

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

vs.

KHRISTINE EROSHEVICH et al.,
Defendants and Respondents.

S210545
2 CRIM. B231411
LASC BA353907

SUPREME COURT
FILED

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APPEAL FROM THE JUDGMENT OF
THE SUPERIOR COURT OF LOS ANGELES COUNTY
THE HONORABLE ROBERT J. PERRY, JUDGE PRESIDING

Frank A. McGuire Clerk

Deputy

ANSWER BRIEF ON THE MERITS

on behalf of

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KHRISTINE EROSHEVICH

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of California:

Petitioner, the People of the State of California, by and through the District Attorney for Los Angeles County, asks this Court to reverse an action taken in this case by the Court of Appeal, Second Appellate District, Division Five. In taking the now challenged action, the Court of Appeal expressly relied upon the authority vested in it by Penal

Code section 1260¹ and the reasoning and holding of this Court in *People v. Braxton* (2004) 34 Cal.4th 798, 818-819. This Court has granted review on the issues set forth below. These issues, as with petitioner's contentions, focus upon the reach of a reviewing court's discretionary authority under Penal Code section 1260.

Issues Presented for Review

(1) If a trial court issues a ruling equivalent to an acquittal after a jury has entered a guilty verdict and the Court of Appeal reverses the trial court's ruling on appeal, does the trial court's erroneous acquittal nevertheless bar retrial under principles of double jeopardy if, on remand, the defendant renews an earlier motion for a new trial?

(2) In such circumstances, is the Court of Appeal permitted to direct a trial court to dismiss charges and acquit a defendant if the trial court decides to grant the defendant's motion for a new trial under Penal Code section 1181?

Introduction – Framing the Issues as to Dr. Eroshevich

Dr. Khristine Elaine Eroshevich, defendant and respondent, and her codefendant Howard Stern were convicted of two felony conspiracies by a jury (Pen. Code, § 182; counts 1 and 3). (22CT 5160, 5161, 5172, 5174; 48RT 15006-15022.) The trial court granted Mr. Stern's new trial motion on the ground the evidence was insufficient as a matter of law. (Pen. Code, § 1181(6); 48RT 15327-15329.) The trial court then

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

dismissed the charges against Mr. Stern. (Pen. Code, § 1385; 48RT 15329.) The trial court dismissed the charges as to Dr. Eroshevich, without ruling on her new trial motion. (48RT 15329, 15337.)

The District Attorney appealed. The Court of Appeal determined the evidence was legally sufficient and concluded that the trial court had incorrectly granted Mr. Stern's new trial motion and reversed. (Slip opn., at pp. 3, 22.) The Court of Appeal also concluded that the trial court incorrectly dismissed the charges against both defendants for lack of legal sufficiency and reversed both dismissals. (Slip opn., at p. 3, 22.)

On review before this Court, the District Attorney states the prosecution is in agreement with each of the actions taken by the Court of Appeal that are set forth above. Specifically, as to Mr. Stern, the prosecution does not dispute the reversal of the trial court's new trial and dismissal rulings. As to Dr. Eroshevich, the prosecution does not dispute the Court of Appeal's reversal of the trial court's dismissal under section 1385. (Slip opn., at pp. 4-5, 22; OBM 5, 15.)

What the District Attorney does dispute are the actions the Court of Appeal took next with regard to events that follow upon the issuance of remittitur. Pursuant to the authority granted reviewing courts by Penal Code section 1260,² the Court of Appeal ordered the verdicts as to

² Penal Code section 1260 provides statutory authorization for rulings by appellate courts and states: "The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances."

Mr. Stern reinstated.³ The Court of Appeal further ordered the trial court to hear and decide both defendants' renewed motions for new trial and the court's own section 1385 motions to dismiss prior to sentencing. The Court of Appeal also ordered that if the trial court were to grant Mr. Stern's new trial motion, a retrial of Mr. Stern was barred because the trial court's previous new trial grant, which was based on evidentiary insufficiency, was tantamount to a functional acquittal and thus invoked double jeopardy protections. (Slip opn., at pp. 30-35; OBM 5, 15.)

As to Mr. Stern, the Court of Appeal said:

We now address the issue of what may occur once the remittitur issues. The prosecution argues the verdict must be reinstated and Mr. Stern sentenced. We are in accord with the prosecution that Mr. Stern's verdicts must be reinstated. (*United States v. Sharif* (9th Cir. 1987) 817 F.2d 1375, 1379; *People v. Johnston* [(2003)] 113 Cal. App. 4th [1299], 1313-1314.) But before Mr. Stern may be sentenced, there are series of hurdles that must be overcome.

