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**IN THE
SUPREME COURT OF CALIFORNIA**

SUPREME COURT
FILED

AUG 07 2009

Frederick K. Ohlrich Clerk

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant, Deputy

vs.

FIRME H. HAJJAJ,

Defendant and Respondent.

After A Decision By The Court Of Appeal
Fourth Appellate District, Division One
Case No. D054754 [(2009) 175 Cal.App.4th 415]

PETITION FOR REVIEW

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By Appointment Of The Court of Appeal
Under The Appellate Defenders, Inc.
Independent Case System

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**IN THE
SUPREME COURT OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

FIRME H. HAJJAJ,

Defendant and Respondent.

PETITION FOR REVIEW

In *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 784 (*Rhinehart*), this Court held that “absent exceptional circumstances, a trial court’s congested calendar does not constitute good cause to avoid a dismissal under [Penal Code] section 1382.” (Accord, *Stroud v. Superior Court* (2000) 23 Cal.4th 952, 969.)

The issue presented is whether good cause to continue trial is shown as a matter of law when, due to court congestion, the only available courtroom is too physically remote for trial to commence within the statutory period.

INTRODUCTION: WHY REVIEW SHOULD BE GRANTED

Review by this Court is necessary to resolve an issue of ever-increasing magnitude: when can a criminal defendant's constitutional right to a speedy trial be abrogated by court congestion? This Court has spoken previously, consistently holding that court congestion alone does not constitute good cause for a trial continuance. (*Rhinehart, supra*, 35 Cal.3d at p. 784; accord, *Stroud v. Superior Court, supra*, 23 Cal.4th at p. 969; *People v. Johnson* (1980) 26 Cal.3d 557, 570-572.) The lower courts have adhered to this Court's directive, even under the pressure of chronic, burgeoning court congestion. (See, e.g., *People v. Wagner* (2009) __ Cal.App.4th __ [2009 WL 2152991]; *People v. Flores* (2009) 173 Cal.App.4th Supp. 9; *People v. Cole* (2008) 165 Cal.App.4th Supp. 1; *Arreola v. Municipal Court* (1983) 139 Cal.App.3d 108.) That is, until now.

In its published opinion, the Court of Appeal in *People v. Hajjaj* (2009) 175 Cal.App.4th 415 (*Hajjaj*) held that when a branch courtroom becomes available on the last day of the statutorily prescribed time period for commencement of trial – but cannot physically be reached by the parties or counsel on that day – this constitutes good cause as a matter of law to continue trial within the meaning of Penal Code section 1382, subdivision (a). (*Id.*, at

pp. 428-429.) Yet the fact the only courtroom to open up on the last day of trial was in a remote branch court, was caused by chronic court congestion in the County as a whole. By crafting an opinion that addresses only the symptom (remoteness), rather than the underlying cause of delay (court congestion), the *Hajjaj* court has created conflict and confusion in the law.

Court congestion is destined to increase. (See, e.g., Govt. Code, § 68106 [mandatory court closures].) The problem cannot be addressed, much less resolved, by make-shift solutions which deprive a criminal defendant of the constitutional right to a speedy trial. Review by this Court is necessary to resolve the conflict in the law created by *Hajjaj*, and to settle this important question of law. (Cal. Rules of Court, rule 8.500(b)(1).)

STATEMENT OF THE CASE

Defendant and respondent Firme H. Hajjaj (“respondent”) was charged in an Information with one count of sale/attempted sale of a controlled substance (methamphetamine) in violation of Health and Safety Code section 11379. The Information alleged a prior conviction enhancement pursuant to Health and Safety Code section 11370.2, subdivision (a), and a prior prison sentence enhancement pursuant to Penal Code section 667.5, subdivision (b). (C.T. 78-79.) Respondent pled not guilty and denied the allegations. (C.T. 82.)

Trial was continued once at the request of defense counsel. (C.T. 86.) Over defense objection, the trial court continued trial on its own motion due to courtroom unavailability. (C.T. 87.) The parties then stipulated to continue the trial to a date within the prior time waiver. (C.T. 88.) The trial court on its own motion again continued trial due to courtroom unavailability to July 28, 2008, the last day for trial to commence without an additional waiver from respondent. (C.T. 89.) On July 28, 2008, both parties announced ready for trial. However, the trial court found there were no available courtrooms. (C.T. 90.)

Respondent brought a motion to dismiss for lack of speedy trial pursuant to Penal Code section 1382. (C.T. 91-98.) The trial court granted the motion. (C.T. 99.)

On September 26, 2008, the People filed a timely notice of appeal from the order of dismissal pursuant to Penal Code section 1238, subdivision (a)(8). (C.T. 100.)

The Court of Appeal filed its published opinion reversing the order of dismissal on June 29, 2009.¹ That Court held that:

“[W]hen, on the last day of the statutorily prescribed time period for commencement of trial in a criminal case, a courtroom becomes ready and available for trial in the late afternoon at a branch court that is physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for trial that day, the physical remoteness constitutes good cause within the meaning of [Penal Code] section 1382(a) to commence the trial the next day at the branch court.” (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.)

¹ A copy of the Court of Appeal opinion is attached. (Cal. Rules of Court, rule 8.504(b)(4).)

LEGAL DISCUSSION

I.

A CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

Penal Code section 1382 provides in relevant part:

“(a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: [¶] (2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant’s arraignment on an indictment or information. . . . However, an action shall not be dismissed under this paragraph if either of the following circumstances exist: [¶] (A) The defendant enters a general waiver of the 60-day trial requirement. . . . [¶] (B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.”

The Legislature enacted Penal Code section 1382 to implement the accused’s constitutional right to a speedy trial. (*Rhinehart, supra*, 35 Cal.3d at p. 776; *Owens v. Superior Court* (1980) 28 Cal.3d 238, 249.) “That section constitutes a legislative endorsement of dismissal as a proper judicial sanction for violation of the constitutional guarantee of a speedy trial and as a legislative determination that a trial delayed more than [the prescribed period]

is prima facie in violation of a defendant's constitutional right. [Citation.] Thus, an accused is entitled to a dismissal if he is brought to trial beyond the time fixed in section 1382. [Citation.]" (*Rhinehart v. Municipal Court, supra*, 35 Cal.3d at p. 776, internal quotes omitted; see also, *Sykes v. Superior Court* (1973) 9 Cal.3d 83, 88-89.)

To avoid a dismissal when a criminal case is not brought to trial within the statutory period, the prosecutor has the burden of establishing good cause for failing to do so. "What constitutes good cause is a matter within the court's discretion, and its determination will be reversed only if that discretion is abused." (*Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17; see also, *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.) "A trial court will not be found to have abused its discretion unless it 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.' [Citation.]" (*People v. Lancaster* (2007) 41 Cal.4th 50, 71; see, *Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17 [Riverside superior court trial judge did not abuse discretion by denying continuance due to court congestion and dismissing the matter]; *People v. Wagner, supra*, ___ Cal.App.4th at p. ___ [same]; *People v. Flores, supra*, 173 Cal.App.4th Supp. at p. 17 [same].)

