

SUPREME COURT COPY

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SUPREME COURT
FILED

DEC 30 2009

Frederick K. Orlinich Clerk

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

TERRION MARCUS ENGRAM,

Defendant and Respondent.

NO. S176983

Fourth District Court of
Appeal Case No. E047015

Riverside County Case
No. RIF125429

REQUEST FOR JUDICIAL
NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES;
AND DECLARATION IN
SUPPORT THEREOF

TO: THE CLERK OF THE CALIFORNIA SUPREME COURT, AND THE
HONORABLE JUSTICES THEREOF:

The People of the State of California, plaintiff and appellant in the above-captioned matter, respectfully request that the Court take judicial notice of its own records and files in case numbers S175794 (*Wagner*), S172559 (*Flores*), S166777 (*Cole & Gurdian*), and S159289 (*Cole & Gurdian*), pursuant to Evidence Code sections 451, 452 and 459.

Appellant provides in support of this request the included Memorandum of Points and Authorities and Declaration of Alan D. Tate, Senior Deputy District Attorney.

Dated: December 29, 2009

Respectfully submitted,

ROD PACHECO
District Attorney

A handwritten signature in black ink, appearing to read 'Alan D. Tate', written over the printed name below.

ALAN D. TATE
Senior Deputy District Attorney

DECLARATION OF ALAN D. TATE

Case No. S176983

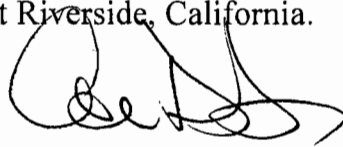
I, ALAN D. TATE, Senior Deputy District Attorney, on personal knowledge and upon information and belief, declare under penalty of perjury, that the following is true and correct:

1. I am employed as a Senior Deputy District Attorney for the County of Riverside, and am currently assigned to represent appellant, the People of the State of California, in this matter;
2. The appeal in this case involves the propriety of the dismissal of serious felony charges pursuant to Penal Code section 1382, purportedly due to a lack of courtrooms to assign this case for a timely trial;
3. When the calendar judge dismissed this criminal trial matter on September 30, 2008, he dismissed 17 other criminal trial matters, and he would have been aware on that date that the calendar judge had previously dismissed other criminal trial matters pursuant to Penal Code section 1382 based on a purported lack of courtrooms to assign those trials, including those brought to this Court's attention in *Cole*, *Flores*, and *Wagner*;
4. Because the calendar judge was necessarily aware of this information on the date he chose to dismiss the instant criminal trial matter, it is important and appropriate for this Court to be aware of the same information in evaluating the propriety of the calendar judge's action in dismissing the *Engram* case;
5. This Court's records and files in case numbers S175794 (*Wagner*), S172559 (*Flores*), S166777 (*Gurdian & Cole*), and S159289 (*Gurdian & Cole*) are also necessary for consideration in the instant appeal because those matters involved identical issues and were challenges to dismissals of Riverside County criminal trial matters also purportedly due to the lack

of criminal courtrooms or judges to timely handle the trials;

6. In addition, this Court's records in those four matters include documentation of attempts by the People to have the Fourth District Court of Appeal address the propriety of the ongoing dismissals of criminal trial matters purportedly due to a lack of judges or courtrooms. This information demonstrates that when the Court of Appeal affirmed the dismissal in *Wagner*, it was expressly aware of the multitude of other criminal trial matters being dismissed under similar facts and for identical reasons; and
7. This Court's records and files in case numbers S175794, S172559, S166777, and S159289 are also relevant to both the trial court's dismissal of the *Engram* matter and the Court of Appeal's affirmance of the dismissal because these records document the proceedings and procedural history of the *Wagner*, *Gurdian*, *Cole*, and *Flores* cases that resulted in published appellate division opinions, and were expressly relied upon by the Court of Appeal in affirming the *Engram* dismissal.
8. Pursuant to California Rules of Court, rule 8.252(a)(3), due to the voluminous nature of these materials in the Court's files, it is not practicable to provide copies of these materials along with this request, but will make such copies available to respondent upon request.

