

In the Supreme Court of the State of California

DONALD SMITH,

Petitioner,

v.

**SUPERIOR COURT OF THE CITY AND
COUNTY OF SAN FRANCISCO,**

Respondent,

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Real Party in Interest.

COPY

Case No. S188068

**SUPREME COURT
FILED**

APR 28 2011

Frederick K. Onirich Clerk

Deputy

First Appellate District, Division Five, Case No. A124763
San Francisco County Superior Court, Case No. 207788
The Honorable Ksenia Tsenin, Judge

**REAL PARTY IN INTEREST'S REPLY BRIEF
ON THE MERITS**

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ARGUMENT

Penal Code section 1382, subdivision (a)(2)(B) adds a 10-day “grace period” beyond the date to which trial is continued at the request or with the consent of a criminal defendant. Smith maintains this grace period applies only to codefendant Sims, who requested the continuance. We disagree. California’s strong interest in joint trials justified the brief delay of Smith’s trial to maintain joinder with Sims, over Smith’s objection.

Penal Code section 1382, subdivision (a) requires trial of a felony defendant within 60 days of arraignment “unless good cause to the contrary is shown.” Smith agrees the illness of Sims’s attorney was good cause to continue the joint trial beyond 60 days.¹ His position is that a separate showing of good cause was required to continue his trial during the 10-day grace period added to Sims’s trial date by section 1382, subdivision (a)(2)(B). Smith’s interpretation is contrary to California’s Constitution and policy for joint trials.

Sims’s continuance was granted at his request (thus it invoked section 1382’s automatic 10-day grace period) and for good cause shown (his attorney was ill and hospitalized). That continuance triggered Penal Code section 1050.1: “In any case in which two or more defendants were jointly charged, in the same . . . information, and the court . . . for good cause shown, continues the . . . trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants’ cases so as to maintain joinder.”²

¹ The court found Sims’s attorney’s illness was good cause to continue the joint trial. (See 4/13/2009 RT at p. 6; 4/14/2009 RT at p. 8; 4/16/2009 RT at p. 10.)

² The prosecutor made the request. See 4/10/09 RT at p. 4 (lodged by petitioner on May 27, 2009.)

In the circumstances of this case, Penal Code section 1050.1 specifies the “good cause” that satisfies section 1382 to continue Smith’s trial, namely to maintain joinder with Sims: The continuance of Sims’s trial is, in itself, good cause to continue Smith’s trial, “so as to maintain joinder.”

According to Smith, the People had three options here: “[t]ry both cases together immediately; [t]ry the objecting codefendant’s (Smith) case immediately and the consenting defendant’s (Sims) case within ten days; [present] new good cause to continue and join [Smith and Sims] for a reasonable period under section 1050.1.” (Smith’s Opening Brief at p. 15.)

Each of Smith’s proposals is contrary to the statutes and public policy. The 10-day “grace period” was enacted in 1959 precisely to prevent a defendant from forcing the People and the court to trial “immediately” on a day of the defendant’s choosing, without adequate time to secure a courtroom and the attendance of witnesses. (See *Barsamyan v. Appellate Division of the Superior Court of Los Angeles County* (2008) 44 Cal.4th 960, 979.)³ Forced severance is also contrary to public policy.

Smith argues that the 10-day grace period is not part of Sims’s requested good cause continuance, but a separate continuance requiring a showing by the People of good cause to delay Smith’s trial. He cites no authority for this proposition; it is contrary to case authority and public policy.

Sims’s good cause continuance includes the 10-day grace period by operation of section 1382, irrespective of whether there is case-specific good cause for the 10-day delay: “No showing of good cause is necessary

³ Real party’s opening brief at page 10 quoted a Court of Appeal decision that, in turn, quoted from *Barsamyan*. This Court later ordered the Court of Appeal decision depublished. (*People v. Graves*, review denied and opinion ordered not to be published February 23, 2011 (S188704).) Accordingly, real party withdraws its citation to *Graves*.

to support [the] request to bring defendant to trial within ten days after the last date to which he had consented . . . since that statute provides that the action ‘shall not be dismissed’ if this is done.” (*Malengo v. Municipal Court* (1961) 56 Cal.2d 813, 815-816, fn. omitted.) That the 10-day grace period is added automatically by a statute is good cause to continue the joint trial for 10 days.