The trial court never ruled on other issues raised by Mr. Stern's new trial motion. As noted, he raised other issues including: the weight of the evidence indicated he acted in good faith; prosecutorial misconduct; selective prosecution; and both conspiracy counts should be reduced to misdemeanors as permitted by section 17, subdivision (b)(3). Before any sentencing can occur, the trial court must rule on these issues. The trial court's ruling was precise – the evidence was insufficient as matter of law. No effort was made to rule on these other matters nor was there any reason to do so given the dismissal order and the new trial motion evidentiary insufficiency finding. Once the remittitur issues, the trial court may rule on Mr. Stern's new trial motion, subject to our former jeopardy analysis. (§ 1260; *People v*

3 The Court of Appeal did not expressly state that the verdicts as to Dr. Eroshevich must be reinstated. (See slip opn., at pp. 33-35.)

Braxton (2004) 34 Cal.4th 798, 818-819.) The trial court has a variety of options. Conceivably, the trial court could deny the new trial motion and sentence Mr. Stern to prison, place him on probation or reduce the two conspiracy counts to misdemeanors. Or the trial court could deny the new trial motion but dismiss the case pursuant to section 1385 on some ground other than evidentiary insufficiency as a matter of law. Or the trial court could grant the new trial motion after reweighing the evidence (acting as the so-called “13th juror”) subject to the following double jeopardy analysis. Or the trial court could dismiss counts 1 and 3 on other than legal insufficiency grounds. We express no opinion as to how the trial court should exercise its discretion.

But under no circumstances may a retrial occur. As discussed in this opinion’s introduction, for double jeopardy purposes, a new trial order based on evidentiary insufficiency grounds can have the effect of an acquittal. (Slip opn., at pp. 30-31.)

As to Dr. Eroshevich, the Court of Appeal said:

Upon remittitur issuance, the trial court may decide to grant Dr. Eroshevich’s new trial motion as to counts 1 and 3. Or the trial court may decide to dismiss counts 1 and 3 on other grounds. (§ 1260; *People v Braxton*, *supra*, 34 Cal.4th at pp. 818-819.) As in the case of Mr. Stern, these are matters that rest in the good hands of the trial court. We express no opinion on how the trial court should exercise its discretion.” (Slip opn., at p. 34.)

However, in contrast with Mr. Stern’s circumstance, the Court of Appeal did not bar retrial following a successful new trial grant for Dr. Eroshevich. In addition, and as earlier noted, the Court of Appeal did not expressly state that the verdicts as to Dr. Eroshevich must be reinstated. But verdict reinstatement for Dr. Eroshevich appears to have been with the

court's contemplation given the Court of Appeal's direction to the trial court that upon remittitur issuance the trial court may decide to grant Dr. Eroshevich's new trial motion or may decide to dismiss counts 1 and 3. Either action would procedurally follow upon verdict reinstatement. (See, e.g., slip opn., at pp. 33-35.)

In sum, as to Dr. Eroshevich then, the Court of Appeal impliedly ordered that the verdicts in counts 1 and 3 be reinstated and expressly ordered that the trial court hear and rule, in the trial court's discretion, upon Dr. Eroshevich's motion for new trial and the trial court's own section 1385 motion. The Court of Appeal made very clear that the trial court's exercise of discretion regarding the outcome for Dr. Eroshevich was its own to make. "As in the case of Mr. Stern, these are matters that rest in the good hands of the trial court. We express no opinion on how the trial court should exercise its discretion." (Slip opn., at p. 34.)

Accordingly, certainly where Dr. Eroshevich is concerned and perhaps where all defendants are concerned, the issues deriving from petitioner's contentions coalesce around the reach of the reviewing court's discretionary authority under Penal Code section 1260. The District Attorney contends that reinstatement of the verdicts is the only available remedy. (OBM 18.) The Court of Appeal agreed, albeit in language expressly limited to Mr. Stern, and ordered reinstatement of the verdicts. (OBM 5; slip opn., at p. 30.)

But the Court of Appeal did not limit its action to verdict reinstatement, which petitioner contends is the only legally correct action, to wit, "only remedy available." (See OBM 18.) The Court of Appeal also exercised its discretion under Penal Code section 1260 to remand with

directions, noting that the trial court may decide to grant Dr. Eroshevich's new trial motion or it may decide to dismiss on grounds other than legal insufficiency. (Slip opn., at p. 34.) The Court of Appeal's exercise of its discretionary section 1260 authority is, then, the gravamen of petitioner's complaint.