Executed on December 29, 2009, at Riverside, California.



ALAN D. TATE
Senior Deputy District Attorney

ARGUMENT

THIS COURT SHOULD TAKE JUDICIAL NOTICE ITS OWN RECORDS IN CASE NUMBERS S175794, S172559, S166777, AND S159289, IN ORDER TO PROPERLY EVALUATE THE PENDING CLAIMS AND TO BE AWARE OF THE SAME FACTS KNOWN BY THE CALENDAR JUDGE AND THE COURT OF APPEAL WHEN THE CASE WAS DISMISSED AND THE DISMISSAL WAS AFFIRMED

Evidence Code sections 452, subdivision (d)(1), and 459, subdivision (a), permit this Court to take judicial notice of the records of “any court of this state.” (*People v. Lawley* (2002) 27 Cal.4th 102, 116, fn.2; *People v. Wiley* (1995) 9 Cal.4th 580, 594; *Alexander v. Superior Court* (1994) 22 Cal.App.4th 901, 905; *County of Orange v. Carl D.* (1999) 76 Cal.App.4th 429, 433.) Additionally, Evidence Code section 459, subdivisions (a), makes it clear that the information judicially noticed can be in a different tenor than the information relied upon by the lower court. Indeed, a court’s authority to exercise its discretion to judicially notice relevant materials under Evidence Code section 452 is extremely broad. (See, Evid. Code § 454.)

Because the calendar judge at the time of the dismissal of the *Engram* criminal trial matter was necessarily aware of the criminal trial matters previously dismissed under similar circumstances, this Court should take judicial notice of its own files and records in case numbers S175794, S172559, S166777, and S159289. (See *Saltares v. Kristovich* (1970) 6 Cal.App.3d 504, 511 [court may judicially notice its own files and records, as well as the files of another case pending in the court].) These files and records provide documentation demonstrating that when the superior court calendar judge dismissed the *Engram* criminal trial matter, and when the Court of Appeal affirmed the dismissal of the *Engram* criminal trial matter, they were expressly aware of the numerous other criminal trial matters dismissed by the Riverside County Superior Court criminal calendar judge under similar circumstances and for similar reasons. Because this information was known to the calendar judge when he dismissed the *Engram* criminal trial matter,

and because the Court of Appeal was aware of this information when it affirmed the dismissal of the *Engram* criminal trial matter, this Court should also consider this information in reviewing anew the propriety of the dismissal of criminal charges. (See *Adelman v. Associated Intern. Ins. Co.* (2001) 90 Cal.App.4th 352, 356, fn. 2 [reviewing court could take judicial notice of the appellate record in related appeal].)

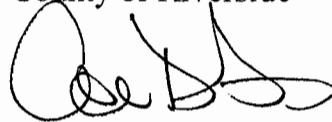
CONCLUSION

Based on the foregoing, appellant respectfully requests that this Court take judicial notice for consideration in the instant appeal its own files and records in case numbers S175794, S172559, S166777, and S159289.

Dated: December 29, 2009

Respectfully submitted,

ROD PACHECO
District Attorney
County of Riverside

A handwritten signature in black ink, appearing to read 'Alan D. Tate', written over the printed name of Alan D. Tate.

ALAN D. TATE
Senior Deputy District Attorney

DECLARATION OF SERVICE

Case No. S176983

I, the undersigned, declare:

I am a resident of or employed in the County of Riverside; I am over the age of 18 years and not a party to the within action. My business address is 3960 Orange Street, Riverside, California. That on December 29, 2009, I served a copy of the within, **REQUEST TO TAKE JUDICIAL NOTICE**, on the following, by placing a copy of same in postage prepaid envelopes addressed as follows:

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

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

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

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

**APPELLATE DEFENDER'S, INC.
555 West Beech Street, Suite 300
San Diego, CA 92101**

Each envelope on December 29, 2009, was sealed and deposited in a United States mailbox in the City of Riverside, State of California, with postage thereon fully prepaid.

I declare the foregoing to be true and correct under penalty of perjury.

Executed on December 29, 2009, at Riverside, California.



DECLARANT