II.

REVIEW SHOULD BE GRANTED TO SETTLE THAT, WHERE THE UNDERLYING CAUSE OF DELAY IN BRINGING A CASE TO TRIAL IS COURT CONGESTION, THE PROSECUTION FAILS TO SHOW GOOD CAUSE FOR A CONTINUANCE.

A. Court Congestion Is Not Good Cause For A Continuance Under Penal Code Section 1382.

Chronic court congestion and overcrowding do not constitute good cause for a continuance under Penal Code section 1382. (*Rhinehart v. Municipal Court Court, supra*, 35 Cal.3d at pp. 781-782; *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572; *Arreola v. Municipal Court, supra*, 139 Cal.App.3d at pp. 113-115.) “If it did, criminal defendants could be consistently denied the right to a speedy trial whenever the state failed to provide adequate court funding to allow criminal defendants to be brought to

trial in a timely manner.” (*People v. Cole, supra*, 165 Cal.App.4th at p. 17; *People v. Johnson, supra*, 26 Cal.3d at pp. 571-572.)

For example, in *Rhinehart v. Municipal Court, supra*, 35 Cal.3d 772, a trial court swore a jury to try a misdemeanor to effectively avert dismissal as the court itself and all other departments were engaged in trial. After selecting the jury, the court then continued the start of evidence for a week to permit the court to conclude the trial for which it was already engaged. This Court held that (1) the latter action was improper and (2) the court’s congestion did not constitute “good cause.”

Relying upon its earlier decision in *People v. Johnson, supra*, 26 Cal.3d 557 – holding that a defendant may be denied his or her right to a speedy trial “simply by the failure of the state to provide enough courtrooms or judges to enable [the accused] to come to trial within the statutory period” – this Court in clear and unambiguous language held that, “absent exceptional circumstances, a trial court’s congested calendar does not constitute good cause to avoid a dismissal under section 1382.” (*Rhinehart v. Municipal Court, supra*, 35 Cal.3d at 784; accord *Stroud v. Superior Court, supra*, 23 Cal.4th at p. 969.)

B. The Prosecution Cannot Meet Its Burden Of Showing Good Cause For A Continuance When The Underlying Cause Of Delay Is Court Congestion.

1. The Record Before The Trial Court.

At 4:15 p.m. on July 28, 2008, the last day for bringing this case to trial within the time limits specified in Penal Code section 1382, the trial court judge (Judge Thomas H. Cahraman) at the Riverside Hall of Justice on Main Street in the city of Riverside, informed counsel that a courtroom had just become available at the Indio Court, approximately 1 hour 20 minutes away.² (RT 8.) Defendant's case was one of five cases before the trial judge for the last day to bring the case to trial. (RT 5, 15, 20.) The Prosecutor represented that the People could have a DA in the courtroom within the next five minutes and could be ready for trial, "provided there is a jury available."³ (RT 8.)

² The Court of Appeal granted respondent's request to take judicial notice of the fact the distance from the Riverside Hall of Justice located at 4100 Main Street in the City of Riverside, to the Indio Court, located at 46-200 Oasis Street in the City of Indio is 76.82 with an estimated travel time of 1 hour, 16 minutes driving at an average speed of 65 miles per hour. (Evid. Code, §§ 452, subd. (g), 459, subd. (a); *Hajjaj, supra*, 175 Cal.App.4th at p. 427, fn. 10.)

³ The record does not establish a jury would have been available.

The trial judge found on these facts and representations that the Indio courtroom was not available to commence trial before expiration of the statutory period, and this did not constitute good cause for a continuance of defendant's trial:

"I don't see how it starts a trial to have a DA not prepared on it to show up and say, 'I'm a DA and I'm in a courtroom,' when to start a trial as I understand it, a jury needs to be empaneled, and at least a few questions of voir dire have to be commenced. [¶] With the defendant not there, the defense lawyer not there, and the DA there who's not prepared, I don't see that that's the start of the trial under the law. And as to whether all this then ties up to good cause . . . for [a] continuance . . . to go beyond the statutory periods, my understanding is that it does not." (RT 15.)

Denying a continuance on this record was a proper exercise of the trial court's discretion.

**2. Physical Remoteness Of An Available
Courtroom Due To Court Congestion Does
Not Constitute Good Cause For A
Continuance.**

“[A]n accused is ‘brought to trial’ within the meaning of section 1382 when a case has been called for trial by a judge who is normally available and ready to try the case to conclusion. The court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned and sworn.” (*Rhinehart, supra*, 35 Cal.3d at p. 780; *Sanchez v. Municipal Court* (1979) 97 Cal.App.3d 806, 808, 813; *People v. Amati* (1976) 63 Cal.App.3d Supp. 10, 12.)

The *Hajjaj* opinion properly rejected the People’s contention that the appearance in the Indio courtroom – late in the day on July 28 – of a deputy district attorney without the presence of the defendant or his counsel of record, would have satisfied the *Rhinehart* requirements for bringing a case to trial within the meaning of Penal Code section 1382. (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.) Where the opinion errs is in finding the remoteness of the Indio court constituted good cause for a continuance. (*Ibid.*)

The lack of available courtrooms within the statutory period was due to the ongoing condition plaguing the Riverside superior court of too many cases and not enough courtrooms, not the remoteness of the Indio court. (See, *People v. Flores, supra*, 173 Cal.App.4th Supp. at pp. 24-25.)

The fact the only courtroom to open up was in Indio was a result of this chronic condition, not an isolated incident. The *effect* of the congestion, i.e., the remoteness of the only available courtroom, was merely the result of the chronic and increasing court congestion in the County as a whole. “The situation in the Riverside Superior Court of insufficient courtrooms and judges to try all criminal matters before the statutory deadlines is in no way novel or limited to this case – it has been the norm for some time now. [Citation.]” (*People v. Flores, supra*, 173 Cal.App.4th Supp. at pp. 24-25, citing *Cole, supra*, 165 Cal.App.4th Supp. at p. 6-7, 17.) The fact this case came to the “last day” at all was due to pervasive court congestion of the type condemned in *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572. Under these conditions, *granting* a continuance would have been an abuse of

discretion, not the contrary.⁴ (*Rhinehart, supra*, 35 Cal.3d at pp. 781-782.)

**3. This Court's Decision In *Rhinehart* Is Not
Distinguishable And Controls The Outcome
Here.**

The *Hajjaj* opinion found this Court's decision in *Rhinehart* "unavailing . . . as the issue here is whether good cause existed in this case for the court to assign this case to the Indio court for trial beyond the July 28 statutory limit." (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.) This reasoning is flawed.

