, citing *People v. Godlewski* (1943) 22 Cal.2d 677, 682.)

In order to insure an accused's right to a "speedy trial", Section 1387 bars a third filing for the "same offense" where it has already been twice dismissed. The prosecution is correct when it points out that it is clear that the section only applies to successive prosecutions for the "same offense". (Appellant's Answer Brief on the Merits, p. 7) However, what is ***not clear***

from the statute, and what is at issue in the present case, is what is meant by the term "same offense"?

If the Court were to adopt the prosecution's extremely narrow interpretation of the words, the Section would not offer ***any protection*** against speedy trial violations, as this case perfectly exemplifies. A right to a speedy trial only on the code sections that the prosecution elects to file in a Complaint/Information would leave the prosecution free to continuously file new code sections to address the same, known, conduct until the prosecutor ran out of applicable code sections. Respondents in the present case spent a year and a half in custody preparing to fight attempted murder charges, only to be charged with conspiracy to commit murder charges when the second set of attempted murder charges were dismissed. Respondents then spent another seven months fighting conspiracy to commit murder charges for the same incident and based on the exact same facts. Such a situation is textbook vexatious, capricious and oppressive delay, manufactured by the prosecution.

The prosecution's argument regarding their adherence to speedy trial principals in the present case (Appellant's Answer Brief on the Merits, p. 43) is also erroneous. The fact that Appellant repeatedly ***refiled*** charges against Respondents on the same day that they dismissed previous cases does nothing to protect an accused's speedy trial rights. The right is to be

tried in a speedy manner, not to be repeatedly ***charged*** in a speedy manner.

Furthermore, the fact that there may not be any "malfeasance" in the sense that the prosecution was not motivated by a desire to violate the Respondents' speedy trial rights does not excuse the prosecution from Section 1387's prohibition. In the present case, the prosecution was twice unable to proceed to trial on attempted murder charges, and was twice forced to dismiss attempted murder charges. It is those dismissals that represents a speedy trial violation, and it is those dismissals that differentiate this case from the situation present in *People v. Traylor*, (2009) 46 Cal.4th 1205.

Even where courts have found that Section 1387's prohibition does not apply, they have taken great pains to state that the section's policies or aims are not offended by such a conclusion. In *Traylor, supra,* where a misdemeanor filing was upheld following the dismissal of felony charges, this Court stated, "Under such circumstances, section 1387(a)'s fundamental aims are not contravened by a conclusion that, following the dismissal of a greater felony charge, the statute permits the subsequent filing of a lesser misdemeanor charge…" (*Traylor, supra,* at p. 1214.)

Along similar lines, in *Dietrick v. Superior Court*, (2014) 220 Cal.App. 4th 1472, a magistrate only held the defendant to answer to misdemeanor DUI charges when the prosecutor failed to present evidence

of the requisite prior DUI convictions. The People moved to dismiss the misdemeanor charges, and the next day filed a second felony complaint which was identical to the first, but added two prior prison term allegations. The trial court denied the defendant's Motion to Dismiss pursuant to Section 1387, finding that "no purpose of [Section 1387] would be promoted" by such a dismissal. The court of appeal affirmed. The court stated, "The prosecutor proceeded in a permissible manner by dismissing the current complaint and refiling the case." (*Dietrick, supra,* at p. 1476.) In affirming the trial court's order, the court specifically discussed the primary purpose of Section 1387, and found that, while the defendant would "indeed face a second preliminary hearing and felony prosecution, this does not constitute the ***kind of "harassment"*** that Section 1387 ***was designed to prevent.***" (*Dietrick, supra*, at p. 1477, emphasis added.)

Finally, in *People v. Elias*, (1990) 218 Cal.App.3d 1161, the court of appeal found that Section 1387 did not bar a third filing for grand theft (PC §487) when one of the two previous dismissals had been in regard to an inadvertently filed complaint that was simply duplicative of the first complaint. The appellate court held that the third, duplicate complaint was not barred by the statute, and that to hold otherwise would lead to absurd results. Most important to the present case, the Court stated that "statutes are to be construed to effectuate their purpose (*Landrum v. Superior Court*

(1981) 30 Cal.3d 1, 12) and not to produce an absurd result (*People v. Colver* (1980) 107 Cal.App.3d 277, 285.)" (*Elias, supra,* at p. 1164.) This Court must construe the phrase "same offense" in a manner that effectuates ***the purpose*** of Section 1387. If the Court were to construe that phrase in a manner that would allow the harassing, speedy trial violation that the prosecution seeks, ***that*** would be an "absurd result".