Statement of the Case

The issues in review in this case are limited to the actions taken by the Court of Appeal with regard to post-remittitur proceedings in the trial court. For that reason, the procedural history and statement of facts in this case have limited, if any, relevance to the issues on review. The procedural and factual summaries are set forth in the slip opinion (at pp. 3-21). Procedural and factual summaries relevant to the issues on review have been set forth in the preceding section and in support of and to give context to the Argument below.

Summary of Dr. Eroshevich's Argument

The Court of Appeal's actions in remanding the case for further proceedings is a statutorily authorized discretionary act that has been sanctioned by this Court.

The Legislature has given a reviewing court the power to remand a case "to the trial court for such further proceedings as may be just under the circumstances." (Pen. Code, § 1260.)

In *People v. Braxton* (2004) 34 Cal.4th 798, this Court, as did the Court of Appeal in the present case, remanded the case before it for rehearing on defendant's new trial motion under authority of Penal Code

section 1260. In exercising its statutorily authorized discretion, *Braxton* stated “[a] limited remand is appropriate under section 1260 to allow the trial court to *resolve one or more factual issues affecting the validity of the judgment but distinct from issues submitted to the jury, or for the exercise of any discretion that is vested by law in the trial court.* [Citations omitted.]” (*Id.*, at pp. 818-819; italics added.)

When the Court of Appeal remanded Dr. Eroshevich’s case for further proceedings that included hearings for new trial and dismissal, it acted in specific reliance upon Penal Code section 1260 and *People v. Braxton, supra*. (See, e.g., slip opn., at p. 34.)

The remand with directions by the Court of Appeal pursuant to section 1260 is an appropriate and proper exercise of that court’s discretionary authority. Because that is so, respondent Dr. Eroshevich respectfully submits that there is no basis for disturbing the Court of Appeal’s proper exercise of its authority as to her.

ARGUMENT

I.

THE COURT OF APPEAL'S REMAND OF DR. EROSHEVICH'S CASE WITH DIRECTIONS TO THE TRIAL COURT IS AN APPROPRIATE AND PROPER EXERCISE OF ITS SECTION 1260 DISCRETIONARY AUTHORITY AND SHOULD BE UPHELD

1. Penal Code Section 1260 and, in Particular, the Remand Authority of a Reviewing Court

In an appeal from the trial court, a reviewing court has the power to remand the case to the trial court for further proceedings. Penal Code section 1260 authorizes the following rulings by an appellate court:

The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial *and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.* (Italics added.)

In *People v. Rodriguez* (1998) 17 Cal.4th 253 (superseded on another ground in *People v. Luna* (2003) 113 Cal.App.4th 395), this Court spoke to the power to order a remand conferred upon reviewing courts by Penal Code section 1260. The defendant in *Rodriguez* had been sentenced under the "Three Strikes Law" by a trial court that believed it lacked discretion to strike prior felony conviction allegations. The questions before this Court were whether remand to allow the sentencing court to exercise its discretion was a proper remedy for the omitted discretionary act

and whether the defendant and his counsel were entitled to be present at the hearing. (*People v. Rodriguez, supra*, 17 Cal.4th at p. 255.)

This Court stated: “Section 1260, which sets out the permissible dispositions of a cause on appeal, permits the reviewing court to ‘remand the cause to the trial court for such further proceedings as may be just under the circumstances.’” (*Id.*, at p. 258.) This Court concluded that that statutory provision authorized it to properly remand the case to the trial court so the trial court could exercise its discretion to strike the defendant’s prior conviction allegation. (*Ibid.*)

This Court then took up the question of whether it had the authority to require the presence of defendant and his counsel at the hearing and concluded that the same provision of section 1260 provided the necessary authorization. The Court reasoned: “Under the statute authorizing us to remand with directions, we must remand ‘*for such further proceedings as may be just under the circumstances.*’” (§ 1260, italics added.) This, then, is the dispositive inquiry: *Is it ‘just under the circumstances’* to require the presence of defendant and his counsel on remand, at the first occasion on which the trial judge will consider whether to exercise his sentencing discretion in defendant’s favor?” (*People v. Rodriguez, supra*, 17 Cal.4th at p. 258; italics added.) *Rodriguez* concluded: “Our power to order a limited remand, as mentioned, includes the authority to direct the trial court to conduct ‘such further proceedings as may be just under the circumstances.’” (§ 1260, italics added.) Because to permit the trial court to decide how to exercise its discretion under section 1385 without affording defendant and his counsel an opportunity to address

the subject would be manifestly unfair, section 1260 provides sufficient authority to require defendant's presence on remand." (*Id.*, at p. 260.)