Smith’s proposal, to require the People to demonstrate additional good cause for the 10-day grace period, is a prescription for severance in every case in which the 10-day period is added automatically by the statute, but the People have no case-specific good cause for the additional 10 days. Such an interpretation is contrary to California’s strong preference for joint trials, expressed in article I, section 30, subdivision (a), of the California Constitution, (“This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the People through the initiative process”) and Penal Code sections 1098 and 1050.1. This Court observed in *People v. Sutton* (2010) 48 Cal.4th 533,

[w]hen the proposed delay to permit a single joint trial is relatively brief, the substantial state interests that are served *in every instance* by proceeding in a single joint trial generally will support a finding of good cause to continue the codefendant’s trial under section 1382, even when there is no indication that, were the defendants’ trials to be severed, the separate trials would be unusually long and complex. (See, e.g., *People v. McFarland*, *supra*, 209 Cal.App.2d 772, 776-778; see also § 1050.1.)

(48 Cal.4th at p. 560, italics added and fn. omitted.)

Whenever the delay is within the statutory 10-day grace period, it is, by definition, “relatively brief,” and the substantial state interest served “in every instance” by proceeding in a single joint trial constitutes “good cause” to continue the codefendant’s trial under section 1382.

Smith claims our analysis ignores his right to a speedy trial. Not so. This Court observed that a 10-day grace period was selected by the Legislature in 1959 because it is short enough to protect a defendant's right to a speedy trial (*Barsamyan v. Appellate Division of the Superior Court of Los Angeles County, supra*, 44 Cal.4th at p. 979), while preventing a defendant from forcing trial on a day of the defendant's choosing, without adequate time to secure a courtroom and secure the attendance of witnesses.

Smith claims this Court's decision in *People v. Clark* (1965) 62 Cal.2d 870, requires a showing of good cause beyond joinder. We disagree. In *Clark* this Court found the interest in joint trial did not control in the unique underlying circumstances of that case. *Clark* is summarized in *Sanchez v. Superior Court of Los Angeles* (1982) 131 Cal.App.3d 884.⁴

The basis of the court finding that the two defendants in *Clark* had been denied a speedy trial was the revelation that the prosecution knew critical facts which the court found constituted clear grounds for severance, and failed to disclose them to the court or the defendants when continuances were sought; consequently, the continuances were granted without good cause and the motions to dismiss and for severance were deemed erroneously denied. There was an abuse of discretion in granting the delays where it was shown that the insistence on a joint trial was not in good faith, was solely for the purpose of obtaining an otherwise illegal delay, and was not reasonably predicated upon the purpose and intent of the statute which grants the right to try the defendants jointly.

(131 Cal.App.3d at p. 891-892.)

Moreover, *Clark* was decided before the enactment of article I, section 30, subdivision (a) of the State Constitution, and Penal Code section 1050.1.

⁴ *Sanchez* was disapproved on a related point in *People v. Sutton, supra*, 48 Cal.4th 533, 562.

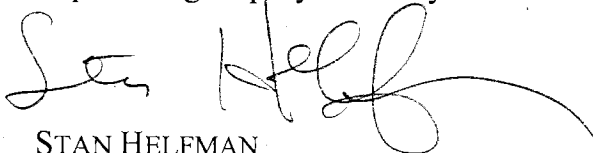
CONCLUSION

The judgment of the court of appeal should be reversed, and the trial court's ruling affirmed.

Dated: April 27, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 1,279 words.

Dated: April 27, 2011

KAMALA D. HARRIS
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A handwritten signature in black ink, appearing to read "Stan Helfman", with a long horizontal flourish extending to the right.

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Smith v. Superior Court of the City and County of San Francisco;
The People of the State of California, Real Party in Interest**

No.: **S188068**

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 that same day in the ordinary course of business.

On April 28, 2011, I served the attached **REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, 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:

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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 April 28, 2011, at San Francisco, California.

S. Agustin
Declarant

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Signature