

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA **SUPREME COURT COPY**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

S176983

TERRION MARCUS ENGRAM,
Defendant and Respondent.

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

REPLY BRIEF ON THE MERITS

**SUPREME COURT
FILED**

MAR 12 2010

Frederick K. Ohlrich Clerk

DEPUTY

ROD PACHECO
District Attorney
County of Riverside

ALAN D. TATE
Senior Deputy District Attorney
County of Riverside

3960 Orange Street
Riverside, California 92501
Telephone: (951) 955-5400
(951) 955-0126
Fax: (951) 955-9566
Email: atate@rivcoda.org
State Bar No. 172413

Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

S176983

TERRION MARCUS ENGRAM,
Defendant and Respondent.

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

REPLY BRIEF ON THE MERITS

ROD PACHECO
District Attorney
County of Riverside

ALAN D. TATE
Senior Deputy District Attorney
County of Riverside

3960 Orange Street
Riverside, California 92501
Telephone: (951) 955-5400
(951) 955-0126
Fax: (951) 955-9566
Email: atate@rivcoda.org
State Bar No. 172413

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIESii

REPLY BRIEF ON THE MERITS 1

INTRODUCTION 1

ARGUMENT3

THE AFFIRMANCE OF THE SUPERIOR COURT DISMISSAL
MUST BE REVERSED BECAUSE THE SUPERIOR COURT
COMMITTED LEGAL ERROR AND EGREGIOUSLY ABUSED
ITS DISCRETION WHEN IT FAILED TO PROPERLY
CONSIDER THE AVAILABILITY OF CIVIL JUDGES AND
COURTROOMS TO HANDLE THIS LAST-DAY FELONY
TRIAL.....3

CONCLUSION..... 8

TABLE OF AUTHORITIES

CASES

Barsamyian v. Appellate Division of Superior Court of Los Angeles County
(2008) 44 Cal.4th 960 6
Herrick v. Municipal Court (1957) 151 Cal.App.2d 804 7
Mendez v. Superior Court (2008) 162 Cal.App.4th 827 6, 7
People v. Belmontes (1983) 34 Cal.3d 335 4
People v. Gaston (1999) 74 Cal.App.4th 310 5
People v. Osslo (1958) 50 Cal.2d 75 3
People v. Russel (1968) 69 Cal.2d 187 5
People v. Yniquez (1974) 42 Cal.App.3d Supp. 13 7
Perez v. Superior Court (1980) 111 Cal.App.3d 994 7
Rhinehart v. Municipal Court (1984) 35 Cal.3d 772 7
Tudman v. Superior Court (1972) 29 Cal.App.3d 129 7

STATUTES

Penal Code:

§ 1050 2, 3, 5, 6, 7
§ 1192.7 4
§ 1382 6, 7

RULES

Rules of Court:

Rule 4.115 7

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

S176983

TERRION MARCUS ENGRAM,
Defendant and Respondent.

INTRODUCTION

On appeal and again in this Court, appellant has asserted that the superior court criminal calendar judge erred as a matter of law and egregiously abused his discretion in dismissing this case involving a serious felony charge with the potential for violence while giving precedence to miscellaneous non-criminal matters. Despite the legislative directive giving precedence to criminal matters over all other civil matters or proceedings, the fact that civil matters were being heard in courtrooms throughout the county, and the lack of any evidence of actual prejudice to any pending civil matters, the Court of Appeal thereafter affirmed the dismissal and underlying actions as appropriate exercises of discretion.

Respondent asserts the calendar judge committed no abuse of discretion or legal error, and properly considered the availability of civil courtrooms. (RBOM 1, 5, 8-9.) However, respondent also adds that to the extent the calendar judge may have abused his discretion, it was because appellant failed to apprise the calendar judge of the facts of this case. (RBOM 14-15.) Respondent additionally asserts the calendar judge need not determine if any civil case will be prejudiced before giving it priority over a last-day criminal case. (RBOM 16.) Finally, respondent asserts that the calendar judge must be afforded discretion in applying the directive in

Penal Code section 1050, but at the same time argues that the presiding judge and court administrators can designate civil departments that need not be considered by the calendar judge for assignment of a criminal trial. (RBOM 18-19.) These positions are inconsistent, and largely ignore the record and the law.

The question in this case is whether, despite the Legislative directive giving precedence to criminal cases over any civil matters or proceedings, a calendar court judge can be allowed to maintain that there are no available courtrooms to handle a criminal trial – resulting in the dismissal of felony criminal charges – when there are, in fact, civil courtrooms and qualified judges available to timely try the case and dispense justice. Under the facts of this case, the answer has to be “no.” At a minimum, the courts and future litigants need guidance on how to interpret and apply the legislative directive in Penal Code section 1050 that “criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.” (Pen. Code, § 1050, subd. (a).)

