

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA SUPREME COURT
FILED

DEC 24 2014

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff/Respondent,
v.
KIRNPAL GREWAL,
Defendant/Appellant.

CASE NO. S217896

Appellate Case No: F065450,
consolidated with F065451, F065689
Frank A. McGuire Clerk
Deputy

Kern County Sup Ct No. CV-276959

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff/Respondent,
v.
PHILLIP WALKER,
Defendant/Appellant.

Appellate Case No: F065451,
consolidated with F065450, F065689

Kern County Sup Ct No. CV-276961

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff/Respondent,
v.
JOHN C. STIDMAN,
Defendant/Appellant.

Appellate Case No: F065689,
consolidated with F065450, F065451

Kern County Sup Ct No. CV-276958

**RESPONDENT'S OBJECTION TO APPELLANTS'
MOTION TO TAKE JUDICIAL NOTICE**

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RESPONSE

Appellants Grewal and Walker filed a Motion to Take Judicial Notice wherein they requested that this Court take judicial notice of several “sweepstakes websites,” “lawful gambling websites,” and “fantasy league sports websites.” The People note that much of the content contained on the various websites identified in the motion is a mishmash of unsubstantiated information which bears little to no resemblance to the facts that are before this Court. Therefore, the People hereby formally object to Appellants’ request to take judicial notice of these websites on the basis that the content of the websites are not “capable of immediate and accurate determination” from indisputable sources within the meaning of Evidence Code Section 452(h). In addition, the wide range of factual variants presented by the websites establish that any probative value to be derived would be greatly outweighed by the risk of confusing the issues before this Court within the meaning of Evidence Code Section 352. For these reasons, the People respectfully request that Appellants’ request to take judicial notice of the websites be denied.

Moreover, the only legal basis on which comparisons could be considered between Appellants and other entities would be for Appellants to assert that the People are engaging in the disparate treatment of Appellants. (*People v. Toomey* (1984) 157 Cal.App.3d 1, 12-13 [discussing the requisites for a showing of discriminatory prosecution in the context of

an action under Business & Professions Code section 17200].) However, as a threshold showing for such a claim, Appellants ““must demonstrate that he has been deliberately singled out for prosecution on the basis of some invidious criterion.’ [Citations].” (*Id.* at p. 13, quoting *Murgia v. Municipal Court* (1975) 15 Cal.3d 286.) In this case, Appellants have not shown any kind of invidious discrimination or intentional discriminatory prosecution by the People. In an out-of-state case dealing with the onslaught of internet café sweepstakes schemes, the Court of Appeals of New Mexico addressed almost this identical issue of disparate treatment as follows:

We first note that Defendant supports this argument by equating his lottery promotion as the same type of sweepstake games and promotions offered by McDonald's, Cola-Cola, or Albertsons. In essence, Defendant argues that any consideration paid to participate in his sweepstakes promotion was identical to the promotions offered by these national companies who have not been subjected to criminal prosecution. Although this argument could be interpreted as a selective prosecution violation under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Defendant has not presented any authority or developed an Equal Protection argument, but limits his argument to the sufficiency of the evidence. [Citations.] Despite Defendant's invitation to do so, we will not substitute our sufficiency of the evidence analysis with an evaluation of the numerous other sweepstakes-type promotions conducted in New Mexico by other national companies who are not defendants in this proceeding. [Citation.] (*State of New Mexico v. Vento* (2012) 286 P.2d 627, 634-635.)

Similarly, an Appellate Court in California also refused to address a discriminatory prosecution argument on appeal because the record did not

contain “an adequate showing of an intentional and purposeful singling out of defendants for prosecution on an ‘invidious discrimination’ basis.” (*People v. Shira* (1976) 62 Cal.App.3d 442, 464, fn. 15.) For the same reasons stated in *Vento* and *Shira*, this Court, too, should decline Appellants’ invitations to compare themselves with entities not before this Court and deny Appellants’ request for judicial notice of the websites.

CONCLUSION

For the foregoing reasons, the People respectfully request that the Court deny Appellants’ request to take judicial notice of various websites identified in their moving papers.

Dated: December 22, 2014 LISA S. GREEN
Kern County District Attorney

BY Gregory A. Pulskamp
GREGORY A. PULSKAMP
Supervising Deputy District Attorney

PROOF OF SERVICE

I declare that I am employed in the County of Kern, State of California; that I am over the age of eighteen years; that I am not a party to this action; and that my business address is 1215 Truxtun Avenue, Bakersfield, California 93301.

I served a copy of the attached **RESPONDENT'S OBJECTION TO APPELLANTS' MOTION TO TAKE JUDICIAL NOTICE** on all parties as follows, and in the manner described below, marked : **SEE SERVICE LIST**

- U.S. MAIL –
 - (1) Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) Pursuant to C.C.P. section 1013(a), placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with this business's practice of collecting and processing documents for mailing. On the same day that document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

- OVERNIGHT MAIL – on December 23, 2014, pursuant to Code Civ. Proc. §1013(c), I caused such envelope with delivery fees fully prepared to be sent to **Supreme Court of California** by FEDERAL EXPRESS.

- ELECTRONIC MAIL – by transmitting the document(s) listed above, electronically to the **Supreme Court**, via the Court of Appeal, which satisfies the requirements for service on the Supreme Court under Rules of Court, rule 8.212(c)(2).

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 23, 2014, at Bakersfield, California.



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