Rodriguez, then, instructs with regard to a Penal Code section 1260 inquiry that the dispositive question begins with: "Is it just under the circumstances." (*Ibid.*) *Rodriguez* also informs that a reviewing court acts within the scope of its discretionary authority under section 1260 when it remands with directions that the trial court conduct a hearing involving the trial court's exercise of discretion and with directions requiring the presence of defendant and his counsel. (*Ibid.*)

In the case of Dr. Eroshevich, the Court of Appeal acted within these established boundaries when it remanded her case to the trial court for a hearing and ruling on her new trial motion, which the trial court had earlier neglected to hear. Respondent explains in the section that follows why the remand with directions was "just under the circumstances" within the meaning of section 1260.

As earlier noted, the Court of Appeal relied upon *People v. Braxton, supra*, in remanding Dr. Eroshevich's case with directions that the trial court hear and rule upon motions for new trial and for acquittal. In *Braxton*, this Court considered the circumstance of a defendant who, on the date of sentencing, did not receive a hearing on his new trial motion because the trial court refused to hear it. (*People v. Braxton, supra*, 34 Cal.4th at p. 805.) Penal Code section 1202,⁴ the governing statute, states

4 Penal Code section 1202 states in relevant part: "If the court shall refuse to hear a defendant's motion for a new trial or when made shall neglect to determine such motion before pronouncing judgment or the making of an order granting probation, then the defendant shall be entitled to a new trial."

that a defendant shall be entitled to a new trial when the trial court either refused to hear or neglected to determine his new trial motion.

In lieu of ordering a new trial for the defendant, this Court concluded that a remand with directions to the trial court to hear the defendant's new trial motion was appropriate, absent any showing that a fair hearing on the motion was no longer possible. (*Id.*, 34 Cal.4th at p. 819.)

In remanding the *Braxton* case with directions for further hearing on a matter involving the trial court's exercise of discretion, this Court relied, as it did in *Rodriguez, supra*, upon section 1260 and specifically upon the provision that an appellate court "may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances." (*People v. Braxton, supra*, 34 Cal.4th at p. 818.) *Braxton* stated: "A limited remand is appropriate under section 1260 to allow the trial court to resolve one or more factual issues affecting the validity of the judgment but distinct from the issues submitted to the jury, or for the exercise of any discretion that is vested by law in the trial court." (*Id.*, at pp. 818-819; see also *People v. Moore* (2006) 39 Cal.4th 168, 176-177; *People v. Vanbuskirk* (1976) 61 Cal.App.3d 395, 405; *People v. Minor* (1980) 104 Cal.App.3d 194, 199.)

In deciding the case of Dr. Eroshevich, the Court of Appeal noted that the trial court had neglected to rule upon Dr. Eroshevich's new trial motion and, in reliance upon *Braxton*, remanded the case with directions to hear that motion. The appellate court's remand for hearing and disposition on Dr. Eroshevich's new trial motion was proper and appropriate and "just under the circumstances," for the same reason this

Court concluded that remand with directions for the same trial court omission was appropriate in *Braxton*.

Braxton was also instructive regarding the scope of an appellate court's remand authority as it relates in Dr. Eroshevich's case to the Court of Appeal's direction regarding a hearing on a motion to dismiss. As set forth above, *Braxton* stated: "A limited remand is appropriate under section 1260 to allow the trial court to resolve one or more factual issues affecting the validity of the judgment but distinct from the issues submitted to the jury, *or for the exercise of any discretion that is vested by law in the trial court.*" (*Id.*, at pp. 818-819; italics added.)

Thus, this Court made clear in *Braxton* and in *Rodriguez*, and in reliance upon the cases cited therein, that a reviewing court may remand a case to the trial court "for the exercise of any discretion that is vested by law in the trial court."

Here, the Court of Appeal remanded Dr. Eroshevich's case to the trial court with directions to hear and rule upon motions for new trial and dismissal. Both motions involve the exercise of discretionary acts by the trial court that our Legislature has determined fulfill a necessary function in our criminal justice system.