The *Hajjaj* opinion improperly assumes the failure to bring this case to trial within the statutory time limit *resulted from* the physical remoteness of an open courtroom. That, however, was not the *cause* of the People's failure to bring this case to trial within the statutory limits. To the contrary, as discussed in the preceding section, the fact the only open courtroom was in

⁴ Even assuming the Indio courtroom had been available the following day, defendant's case was one of five cases before the trial judge for the last day to bring the case to trial. (RT 5, 15, 20.) And yet there was only one courtroom. Four cases had to be dismissed. (Pen. Code, § 1382.) The prosecution made no showing that, of those five, it was an abuse of discretion to dismiss defendant's case rather than any of the others. Although raised by defendant, the *Hajjaj* opinion fails to address this point.

Indio at 4:15 in the afternoon on the last day for trial was the result of the chronic congestion of the Riverside County Superior Court. The result (remote courtroom) cannot be divorced from its cause (chronic court congestion). It was this chronic congestion which caused this case to come up to the "last day" when getting to the only potential courtroom was a physical impossibility. This is precisely the type of court congestion this Court has consistently held does *not* constitute good cause for a continuance. (*Rhinehart, supra*, 35 Cal.3d at p. 784; *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572; *Stroud v. Superior Court, supra*, 23 Cal.4th at p. 969.)

CONCLUSION

Review should be granted for the reasons set forth above.

Dated: August 6, 2009

Respectfully submitted,



Douglas G. Benedon

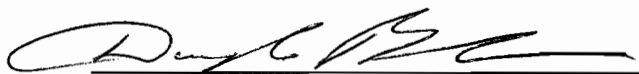
Attorney for Defendant and Respondent
FIRME H. HAJJAJ

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.504(d), I certify that the total word count of the Petition for Review, excluding covers, table of contents, table of authorities, and certificate of compliance is 2,814.

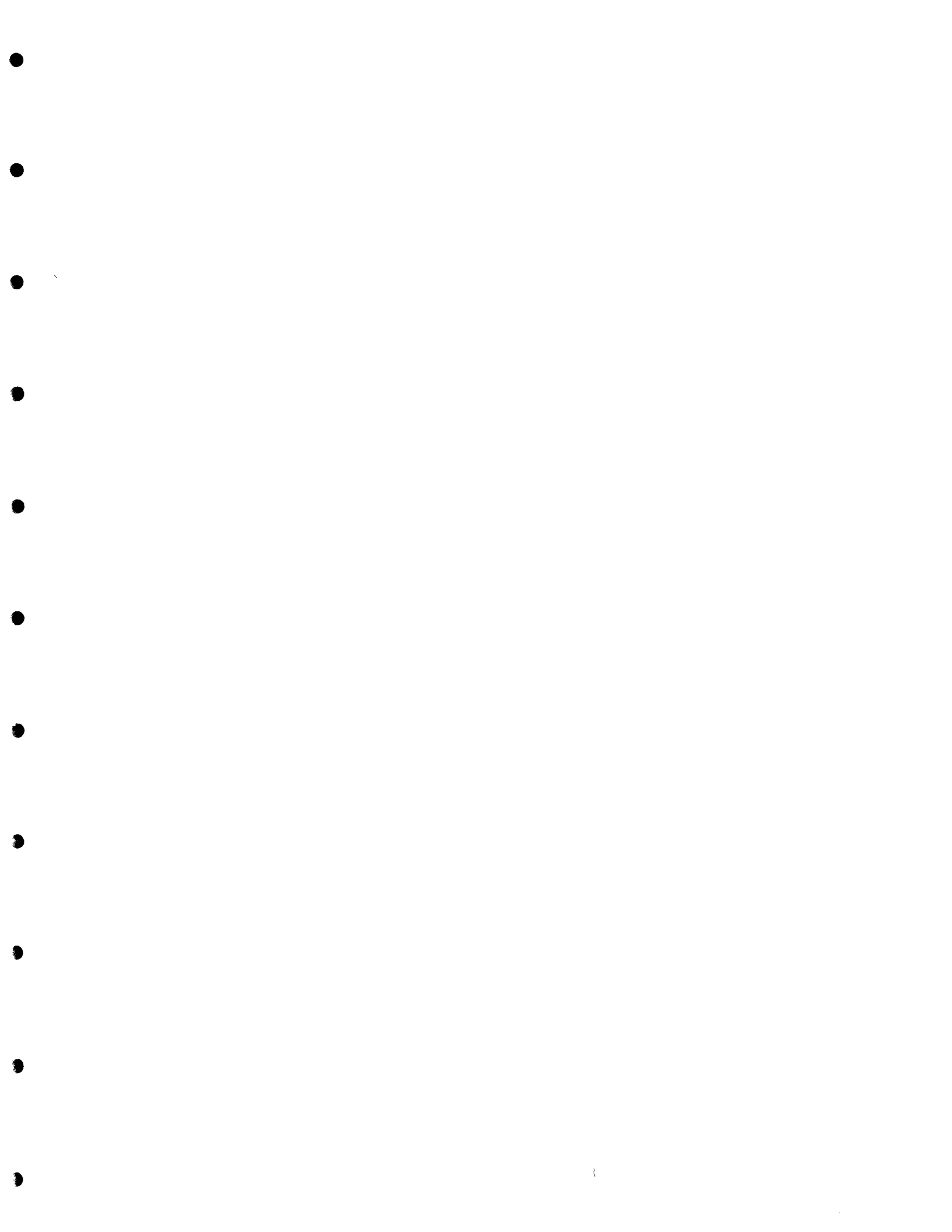
Dated: August 6, 2009

Respectfully submitted,



Douglas G. Benedon

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FIRME H. HAJJAJ



Westlaw

175 Cal.App.4th 415

175 Cal.App.4th 415, 95 Cal.Rptr.3d 916, 09 Cal. Daily Op. Serv. 8290, 2009 Daily Journal D.A.R. 9654
(Cite as: 175 Cal.App.4th 415, 95 Cal.Rptr.3d 916)

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Court of Appeal, Fourth District, Division 1, California.

The PEOPLE, Plaintiff and Appellant,

v.

Firme Hassan HAJJAJ, Defendant and Respondent.

No. D054754.

June 29, 2009.

Background: A felony complaint was filed against defendant. The Superior Court, Riverside County, No. SWF024102, Thomas H. Cahraman, J., dismissed for violation of defendant's speedy trial rights. The People appealed.

Holding: The Court of Appeal, Nares, J., held that physical remoteness of available courtroom from criminal calendar court was good cause to bring defendant to trial beyond speedy trial period.

Reversed and remanded.