Even when courts determine that Section 1387 does not bar a successive prosecution, they look to the intent, design and purpose of the statute in doing so. In the present case, a determination that the third filing against Respondents is permissible would ***absolutely*** present the type of harassment and speedy trial violation that the section is designed to prevent.

While Section 1387 undeniably uses the term "same offense", the statute also undeniably fails to specifically define what that term means. The phrase "same offense" does not mean merely violation of the same statute; rather, when different offenses are charged in successive prosecutions, the court must look to the essence of the offenses. (*5 Witkin, California Criminal Law, 3rd Ed.,* §421)

The prosecution's assertion that the Legislature's "clear language" governs, and it's reliance on *In re D.B.*, (2014) 58 Cal.4th 941, are erroneous. The Legislature clearly used the phrase "same offense", but they ***did not make clear*** what that term meant. Courts have, however,

made it crystal clear that the legislative intent in enacting the statute was to protect defendants from harassment, and to prevent speedy trial violations. This Court is now called upon to determine what the phrase "same offense" means.

The ambiguity in the meaning of "same offense" is what distinguishes the present case from *In re D.B., supra.* In *In re D.B.*, this Court found that the language of California Welfare and Institutions Code Section 733, subdivision (c), referring to a minor's "most recent offense", was clear and led to only one reasonable interpretation. (*In re D.B., supra,* at p. 947.) That is not the case with Section 1387. The words "same offense" are not "clear and unambiguous" and do not lead to only one "reasonable interpretation", as is clear from a review of the various cases that have interpreted the section. More importantly, this Court also said, in *In re D.B.*, that:

> "Our fundamental task is to determine the Legislature's intent and give effect to the law's purpose."
>
> (*In re D.B., supra,* at p. 945.)

The Legislature's "intent" in enacting Section 1387 is clear, and in order to give effect to that intent, this Court ***must*** adopt an interpretation of the phrase "same offense" that protects the defendant's speedy trial rights.

Contrary to Appellant's assertions (Appellant's Brief, p. 51), Respondents' arguments regarding the scope of Section 1387 are not misplaced; Respondents are not barking up the wrong tree. This Court ***is*** the appropriate body to interpret the phrase "same offense".

If this Court were to adopt the prosecution's narrow "same elements" test they would condone an almost unlimited number of filing by the government for charges describing the same set of facts and circumstances. In the present case, the prosecution has already had two bites at the attempted murder charges. If the Court affirms the Court of Appeal's holding they will be entitled to two bites at a conspiracy to commit murder apple. Beyond that, at a minimum, they would have two bites at an aggravated assault apple. The prosecution would be able to twice file and dismiss as many cases as statutes they could come up with to describe the events of June 3, 2011. That is ***exactly*** the danger that Section 1387 was intended to protect against.

II.

OTHER JURISDICTIONS HAVE DEFINED THE PHRASE "SAME OFFENSE" BROADLY, TO ENCOMPASS OFFENSES BASED ON THE SAME CONDUCT.

The prosecution's narrow interpretation notwithstanding, other jurisdictions have interpreted, or even defined, the term "same offense" broadly, in a manner that would encompass all offenses arising from the same conduct.

Nevada Revised Statute Section 62D.020, which discusses juvenile rights, states:

> 1. If a child is prosecuted for an offense in a juvenile proceeding, the child may not be prosecuted again for the ***same offense*** in another juvenile proceeding or in a criminal proceeding as an adult.
> 2. For purposes of this section:
>
> ...
>
> (b) An offense is the ***same offense*** if it is:
>
> ...
>
> (2) An offense ***based*** upon the ***same conduct*** as that alleged in the petition.

(Nev.Rev.Stat.§62D.020, emphasis added.)

In the context of double jeopardy analysis, the Hawaii State Constitution states, in relevant part:

> No person shall be . . . subject for the same offense to be twice put in jeopardy[.]"