A motion for new trial involves a trial court's exercise of discretion and is vested by law in the trial court pursuant to Penal Code section 1181. As relevant here, that section states: "When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only: [¶] 6. When the verdict or finding is contrary to law or evidence, but if the evidence shows the defendant to be not guilty of the degree of the crime of which he

was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict, finding or judgment accordingly without granting or ordering a new trial, and this power shall extend to any court to which the cause may be appealed.” (See, e.g., *People v. McGarry* (1954) 42 Cal.2d 429, 432-433, “It has been repeatedly held that a motion for new trial is addressed to the sound discretion of the trial court, and its action will not be disturbed except for a clear abuse of discretion.”)

Like a motion for new trial, a motion to dismiss involves a trial court’s exercise of discretion and is vested by law in the trial court pursuant to Penal Code section 1385. As relevant here, that section states: “(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and *in furtherance of justice*, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.” (Italics added; see, e.g., *People v. Meloney* (2003) 30 Cal.4th 1145, 1155, “It is well established that [] a court has discretion under section 1385. . .”)

As the foregoing discussion shows, when the Court of Appeal remanded Dr. Eroshevich’s case to the trial court with directions to hear and rule upon motions for new trial and dismissal, the Court of Appeal properly exercised its discretion under Penal Code section 1260 and this Court’s expressions regarding the scope of a reviewing court’s authority to remand with directions. (*People v. Rodriguez, supra*, 17 Cal.4th at p. 260; *People v. Braxton, supra*, 34 Cal.4th at pp. 318-319.)

2. Remand with Directions to the Trial Court to Exercise Its Discretion in Ruling upon Motions for New Trial and Dismissal for Dr. Eroshevich Is “Just under the Circumstances” within the Meaning of Penal Code Section 1260

Respondent noted above that in *People v. Rodriguez* (1998) 17 Cal.4th 253, this Court stated that when a reviewing court remands with directions under section 1260 the dispositive inquiry is, “Is it just under the circumstances.” “Under the statute authorizing us to remand with directions, we must remand ‘for such further proceedings as may be just under the circumstances.’ (§ 1260, italics added.) This, then, is the dispositive inquiry: Is it ‘just under the circumstances’” (*People v. Rodriguez, supra*, 17 Cal.4th at p. 258.)

In the preceding section, respondent has shown that the Court of Appeal’s order in issue here is well within the discretionary authority conferred upon it by Penal Code section 1260 and the expressions by this Court concerning the scope of authority invested in appellate courts by the provision of section 1260 that authorizes remand “for such further proceedings as may be just under the circumstances.”

Respondent addresses here the “dispositive” question identified by *Rodriguez*. Is the Court of Appeal’s remand order with directions “just under the circumstances” of this case?

But, first, it is appropriate to discuss the necessary functions carried out by motions for new trial and to dismiss within our criminal justice system.

In *People v. Robarge* (1953) 41 Cal.2d 628, 633, this Court explained the function of a new trial motion, which assigns to a trial court supervisory power over the verdict.

While it is the exclusive province of the jury to find the facts, it is the duty of the trial court to see that this function is intelligently and justly performed, and in the exercise of its supervisory power over the verdict, the court, on motion for a new trial, should consider the probative force of the evidence and satisfy itself that the evidence as a whole is sufficient to sustain the verdict. It has been stated that a defendant is entitled to two decisions on the evidence, one by the jury and the other by the court on motion for a new trial. This does not mean, however, that the court should disregard the verdict or that it should decide what result it would have reached if the case had been tried without a jury, but instead that it should consider the proper weight to be accorded to the evidence and then decide whether or not, in its opinion, there is sufficient credible evidence to support the verdict. (*People v. Robarge, supra*, 41 Cal. 2d at p. 633; internal citations omitted.)

In delineating the trial court's duties in this fashion, this Court also made two important points – that a trial court is not bound by conflicts in the evidence and that the judge has very broad discretion in ruling. “In passing upon a motion for a new trial the judge has very broad discretion and is not bound by conflicts in the evidence, and reviewing courts are reluctant to interfere with a decision granting or denying such a motion unless there is a clear showing of an abuse of discretion.” (*People v. Robarge, supra*, 41 Cal.2d at p. 633.)

Thus, this Court has made clear that the trial court has a supervisory duty over the verdict, which includes satisfying itself that the evidence as a whole sufficiently sustains the verdict and the duty to see that

the jury's fact-finding function is "justly performed." The Legislature has recognized the importance of this judicial function to our criminal justice system by investing the procedural mechanism for that function in the trial court in the form of the new trial motion.