West Headnotes

[1] **Criminal Law 110** ↪ 577.10(4)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(4) k. Cause for Delay, "Good Cause", and Excuse or Justification in General. Most Cited Cases

When, on the last day of the statutory speedy trial time period, a courtroom becomes ready and available for trial in the late afternoon at a branch court physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for tri-

al that day, the physical remoteness constitutes good cause to commence the trial the next day at the branch court. West's Ann.Cal.Penal Code § 1382.

[2] **Criminal Law 110** ↪ 304(5)

110 Criminal Law

110XVII Evidence

110XVII(A) Judicial Notice

110k304 Judicial Notice

110k304(5) k. Geographical Facts in General. Most Cited Cases

In determining whether trial court abused its discretion in finding that the opening of a criminal courtroom at 4:15 p.m. on the last day of defendant's statutory speedy trial period, in another courthouse at a distance too great for the parties to reach before the end of the business day, was not good cause for bringing a criminal case to trial beyond the statutory speedy trial time period, the Court of Appeal would take judicial notice of the names and locations of the courthouses, the distance the parties would have had to travel between the courthouses, and the amount of time the journey would have taken at an average speed of 65 miles per hour. West's Ann.Cal.Penal Code § 1382(a); West's Ann.Cal.Evid.Code §§ 452(g), 459(a).

[3] **Criminal Law 110** ↪ 1139

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110XXIV(L)13 Review De Novo

110k1139 k. In General. Most Cited Cases

Criminal Law 110 ↪ 1151

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

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 (Cite as: 175 Cal.App.4th 415, 95 Cal.Rptr.3d 916)

110k1151 k. Time of Trial; Continuance.
 Most Cited Cases

A trial court's determination of good cause for a continuance in a statutory speedy trial case is generally reviewed for an abuse of discretion, but a reviewing court applies the independent or de novo standard of review, which is nondeferential, to a trial court's resolution of a pure question of law or a mixed question of law and fact that is predominantly legal. West's Ann.Cal.Penal Code § 1382(a).

[4] Criminal Law 110 ↪ 577.10(4)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(4) k. Cause for Delay, "Good Cause", and Excuse or Justification in General. Most Cited Cases

Criminal Law 110 ↪ 577.10(9)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(9) k. Consent to or Waiver of Delay. Most Cited Cases

Criminal Law 110 ↪ 577.11(2)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.11 Status of Persons Affecting Trial Time

110k577.11(2) k. Defendant Unavailable. Most Cited Cases

An accused may be brought to trial beyond the statutory speedy trial time period (1) for good cause, (2) at the request of the defendant, (3) with the defendant's consent, either express or implied, or (4)

when the defendant fails to appear. West's Ann.Cal.Penal Code § 1382(a).

[5] Criminal Law 110 ↪ 577.10(4)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(4) k. Cause for Delay, "Good Cause", and Excuse or Justification in General. Most Cited Cases

The People's exercise of a peremptory challenge against the only available trial judge constitutes good cause for bringing a criminal case to trial beyond the statutory speedy trial time period. West's Ann.Cal.C.C.P. § 170.6; West's Ann.Cal.Penal Code § 1382(a).

[6] Criminal Law 110 ↪ 577.10(7)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(7) k. Necessities of Trial Procedure; Docket Congestion. Most Cited Cases

Court congestion will constitute good cause for bringing a criminal case to trial beyond the statutory speedy trial time period only when the congestion is attributable to exceptional circumstances. West's Ann.Cal.Penal Code § 1382(a).

[7] Criminal Law 110 ↪ 577.16(8)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.16 Relief; Dismissal or Discharge

110k577.16(5) Proceedings

110k577.16(8) k. Presumptions and Burden of Proof. Most Cited Cases

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(Cite as: 175 Cal.App.4th 415, 95 Cal.Rptr.3d 916)

The burden of showing good cause for bringing a criminal defendant to trial beyond the statutory speedy trial time limit is on the prosecution. West's Ann.Cal.Penal Code § 1382(a).

[8] Criminal Law 110 ↪577.10(4)

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.10 Factors Affecting Application of Requirements in General

110k577.10(4) k. Cause for Delay, "Good Cause", and Excuse or Justification in General. Most Cited Cases

Trial court abused its discretion in finding that the physical remoteness of a branch court where a courtroom had opened from the criminal calendar court where defendant's case had been called was not good cause for bringing defendant's case to trial one day beyond the statutory speedy trial time period, where the courthouses were 76 miles apart, the parties had insufficient time to travel between courthouses before the end of the business day, and defendant was not in custody, absent evidence that a panel of prospective jurors could not have been summoned and sworn at the branch court when the courtroom opened at 4:15 in the afternoon. West's Ann.Cal.Penal Code § 1382(a).

See *Cal. Jur. 3d, Criminal Law: Rights of the Accused*, §§ 184, 185, 191; 5 *Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Trial*, § 313.

[9] Criminal Law 110 ↪577.7

110 Criminal Law

110XVIII Time of Trial

110XVIII(B) Decisions Subsequent to 1966

110k577.7 k. Duty of Prosecution to Proceed to Trial. Most Cited Cases

The appearance of a district attorney in an available trial courtroom late in the day on the last day of defendant's statutory speedy trial period, without the presence of defendant and his counsel of record, who were in the criminal calendar court at a dis-

tance too great to travel before the end of the business day, would not have caused defendant to be "brought to trial" within meaning of speedy trial statute. West's Ann.Cal.Penal Code § 1382(a).

****918** Rod Pacheco, District Attorney, and Alan D. Tate, Deputy District Attorney, for Plaintiff and Appellant.

Benedon & Serlin and Douglas G. Benedon, Los Angeles, under appointment by the Court of Appeal, for Defendant and Respondent.

NARES, J.

[1] ***418** A defendant in a criminal case must be brought to trial within the statutorily prescribed time period unless good cause is shown. (Pen.Code, FN1 § 1382, subd. (a).) This appeal FN2 presents the following issue: When, on the last day of the prescribed time period, a courtroom becomes ready and available for trial in the late afternoon at a branch court physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for trial that day, does the physical remoteness constitute good cause to commence the trial the next day at the branch court? We conclude it does, as we will explain hereafter.

FN1. All further statutory references are to the Penal Code unless otherwise specified.

FN2. By order dated March 11, 2009, the California Supreme Court transferred this appeal from Division 2 to Division 1 of the Fourth Appellate District of the Court of Appeal.

The People appeal the dismissal under section 1382 of an information charging Firme Hassan **Hajjaj**, who was out of custody on bail during all of the proceedings in this matter, with one felony count of transporting for sale a controlled substance (methamphetamine) in violation of Health and

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Safety Code section 11379, subdivision (a). After finding no courtrooms available for trial and no good cause to continue the trial beyond the statutory time limit for bringing the case to trial, the calendar court (hereafter the court) granted **Hajjaj's** motion for dismissal for lack of a speedy trial under section 1382, subdivision (a) (hereafter section 1382(a)), which interprets and implements the state constitutional right to a speedy trial (see Cal. Const., art. I, § 15), and entered the judgment of dismissal on July 29, 2008,^{FN3} the day after the last day on which **Hajjaj** could have been brought to trial under that subdivision absent a showing of good cause. The record shows that a courtroom became available for the trial of this criminal case late in the afternoon of that last day for trial (July 28) under section 1382(a) at a branch of the Riverside County Superior Court located in Indio, California, but the court, itself located at the Riverside Hall of Justice in the City of Riverside, found it would be futile to send this case to the Indio court for trial because there was not enough time for **Hajjaj**, his counsel, and the prosecutor to drive to the Indio court before it closed that day.