(Hawai'i Constitution, Art. 1, Sec 10)

This Hawaii Supreme Court has determined that "same offense" is governed by the "same conduct" test, that was set out by the United States Supreme Court in *Grady v. Corbin,* (1990) 495 U.S. 508.[2] In *State v. Lessary,* (1994) 75 Haw. 446, the Hawai'i Supreme Court stated:

> The double jeopardy clause of the Hawai'i Constitution prohibits the State from pursuing multiple prosecutions of an individual for the same conduct. Prosecutions are for the same conduct if any act of the defendant is alleged to constitute all or part of the conduct elements of the offenses charged in the respective prosecutions.
> (*State v. Lessary, supra,* at p. 461.)

III.

RESPONDENT GERARDO JUAREZ JOINS IN AND ADOPTS THE ARGUMENTS RAISED BY CO-RESPONDENT.

Respondent Gerardo Juarez hereby joins in and adopts by reference all arguments raised by his co-respondent Emmanuel Juarez. (*People v. Stone* (1981) 117 Cal.App.3d 15, 19, fn.5; *People v. Smith* (1970) 4 Cal.App.3d 41, 44; Calif. Rules of Court 8.200(a)(5).) Respondent is aware of this Court's holding in *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363-364, that "[a]ppellate counsel for the party purporting to

[2] The United States Supreme Court specifically rejected this test for federal double jeopardy analysis three years later in *United States v. Dixon* (1993) 509 U.S. 608, however a number of states continue to use the test when contemplating their own constitutional Double Jeopardy Clauses. The Citation to *Grady* herein is not for precedential value, only to indicate where the State of Hawai'i's test is derived from.

join some or all of the claims raised by another are obligated to thoughtfully assess whether such joinder is proper as the specific claims and, if necessary, to provide particularized argument in support of his or her client's ability to seek relief on that ground", and that the Court may treat arguments as waived if the party does not provide a legal argument and citation to authority on each point. (*id.*) However, as co-respondent Emmanuel Juarez has pointed out, in the present case both respondents are in exactly the same position vis-à-vis all of the issues raised in the briefs. The arguments co-respondent Emmanuel Juarez has raised are equally applicable in all respects to respondent. In this case, "joinder *is* proper" as to all arguments made by co-respondent.

CONCLUSION

For all of the reasons articulated herein, as well as those argued in Respondents' previous briefs, reversal of the Court of Appeal's opinion is required.

Dated: 3/9/15

Respectfully Submitted,

FRANK DAVIS
Alternate Defender
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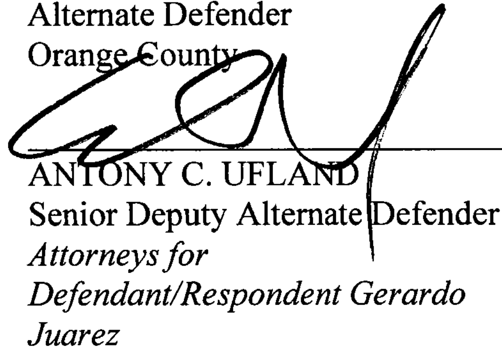

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CERTIFICATE OF WORD COUNT

[California Rules of Court, Rule 28.1(e) (1)]

I certify that the text of Defendant/Respondent Gerardo Juarez' Reply Brief consists of 2,664 words as counted by "Word", the word-processing program used to generate it.

Dated this 9th day of March, 2015

ANTONY C. UFLAND
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DECLARATION OF SERVICE

The People v. Gerardo Juarez/Emmanuel Juarez
Supreme Court Case No. S219889
DCA Case No. G049037
Superior Court Case No. 12CF3528

STATE OF CALIFORNIA)
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Antony Ufland, declares that he is a citizen of the United States, a resident of Orange County, over the age of 18 years, not a party to the above-entitled action and has a business address at 600 West Santa Ana Blvd, #600, Santa Ana, CA 92701.

That on the 9th day of March, 2015, I served a copy of Defendant/Respondent Gerardo Juarez' Reply Brief on the Merits in the above-entitled action by depositing a copy thereof in a sealed envelope, postage thereon fully prepaid, in the United States Mail at Santa Ana, California. Said envelope was addressed as follows:

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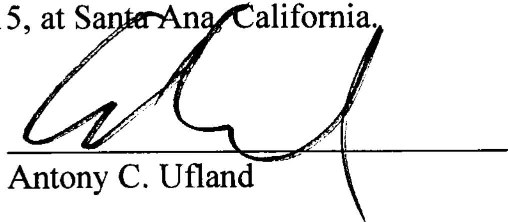
I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9th day of March, 2015, at Santa Ana, California.



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