As to the function of the motion to dismiss, the statutory language authorizing dismissal by the trial court carries within it the requirement that the dismissal must be "in furtherance of justice," setting forth the function assigned to this duty of the trial court by the Legislature. "The sole limitation on the court's power to order dismissal is that the order be in furtherance of justice, a limitation not explicitly defined by the Legislature and one which has remained a subject of judicial discretion." (*People v. Silva* (1965) 236 Cal.App.2d 453.)

Thus, it is clear that the Legislature has empowered trial courts to hear and decide motions for new trial and dismissal for the purpose of furthering justice. The Legislature has similarly invested appellate courts with the authority to remand with directions to the trial court to carry out "such proceedings as may be just under the circumstances" for the same purpose of seeking to further justice.

In coming now full circle to the question of whether the Court of Appeal's section 1260 order remanding Dr. Eroshevich's case with directions was "just under the circumstances" of her case, the answer is implicit in the order of the Court of Appeal. The Court of Appeal remanded with directions to the trial court to hear and decide motions calling for an exercise of discretion by the trial court, which our Legislature has recognized have a necessary function in our criminal justice system.

That function, as recognized in our criminal jurisprudence, is to further justice.

The Court of Appeal's remand with directions to hear Dr. Eroshevich's new trial motion was therefore "just under the circumstances" of this case in which the trial court had previously expressed concern about the probative force and weight of the evidence but had neglected to rule on Dr. Eroshevich's new trial motion.

For the same reason, it was just under the circumstances of this case for the Court of Appeal to remand with direction to conduct a section 1385 hearing in this case in which the experienced jurist who had presided over the trial had previously sought to comply with that section's provision that a dismissal may be ordered when such action is *in furtherance of justice*.

The cold face of the record now shows that two courts, both intimate with the record – the trial court that heard the evidence, the parties' theories and arguments, and instructed on the law, and the Court of Appeal that reviewed the evidence, theories, arguments, and instructions – exercised the discretionary authority invested in them by the Legislature for the purpose of furthering justice, as those functions have been explained in our criminal jurisprudence, for the purpose of arriving at a result that is "just under the circumstances" of this case.

Respondent respectfully submits that there is no basis for disturbing the remand with directions ordered by the Court of Appeal as to Dr. Eroshevich.

II.

RESPONDENT JOINS IN ALL CONTENTIONS RAISED BY HER CO-RESPONDENT THAT MAY ACCRUE TO HER BENEFIT

Respondent Dr. Khristine Eroshevich joins in all contentions raised by her co-respondent that may accrue to her benefit. (Rule 8.200, subdivision (a)(5), California Rules of Court; *People v. Castillo* (1991) 233 Cal.App.3d 36, 51; *People v. Stone* (1981) 117 Cal.App.3d 15, 19 fn. 5; *People v. Smith* (1970) 4 Cal.App.3d 41, 44.)

Conclusion

Petitioner argues that reinstatement of the verdicts is the only remedy. Respondent disagrees. Here, the Court of Appeal acted properly and within its authority under Penal Code section 1260 in remanding Dr. Eroshevich's case to the trial court with directions. Both of the motions contemplated in the directions of the Court of Appeal are "just" within the meaning of Penal Code section 1260 and by their very function further the achievement of justice. The Court of Appeal's order remanding Dr. Eroshevich's case with directions was a proper exercise of that court's discretionary authority and respondent respectfully submits the Court of Appeal's order as to her should not be disturbed.

DATED: August 22, 2013

Respectfully submitted,

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Certificate of Word Count

Counsel of record certifies that pursuant to Rule 8.504(d), California Rules of Court, this Answer Brief on the Merits, including footnotes, but excluding the tables, the certificate of word count required by the rule, and any permitted attachment, contains approximately 4900 words, which is less than the 14,000 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: August 22, 2013

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Proof of Service

I declare that I am over the age of eighteen years and not a party to the within entitled action. My business address is 321 Richmond Street, Suite A, El Segundo, California 90245. On the date of execution hereof, I served the attached document, **Answer Brief on the Merits in People v. Eroshevich et al. (S210545)**, by placing true copies thereof in sealed envelopes addressed as stated below, with delivery fee fully prepaid, at El Segundo, California, with the United Parcel Service.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, at El Segundo, California.