FN3. All further dates are to calendar year 2008.

The People contend (1) the court committed legal error and abused its discretion**919 when it failed to properly consider the availability of *civil* judges and courtrooms to handle the last-day criminal trial in this matter; and (2) the court erred by failing to find that the inability of the parties to travel safely to the Indio court for trial on July 28 by the close of the court day was good cause to permit a brief continuance of the trial to the following morning. We conclude that the physical distance of the available and ready Indio branch *419 courtroom from the court's location in the City of Riverside, which made it impossible for this criminal case to be brought to trial late in the afternoon of the last statutory day for trial, constituted good cause for the court to order **Hajjaj**, his counsel, and the prosec-

utor to appear in the Indio court for the commencement of trial beyond the time limit set under section 1382(a). Accordingly, we reverse both the order granting **Hajjaj's** motion to dismiss and the judgment of dismissal, and remand the matter for further proceedings.^{FN4}

FN4. In light of our conclusions, we need not address the People's contention that the court erred by failing to properly consider the availability of *civil* judges and courtrooms to handle the last-day criminal trial in this matter.

PROCEDURAL BACKGROUND ^{FN5}

FN5. We need not summarize the factual background of this case as it is not relevant to the issues presented on appeal, which pertain to **Hajjaj's** constitutional right to a speedy trial.

On May 2, the Riverside County District Attorney charged **Hajjaj** in an information with one felony count of selling or transporting methamphetamine in violation of Health and Safety Code section 11379, subdivision (a). The information also alleged that **Hajjaj** had previously been convicted (in June 1998) of a violation of Health and Safety Code section 11379, subdivision (a) within the meaning of Health and Safety Code section 11370.2, subdivision (a), and he had served a prison term for that offense (Pen.Code, § 667.5, subd. (b)).

At his May 6 arraignment, **Hajjaj**, who remained free of custody on bail pending trial, pleaded not guilty and denied the sentencing enhancement allegations. The court's minutes indicate that July 7 was the last day for the commencement of the trial.

At the May 28 trial readiness conference, Presiding Judge Michael S. Hider set the matter for trial on June 30. On June 30, Judge Hider trailed the jury

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trial to July 1.

On July 1, the parties again appeared before Judge Hider and announced they were ready for trial. Judge Hider assigned the matter to the Riverside master calendar department and trailed the jury trial to July 10. The parties stipulated that July 14 was the last day for the commencement of the trial.

On July 10, Judge Timothy F. Freer in the master calendar department granted **Hajjaj's** unopposed motion to continue the trial under section 1050, subdivision (d) (hereafter section 1050(d)) for good cause shown, on the ground **Hajjaj's** trial counsel, Deputy Public Defender Yusun Kang, was in trial. **Hajjaj** waived time for trial, and Judge Freer set the matter for trial on *420 July 16. The court's minutes indicate July 28 was the last day for the commencement of the trial.

On July 16, over defense objection, the court (Judge Mark A. Mandio) on its own motion, found good cause under section 1050(d) for a continuance and trailed the jury trial due to "courtroom unavailability" to July 23, which the court's minutes indicate was "within [the] previous time waiver." The minutes also reflect that the **920 prosecutor was assigned to trial in another department and thus was not available for trial in this case.

On July 23, both parties announced they were ready for trial, and they both stipulated to a motion to trail the trial date pursuant to section 1050 and California Rules of Court, rule 4.115(b).^{FN6} Judge Mandio found good cause for a continuance within the meaning of section 1050(d), granted the stipulated motion, and trailed the trial to July 25. The court's minutes indicate that July 28 remained the last day to commence the trial under the "previous time waiver."

FN6. All further rule references are to the California Rules of Court. Rule 4.115(b) provides: "Any request for a continuance,

including a request to trail the trial date, must comply with rule 4.113 and the requirement in section 1050 to show good cause to continue a hearing in a criminal proceeding. Active management of trial calendars is necessary to minimize the number of statutory dismissals. Accordingly, courts should avoid calendaring or trailing criminal cases for trial to the last day permitted for trial under section 1382. Courts must implement calendar management procedures, in accordance with local conditions and needs, to ensure that criminal cases are assigned to trial departments before the last day permitted for trial under section 1382."

On July 25, the parties again announced they were ready for trial and provided a time estimate of three days for the trial. On its own motion, the court trailed the trial to July 28 "due to courtroom unavailability." Judge Mandio found good cause for a continuance within the meaning of section 1050(d).

A. Monday, July 28 Hearing

[2] On July 28, at 4:04 p.m., at the Riverside Hall of Justice ^{FN7} located at 4100 Main Street in the City of Riverside, the court (Judge Thomas H. Cahraman) called this case (and several other criminal cases). **Hajjaj** was present and not in custody. Both parties indicated they were ready for trial. The court noted it was the last day for commencement of trial in this matter and informed the parties, "I seem to be out of courtrooms." Defense counsel objected to any further delay and, noting the unavailability of a courtroom, asked the court to *421 set a hearing on a defense motion to dismiss the case. The court indicated that it was inclined to grant the request to set the motion for hearing on July 29 and that its ruling would be to grant the motion.

FN7. We take judicial notice under Evid-

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ence Code sections 452, subdivision (g) and 459, subdivision (a), that the court facility located at 4100 Main Street in the City of Riverside is known as the Riverside Hall of Justice.

With leave of court, the prosecutor asked the court a series of questions about the availability of courtrooms throughout the entire court.

At about 4:15 p.m., the court interrupted the prosecutor and, after a discussion off the record, indicated that a courtroom had just become available in Indio: ^{FN8}

FN8. We take judicial notice under Evidence Code sections 452, subdivision (g) and 459, subdivision (a), that the Indio court facility is located at 46-200 Oasis Street in Indio, California-about 76 miles from the Riverside Hall of Justice in the City of Riverside-and is known as the Larson Justice Center (hereafter the Indio court).

[W]e've been checking with Judge [James S.] Hawkins throughout the day, because he was doing closing arguments in a *murder case*, and it didn't look like he would open before the end of the day. Now it's 4:15 in the afternoon and *he just now opened*. And it takes an hour and 20 minutes if you were already in ***921* the car. And I just don't think that solves anything." (Italics added.)