ARGUMENT

THE AFFIRMANCE OF THE SUPERIOR COURT DISMISSAL MUST BE REVERSED BECAUSE THE SUPERIOR COURT COMMITTED LEGAL ERROR AND EGREGIOUSLY ABUSED ITS DISCRETION WHEN IT FAILED TO PROPERLY CONSIDER THE AVAILABILITY OF CIVIL JUDGES AND COURTROOMS TO HANDLE THIS LAST-DAY FELONY TRIAL

Appellant's position should be clear. Appellant believes there should be no judges or courtrooms in Riverside County that are completely excluded from being considered or utilized in order to prevent the dismissal of a last-day criminal trial matter. This does not mean that civil departments need to be completely shut down to prevent *any* dismissal of *any* last-day criminal matter. This argument is consistent with the plain language of Penal Code section 1050, subdivision (a), court rules, and established case authority. However, as the record in this case demonstrates, the calendar judge gave only lip-service to utilizing various civil courtrooms and judges, and he ultimately gave preference to unspecified civil matters resulting in the dismissal of the instant felony charge. Taking such action without respect to the facts of any pending cases, and in direct contradiction to statutes, rules, and case authority, is legal error or an egregious abuse of discretion.

Respondent asserts, and the Court of Appeal held, that the legislative directive in Penal Code section 1050 – that criminal cases take precedence over civil matters – is directory, and not mandatory. (RBOM 11, 18; Slip Opn. at pp. 5-6.) Respondent adds that this section “gives courts discretionary authority to allocate resources in a manner consistent with the ends of justice.” (RBOM 11.) Appellant agrees. However, as set forth in the Opening Brief on the Merits, nothing in the statute or this Court's opinion in *People v. Osslo* (1958) 50 Cal.2d 75, dictates that nonspecific civil matters take priority over a last-day criminal trial involving serious felony charges, resulting in the dismissal of those charges. It can never be “consistent with

the ends of justice” to take action resulting in the dismissal of a felony charge without some evidence of necessity or prejudice to pending civil matters.

The record shows that the calendar judge applied an inflexible policy not to utilize judges handling civil matters in various non-criminal courtrooms. Although there were references to considering the utilization of family law or probate judges (see RT 14-15), there is no evidence the calendar judge has ever utilized such measures to prevent the dismissal of any last-day criminal trial matter. There is also no evidence in the record that any civil trial matter, or any family law or probate matter, has ever been dismissed due to a shortage of judges or courtrooms. Moreover, other than the asserted general importance of the matters pending in the various non-criminal courtrooms, the calendar judge was completely unaware of the actual facts of any pending non-criminal case.

The calendar judge did not exercise his independent discretion or truly consider the availability of non-criminal judges and courtrooms when the relevant facts were completely unknown to him. (See, e.g., *People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8 [if a trial court’s decision is influenced by an erroneous understanding of applicable law or reflects that the court is unaware of the full scope of its discretion, it cannot be said the court has properly exercised its discretion under the law].)

Seemingly acknowledging some error by the calendar judge, respondent assigns as error on the part of appellant the failure to advise the court of the underlying facts of this case. Respondent asserts by “failing to do so, the court was without the means necessary to determine whether this case should have been given some form of priority.” (RBOM 14.) Appellant strongly disagrees. The court had in its possession the complaint and information, and as a matter of law, the charged burglary was a serious felony offense. (See Penal Code, § 1192.7, subdivision (c)(18).) In contrast, the calendar judge considered nothing more than the “general

seriousness” of the civil matters pending in the various non-criminal courtrooms. (RT 14.) Assuming the calendar judge actually lacked awareness of the facts of the pending criminal charge, if he could consider the general seriousness of unspecified civil matters, he surely could compare that to the general seriousness of pending felony charges.

The *Engram* opinion holds that the “lack of available courtrooms was the result of chronic court congestion” and suggests that fact is undisputed. (Slip Opn. 15.) No doubt, the Riverside County Superior Court is overburdened and understaffed. However, there were courtrooms and judges not already handling last-day criminal trials. The policy and directive has been set by the Legislature as set forth in Penal Code section 1050. The calendar judge had no right or responsibility to completely reject the directive and refuse to give true consideration to many civil courtrooms to prevent the dismissal of a last-day felony trial matter. Crowded courts or not, providing preference to a civil matter with no evidence of potential for prejudice -- while permitting a felony to be dismissed -- is not an appropriate exercise of discretion. (See, e.g., *People v. Russel* (1968) 69 Cal.2d 187, 195 [“all 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. Gaston* (1999) 74 Cal.App.4th 310, 314-315 [discretion of a trial judge is a controlled power to be exercised in conformity with the spirit of the law, and in a manner to serve the ends of justice].)

Respondent asserts “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.” (RBOM 19.) However, nothing in Penal Code section 1050 requires the availability of a completely-open civil courtroom before a criminal trial can be assigned thereto. Ongoing civil proceedings involve activities other than trials, and

even a civil trial can be continued without necessarily prejudicing the parties. Since the calendar judge was referencing considerations such as “the general importance of the work done” and the lack of jury boxes, it is disingenuous to suggest now there simply were no courtrooms or judges to handle the instant trial. Had that been the case, the calendar judge would have simply said so and not attempted to provide specific reasons to support an asserted exercise of discretion.