The prosecutor asked whether "any of the current felony matters ... would be willing to accept a time certain starting of tomorrow, knowing that they would have the courtroom, and then not have to go through the dismissal and refile process." The court replied, "I'll ask that again," and then informed the parties that a number of courtrooms were "going to open on Monday," and "a number of people" were coming back from vacation.

The prosecutor then asked the court to send the case

out to Judge Hawkins's courtroom in Indio:

"With regards to that Judge Hawkins situation, there was one other point I wanted to suggest, is that the Court could send the case out at this point in time. There could be a DA in the courtroom within the next five minutes in Judge Hawkins' court. And, so from our position, the Court could send one of these cases out. We would be ready. There would be a courtroom available, provided there is a jury available."

Indicating it would respond to the prosecutor's request, the court stated, "I'm going to wait until I[ve] heard all of your comments; go ahead."

After asking his last question, the prosecutor concluded by stating:

"[T]he People assert there is *good cause* to continue these cases beyond the statutory period, and would object to setting the matter over for dismissal for tomorrow. With that I submit, [Y]our Honor." (Italics added.)

The court answered the prosecutor's questions, finding that no courtrooms were available for the trial of this and the other cases and that under statutory **422* and case law "it's not always true that criminal trumps civil." Referring to the availability of Judge Hawkins's courtroom in Indio, the court also found the prosecutor had failed to show good cause to continue the trial:

"I don't see how it starts a trial to have a [deputy district attorney] not prepared on it to show up and say, 'I'm a DA and I'm in a courtroom [.]'" when to start the trial, as I understand it, a jury needs to be empaneled, and at least a few questions of court voir dire have to be commenced. [¶] With the defendant not there, the defense lawyer not there, and the DA there who's not prepared, I don't see that that's the start of the trial under the law. *And as to whether all of this then ties up to ... good cause for continuance ... to go*

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beyond the statutory periods, my understanding is that it does not. (Italics added.)

The court then set **Hajjaj's** dismissal motion for hearing the next day. The court informed the parties that it "ha[d] an Indio court open tomorrow" and "[m]any courts are opening on Monday."

B. July 29 Hearing on **Hajjaj's** Dismissal Motion

The next day, July 29, **Hajjaj** filed his motion to dismiss the information under section 1382, subdivision (a)(2)(B), asserting he was not brought to trial within 10 days of the date set for trial in violation of his statutory and constitutional speedy trial rights.

The court heard **Hajjaj's** dismissal motion. In opposition to the motion, the prosecutor argued that "several courtrooms" were available on July 28, and a judge from the Hawthorne courts "could have come over." Referring to the availability of Judge Hawkins and his courtroom in Indio, the prosecutor also argued the case should not be dismissed because "a courtroom did become available yesterday, late afternoon; ... the People announced**922 ready, and ... a courtroom was available out in Indio."

The court granted **Hajjaj's** motion and dismissed the case. The court explained that, "with respect to taking a judge out of the Hawthorne court, where the Administrative Office of the Court[s] has given us three retired judges specifically for purposes of handling civil cases and reducing the civil backlog, this trial Court will not do that." The court addressed and rejected the prosecutor's argument that a courtroom had become available in Indio late in the afternoon on July 28:

"There's a balancing that's required, and human issues are involved in civil cases, as well as in criminal. With respect to the courtroom that became available at 4:[15] in Indio, as I understand

the law, we don't start a trial by having a prosecutor appear in Indio when the defense lawyer can't be there and the defendant can't be there, when we hear at 4:[15] that a courtroom is available in Indio. It would have been highly artificial to say that the trial started just because the prosecutor assigned to *423 the Indio office, knowing nothing about the particular trial, showed up in court and said, 'I'm a prosecutor,' and ... it's not the same as starting a trial."

That same day, the people refiled the felony complaint against **Hajjaj** under a different case number (*People v. Hajjaj* (Super. Ct. Riverside County, 2008, No. SWF026125)), and **Hajjaj** was arraigned on that complaint and pleaded not guilty. This appeal from the dismissal of case No. SWF024102 followed.

On December 8, a preliminary hearing was held in the refiled case and **Hajjaj** was held to answer on all charges. Trial is pending in that matter. ^{FN9}

FN9. Although the charges have been refiled against **Hajjaj** and trial is pending, we certify this opinion for publication because it establishes a new rule of law and involves a legal issue of continuing public interest. (Rule 8.1105(c)(1), (6).)

STANDARD OF REVIEW

[3] A trial court's determination of good cause for a continuance in a statutory speedy trial case is generally reviewed for an abuse of discretion. (*People v. Memro* (1995) 11 Cal.4th 786, 852-853, 47 Cal.Rptr.2d 219, 905 P.2d 1305; *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275, 29 Cal.Rptr.3d 208.) However, a reviewing court applies the independent or de novo standard of review, which is nondeferential, to a trial court's resolution of a pure question of law or a mixed question of law and fact that is predominantly legal. (*People v. Waidla* (2000) 22 Cal.4th 690, 730, 94

Cal.Rptr.2d 396, 996 P.2d 46.)

DISCUSSION

The People assert this court must determine the meaning of the phrase “civil matters or proceedings” in section 1050, subdivision (a) (hereafter section 1050(a)) “in order to provide guidance to the courts and future parties to criminal actions.” We need not, and do not, reach this issue. The dispositive question we must decide is whether the court, in granting **Hajjaj**'s motion for dismissal, committed legal error and abused its discretion by finding that the People failed to show “good cause” within the meaning of section 1382(a) for a continuance of the trial beyond that statutory time limit. In order to resolve this issue, we must decide whether the physical remoteness of the Indio court from the Riverside Hall of Justice in the City of Riverside—one of the circumstances on which the court relied in finding the case could not be “brought to trial” in the Indio court that afternoon—constituted “good cause” under section 1382 for a brief delay in the commencement of the trial. For reasons we shall explain, we conclude the physical remoteness of the available courtroom in Indio constituted “good cause” within the meaning of section 1382 that justified commencement of the trial beyond the statutory time limit, and thus the court committed legal error and abused its discretion in dismissing this case.

A. Applicable Legal Principles

1. Right to a speedy trial and “good cause” for delay

“The right to a speedy trial is a fundamental right ... guaranteed by the state and federal Constitutions.” (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776, 200 Cal.Rptr. 916, 677 P.2d 1206 (*Rhinehart*), citing Cal. Const., art. I, § 15; U.S. Const., 6th Amend.) “The Legislature has also provided for

‘a speedy and public’ trial as one of the fundamental rights preserved to a defendant in a criminal action.” (*Rhinehart, supra*, at p. 776, 200 Cal.Rptr. 916, 677 P.2d 1206, citing § 686, subd. (1).)

The Legislature enacted section 1382 to codify and implement an accused's constitutional and statutory right to a speedy trial. (*Rhinehart, supra*, 35 Cal.3d at pp. 776, 783-784, 200 Cal.Rptr. 916, 677 P.2d 1206; *Sanchez v. Municipal Court* (1979) 97 Cal.App.3d 806, 810, 159 Cal.Rptr. 91.) That section, which prescribes certain time periods within which an accused must be “brought to trial,” provides in part:

“The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: [¶] ... [¶] (2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment on an ... information.... However, an action shall not be dismissed under this paragraph if either of the following circumstances exist: [¶] ... [¶] (B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.” (§ 1382, subd. (a)(2)(B), italics added.)

[4] The limitation periods set forth in section 1382, subdivision (a)(2) for bringing a case to trial are not absolute, and an accused may be “brought to trial” beyond the applicable period “(1) for good cause, (2) at the request of the defendant, (3) with the defendant's consent, either express or implied, or (4) when the defendant fails to appear.” (*People v. Malone* (1987) 192 Cal.App.3d 1096, 1103, 237 Cal.Rptr. 794, italics added; see also *People v. Johnson* (1980) 26 Cal.3d 557, 569, 162 Cal.Rptr. 431, 606 P.2d 738 [under the “good cause” provision of section 1382, subdivision (a), if a criminal

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case is "brought to trial" beyond the statutory time limit without the request or consent of the defendant, the court must dismiss the action unless "good cause" is shown[.]

425** Although section 1382 permits a felony case to be "brought to trial" beyond the statutory time limits set forth in that section on a showing of "good cause," it does not define the term "good cause." (§ 1382; see also *Greenberger v. Superior Court* (1990) 219 Cal.App.3d 487, 495, 267 Cal.Rptr. 849.) The California Supreme Court has explained that "[w]hether ... good cause exists depends upon the circumstances of the case" (*Rhinehart, supra*, 35 Cal.3d at p. 781, 200 Cal.Rptr. 916, 677 P.2d 1206), and "[w]hat constitutes good cause for the delay of a criminal trial is a matter that lies within the discretion of the trial court" *924**(*People v. Johnson, supra*, 26 Cal.3d at p. 570, 162 Cal.Rptr. 431, 606 P.2d 738).

By way of illustration, the high court in *Johnson* indicated that the courts have held that delay caused by the defendant's conduct, delay for the defendant's benefit, and delay arising from unforeseen circumstances such as the unexpected illness or unavailability of counsel or witnesses all constitute good cause to avoid dismissal under section 1382, subdivision (a). (*People v. Johnson, supra*, 26 Cal.3d at p. 570, 162 Cal.Rptr. 431, 606 P.2d 738).

[5] The courts have also held that "good cause" under section 1382 for delay in bringing a criminal case to trial includes the defendant's being on trial for murder in another city (*People v. Gates* (1987) 43 Cal.3d 1168, 1190-1192, 240 Cal.Rptr. 666, 743 P.2d 301), a delay attributable to a codefendant's need for a continuance to adequately prepare for trial (*Greenberger v. Superior Court, supra*, 219 Cal.App.3d at pp. 492, 500-501, 267 Cal.Rptr. 849), the unavailability of a public defender due to a trial in another case (*Eshaghian v. Municipal Court* (1985) 168 Cal.App.3d 1070, 1078-1079, 214 Cal.Rptr. 712), the delayed transportation of

the defendant from state prison and trial preparation by the defense attorney (*People v. Malone, supra*, 192 Cal.App.3d at pp. 1104-1105, 237 Cal.Rptr. 794); and a surge of in-custody, no time waiver cases (*People v. Gopal* (1985) 171 Cal.App.3d 524, 544-546, 217 Cal.Rptr. 487). The People's exercise of a peremptory challenge under Code of Civil Procedure section 170.6 against the only available trial judge also constitutes "good cause" for bringing a criminal case to trial beyond the applicable statutory time limit. (*Bryant v. Superior Court* (1986) 186 Cal.App.3d 483, 501, 230 Cal.Rptr. 777.)

[6] However, "[c]ourt congestion will constitute good cause only when the congestion is 'attributable to exceptional circumstances.'" (*Rhinehart, supra*, 35 Cal.3d at p. 782, 200 Cal.Rptr. 916, 677 P.2d 1206, citing *Johnson, supra*, 26 Cal.3d at pp. 571-572, 162 Cal.Rptr. 431, 606 P.2d 738, fn. omitted; see also 5 Witkin & Epstein, *Cal.Criminal Law* (3d ed. 2000) Criminal Trial, § 274, p. 421.)

[7] The burden of showing "good cause" for bringing a criminal defendant to trial beyond the applicable statutory time limit set forth in section 1382 is on the prosecution. (*Rhinehart, supra*, 35 Cal.3d at p. 781, 200 Cal.Rptr. 916, 677 P.2d 1206.)

***426 2. Meaning of "brought to trial" in section 1382(a)**

For purposes of section 1382, the California Supreme Court has explained that "[t]here is no talismanic phrase which can be used to describe the precise point at which an individual has been "brought to trial." The outside limits of the area can easily be established. A defendant has obviously been "brought to trial" when the judgment or verdict is rendered in the case. On the other hand, a defendant has certainly not been brought to trial prior to the day when the trial is scheduled and both parties appear and announce that they are ready to

proceed.’ ” (*Rhinehart, supra*, 35 Cal.3d at p. 777, 200 Cal.Rptr. 916, 677 P.2d 1206, quoting *Sanchez v. Municipal Court, supra*, 97 Cal.App.3d at p. 810, 159 Cal.Rptr. 91.)

In construing the phrase “brought to trial” in subdivision (a) of section 1382, the high court in *Rhinehart* stated that a defendant is “brought to trial” when “a case has been called for trial by a judge who is normally available and ready to try the case to conclusion. The court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned**925 and sworn.” (*Rhinehart, supra*, 35 Cal.3d at p. 780, 200 Cal.Rptr. 916, 677 P.2d 1206, fns. omitted; see also *Sanchez v. Municipal Court, supra*, 97 Cal.App.3d at p. 813, 159 Cal.Rptr. 91 [A defendant is “brought to trial” within the meaning of section 1382 when the record objectively shows the case is “assigned for trial to a judge who is available to try the case and the court has committed its resources to the trial, the parties answer ready and a panel of prospective jurors is summoned and sworn.”].)

B. Analysis

[8] The record and judicially noticed facts establish for purposes of section 1382(a) that the People demonstrated good cause to commence the trial in this case on July 29, one day beyond the statutory time limit for bringing this case to trial. As already discussed, July 28 was the last day on which **Hajjaj** could be “brought to trial” under section 1382(a) in the absence of good cause for a delay beyond that statutory time limit. At the hearing conducted in Department 63 at the Riverside Hall of Justice in the City of Riverside in the afternoon on July 28, the court called this felony case (along with several other criminal cases) and the parties announced they were ready for trial. At 4:15 p.m., the court informed the parties that Judge Hawkins, who had been presiding over a murder case in the Indio

court, had “just now opened,” and shortly thereafter the court told the parties, “I have an Indio court open tomorrow.”