Appellant does not believe that the calendar judge must “inquire of all matters occurring in other non-criminal courtrooms” or that he or she must “review each and every case in every department[.]” (RBOM 19.) But, to appropriately exercise discretion, the calendar judge must be aware of the relevant circumstances. Respondent asserts that “[t]rial courts are in the best position to determine their day-to-day functioning,” but also asserts that the “presiding judge and court administrators [can] designate separate civil departments that need not be considered to try criminal matters.” (RBOM 16, 19.) However, such limitations by others would necessarily subvert the directive in Penal Code section 1050 and prevent the calendar judge – who should be in possession of the relevant information – from independently and intelligently exercising his or her own discretion. In Riverside County, the calendar judge has never utilized courtrooms such as family law or probate to prevent the dismissal of a last-day criminal trial matter, and the reason appears to be the court’s wholesale adoption of policy decisions by others rather than a considered, individualized exercise of judicial discretion.

Finally, there was good cause to briefly continue this trial matter. As set forth in the Opening Brief on the Merits, the statutory speedy trial periods in Penal Code section 1382 are not fundamental, and can be exceeded for various reasons amounting to good cause. (See *Barsamyan v. Appellate Division of Superior Court of Los Angeles County* (2008) 44

Cal.4th 960, 969; *Mendez v. Superior Court* (2008) 162 Cal.App.4th 827, 837.) In the wake of recent rule amendments, court congestion has become good cause in this state. (See Rules of Court, rule 4.115(b).) If the calendar judge truly had done everything required to locate a courtroom for this last-day violent criminal trial matter, then good cause did exist for a brief continuance. (*People v. Yniquez* (1974) 42 Cal.App.3d Supp. 13, 19-20; see *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 782.)

By inflexibly refusing to utilize numerous civil judges and courtrooms to hear this felony trial, the calendar judge violated the principles of *Perez v. Superior Court*, the Rules of Court, and Penal Code section 1050. (See *Perez v. Superior Court* (1980) 111 Cal.App.3d 994, 1000 [court could not adhere to inflexible policy giving priority to civil cases over criminal cases which are required pursuant to Penal Code section 1382 to come to trial on that date]; *Tudman v. Superior Court* (1972) 29 Cal.App.3d 129, 132 [“the fact that civil cases were sent out for trial . . . eliminates any legal ground for refusing to send out defendant’s case for trial in one of the departments in the civil pool”]; see also *Herrick v. Municipal Court* (1957) 151 Cal.App.2d 804, 810 [reviewing court specifically noted that to avoid dismissing a criminal matter, the civil calendar “could have been set aside for one day so a criminal matter could be heard”].) Despite the availability of courtrooms and judges who could have been utilized to prevent the dismissal of this last-day serious felony matter, the calendar judge chose to take action resulting in the dismissal of this case. This was an error of law, or at least an egregious abuse of discretion, and should be reversed.

CONCLUSION

Accordingly, for the foregoing reasons, and the reasons set forth more fully in the Opening Brief on the Merits, appellant respectfully requests that the judgment of the Court of Appeal affirming the dismissal by the Superior Court be reversed.

Dated: March 11, 2010

Respectfully submitted,

ROD PACHECO
District Attorney
County of Riverside



ALAN D. TATE
Senior Deputy District Attorney

CERTIFICATE OF WORD COUNT

Case Nos. S176983/E047015

The text of the ***REPLY BRIEF ON THE MERITS*** consists of 2,024 words as counted by the Microsoft Word Program used to generate the said ***REPLY BRIEF ON THE MERITS***.

Executed on March 11, 2010.

Respectfully submitted,

ROD PACHECO
District Attorney
County of Riverside

A handwritten signature in black ink, appearing to read 'Alan D. Tate', written over a circular stamp or mark.

ALAN D. TATE
Senior Deputy District Attorney

PROOF OF SERVICE BY MAIL

Case Nos. S176983/E047015

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 11, 2010, I served a copy of the paper to which this proof of service by mail is attached, ***REPLY 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:

**COURT OF APPEAL
Fourth District, Division Two
3389 Twelfth Street
Riverside, CA 92501**

**SUSAN S. BAUGUESS
Attorney for Terrion Engram
P.O. Box 2318
Running Springs, CA 92382**

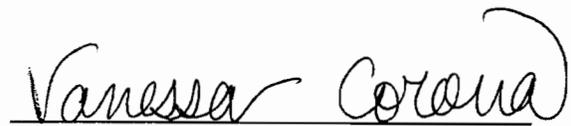
**ATTORNEY GENERAL'S OFFICE
110 West A Street, Suite 1100
San Diego, CA 92101**

**HON. HELIOS J. HERNANDEZ
Riverside County Superior Court
Hall of Justice
4100 Main Street
Riverside, CA 92501**

**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 11, 2010, at Riverside, California.


DECLARANT