We presume from the court's findings that Judge Hawkins's courtroom in Indio had “just now opened” and that “I have an Indio court open tomorrow,”*427 that a panel of prospective jurors was available and could have been summoned and sworn in this matter at the Indio court both at 4:15 p.m. on July 28 and the next day. Nothing in the record suggests otherwise. However, the court did not assign this case to the Indio court for trial, noting it would take **Hajjaj**, his counsel and the prosecutor an hour and 20 minutes to drive there.^{FN10} The next day, the court dismissed this case under section 1382(a) on the grounds it was not brought to trial within the applicable statutory time limit, implicitly finding the People had failed to show good cause for delay.

FN10. We grant **Hajjaj's** request for judicial notice that the distance from the Riverside Hall of Justice to the Indio court is about 76 miles, with a travel time of 1 hour and 16 minutes at an average speed of 65 miles per hour. (Evid.Code, §§ 452, subd. (g), 459, subd. (a).)

The foregoing shows that the circumstance that both prevented **Hajjaj**, his defense counsel, and the prosecutor from appearing before Judge Hawkins for trial on July 28 in the available criminal courtroom at the Indio court and prevented a panel of prospective jurors from being summoned and sworn there that afternoon was the physical remoteness of the Indio court from the Riverside Hall of Justice. We are persuaded that had Judge Hawkins's courtroom been located at the Riverside Hall of Justice, this case would have been brought to trial within the statutory time period governed by section 1382(a).

We are also persuaded that in the exercise of its

legal discretion, the court should have found that the prosecution met its burden of showing good cause under section 1382(a) for a one-day delay in the commencement of the trial to allow **Hajjaj** (who was not in custody and would have suffered no prejudice from such a brief delay), his trial counsel, and the prosecutor to safely travel to the Indio court for trial. In granting **Hajjaj**'s motion for dismissal, the court overlooked the fact that in a large and populous county like the County of Riverside, which is served by one superior**926 court consisting of a central courthouse (the Riverside Hall of Justice) and various outlying branch facilities (such as the Indio court), the administration of justice and the efficient utilization of limited judicial resources may require the parties to a criminal proceeding to travel to a distant court facility.

In his motion for dismissal, **Hajjaj** relied on the Supreme Court's statements in *Rhinehart*, *supra*, 35 Cal.3d at page 780, 200 Cal.Rptr. 916, 677 P.2d 1206, that a defendant is "brought to trial" within the meaning of section 1382 when "a case has been called for trial by a judge who is normally available and ready to try the case to conclusion" and that "[t]he court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned and sworn." In supplemental briefing on appeal,^{FN11}*428 **Hajjaj**-apparently in response to the People's suggestion that a deputy district attorney assigned to the Indio court could have made an appearance in Judge Hawkins's courtroom late in the afternoon on July 28 for the purpose of swearing in a panel of prospective jurors in an attempt to bring this case to trial for purposes of section 1382-relies on *Rhinehart* for the proposition that "[h]aving an unprepared [deputy district attorney] (who may or may not actually have been available), no defendant, no defense attorney, and no jury does not meet the requirements for bringing a case to trial within the meaning of ...section 1382."

FN11. This court requested that the parties

file simultaneous letters briefs addressing the following two questions: (1) "Given that a judge (Judge Hawkins) at the Indio Court was available and ready to try this case late in the afternoon on July 28, 2008, within the time limits specified in Penal Code section 1382, did the *physical remoteness* of the Indio Court from the Riverside Hall of Justice, which made it physically impossible to bring this case to trial that afternoon, constitute good cause within the meaning of that section for a continuance of the trial to the following day, July 29?"; and (2) "Is *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 200 Cal.Rptr. 916, 677 P.2d 1206 distinguishable in that the failure to bring that case to trial within the statutory time limit resulted from court congestion rather than the physical remoteness of an available courtroom?"

[9] We reject the People's suggestion that the appearance in Judge Hawkins's courtroom-late in the day on July 28-of a deputy district attorney in Indio, without the presence of **Hajjaj** and his counsel of record, would have satisfied the *Rhinehart* requirements for bringing this case to trial within the meaning of section 1382. **Hajjaj**'s reliance on *Rhinehart* is unavailing, however, to the extent he urges affirmance of the court's dismissal of this case, as the issue here is whether good cause existed in this case for the court to assign this case to the Indio court for trial beyond the July 28 statutory limit.

We hold that when, on the last day of the statutorily prescribed time period for commencement of trial in a criminal case, a courtroom becomes ready and available for trial in the late afternoon at a branch court that is physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for trial that day, the physical remoteness

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constitutes good cause within the meaning of section 1382(a) to commence the trial the next day at the branch court.

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END OF DOCUMENT

Here, as already discussed, this criminal case would have been brought to trial at the Indio court late in the day on July 28, the last day under section 1382(a) for commencement of the trial, but for the physical distance of the Indio court from the Riverside Hall of Justice where the case was called for assignment to a trial department.**927 It is undisputed that because Judge Hawkins's courtroom became available at 4:15 p.m. on July 28, the distance of about 76 miles from the Riverside Hall of Justice to the Indio court made it impossible for **Hajjaj**, his counsel, and the assigned prosecutor to travel to Indio and commence the trial in this matter before the Indio court closed that day. We conclude that the physical remoteness of the Indio court *429 from the Riverside Hall of Justice constituted good cause within the meaning of section 1382(a) that justified commencement of the trial beyond the statutory time limit to allow **Hajjaj**, his counsel, and the prosecutor to travel to the Indio court for the trial in this matter. We thus also conclude the court erred in granting **Hajjaj's** motion and dismissing this case. Accordingly, we reverse both the order granting **Hajjaj's** dismissal motion and the ensuing judgment of dismissal and remand the matter for further proceedings.

DISPOSITION

The order granting **Hajjaj's** motion to dismiss and the judgment of dismissal are reversed, and the matter is remanded for further proceedings.

WE CONCUR: McCONNELL, P.J., and BENKE, J.
 Cal.App. 4 Dist.,2009.
 People v. Hajjaj
 175 Cal.App.4th 415, 95 Cal.Rptr.3d 916, 09 Cal.
 Daily Op. Serv. 8290, 2009 Daily Journal D.A.R.

PROOF OF SERVICE BY MAIL

1. I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. My business address is 21700 Oxnard Street, Suite 1290, Woodland Hills, California 91367.

2. I served the document(s) listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Date Served: August 6, 2009

Document Served: **PETITION FOR REVIEW**

Parties Served:

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Firme Hassan Hajjaj

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I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California on the aforesaid date.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 6, 2009, at Woodland Hills, California.



Maria Wilson