IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STHEN,

Petitioner,

v.

APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

S174773

(Ct. of App., 2nd Dist, Div. 4, Case No. B217263)
(Willhite, Acting P.J., Manella, J., Suzukawa, J.)

(Appellate Div. Sup. Ct. No. BR046020)
(Weintraub, J., McKay, P.J., Wasserman, J.)

(Trial Ct. No. 6200307)
(Munisoglu, C., Dept. 66)

REAL PARTY'S SUPPLEMENTAL RETURN TO PETITION FOR WRIT OF MANDATE

CARMEN A. TRUTANICH, Los Angeles City Attorney
DEBBIE LEW, Assistant City Attorney
Supervisor, Criminal Appellate Division
KATHARINE H. MACKENZIE,
Deputy City Attorney
katharine.mackenzie@lacity.org
State Bar No. 106349
CRIMINAL APPELLATE DIVISION
500 City Hall East
200 N. Main Street
Los Angeles, California 90012
Telephone: 213-473-6900
Fax: 213-473-6915

Attorneys for Real Party in Interest
PEOPLE OF THE STATE OF CALIFORNIA

Service on the State Attorney General required by California Rule of Court 8.29(c)(1)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN, Petitioner, v. APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	**S174773** (Ct. of App., 2nd Dist, Div. 4, Case No. B217263) (Willhite, Acting P.J., Manella, J., Suzukawa, J.) (Appellate Div. Sup. Ct. No. BR046020) (Weintraub, J., McKay, P.J., Wasserman, J.) (Trial Ct. No. 6200307) (Munisoglu, C., Dept. 66)

REAL PARTY'S SUPPLEMENTAL RETURN TO PETITION FOR WRIT OF MANDATE

Service on the State Attorney General required by California Rule of Court 8.29(c)(1)

CARMEN A. TRUTANICH, Los Angeles City Attorney
DEBBIE LEW, Assistant City Attorney
Supervisor, Criminal Appellate Division
KATHARINE H. MACKENZIE,
Deputy City Attorney
katharine.mackenzie@lacity.org
State Bar No. 106349
CRIMINAL APPELLATE DIVISION
500 City Hall East
200 N. Main Street
Los Angeles, California 90012
Telephone: 213-473-6900
Fax: 213-473-6915

Attorneys for Real Party in Interest
PEOPLE OF THE STATE OF CALIFORNIA

TOPICAL INDEX OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN, Petitioner, v. APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	**S174773** (Ct. of App., 2nd Dist, Div. 4, Case No. B217263) (Willhite, Acting P.J., Manella, J., Suzukawa, J.) (Appellate Div. Sup. Ct. No. BR046020) (Weintraub, J., McKay, P.J., Wasserman, J.) (Trial Ct. No. 6200307) (Munisoglu, C., Dept. 66)

REAL PARTY'S SUPPLEMENTAL RETURN TO PETITION FOR WRIT OF MANDATE

INTRODUCTION

Petitioner, Jewerelene Steen, filed a Petition for Writ of Mandate on July 20, 2009 ("Petition") requesting that this Court vacate her misdemeanor conviction for her failure to appear in court on traffic offenses. Pursuant to this Court's order to show cause requesting briefing on one issue, the People of the State of California, responding as real party in interest ("real party"), filed its initial return on October 19, 2009, which addressed whether Penal Code section 959.1, subdivision (c),[1] violated the

[1] Subsequent statutory references are to the Penal Code unless otherwise indicated.

separation of powers doctrine.

On September 12, 2012, this Court issued a second order to show cause requesting briefing from real party and respondent on two additional issues: (1) does section 959.1 violate due process, and (2) was the prosecution in this case commenced within the statute of limitations.

This case involves the Legislature's effort to "increase court efficiency" with a resource-saving procedure that is consistent with technological advances and applicable to limited offenses of a special nature, here, a failure to appear. In this case, the question is whether the Legislature was permitted to address those goals by enacting a procedure which allows court clerks to issue and file electronic complaints under the unique circumstances that exist when a defendant fails to appear.

Most often, when a defendant fails to appear, it is only the clerk who has personal knowledge or is in possession of credible information of the commission of the offense. Thus, the clerk is the best possible complainant to issue a complaint stating facts supportive of those allegations, and that is why Penal Code section 959.1, subdivision (c)(1), means precisely what it says, that a court may receive a complaint in electronic form issued by a clerk - the complaining witness with knowledge of the facts of the offense of a failure to appear. The Legislature recognized that it would be unnecessarily burdensome to require court clerks to submit to the prosecutor documentation detailing every failure to appear, failure to pay a fine, or failure to comply with a court order, and in turn require the prosecuting attorney to submit back to the clerk reciprocal documentation in order to issue and file complaints for these charges.

As set forth in real party's initial return, the separation of powers doctrine is not violated when a clerk complainant performs the act of filing a complaint. Furthermore, as addressed in this supplemental return, there is no due process violation when the prosecution approves, authorizes, or concurs in complaints filed by clerks under the process provided by section

959.1. Here, the prosecution was aware of this statutory procedure and the clerk's utilization of it; and the prosecution approved, authorized, and concurred in the complaints filed under that process. Thus, the complaint filed in this case effectively commenced a criminal proceeding against petitioner at the time it was filed on August 13, 2002. Moreover, because not only a complaint, but also an arrest warrant was issued on August 13, 2002, the prosecution of petitioner's July 24, 2002, failure to appear offense was timely commenced within the one-year statute of limitations. (§§ 802, subd. (a), 804, subds. (b) & (d); Veh. Code, § 40515.)

STATEMENT OF FACTS IN SUPPORT OF SUPPLEMENTAL RETURN

Real party, the People of the State of California, by it attorney, Carmen A. Trutanich, City Attorney of Los Angeles, hereby files its verified Supplemental Return to the Petition for Writ of Mandate.

1

Real party realleges as true all allegations set forth in its initial return filed November 23, 2009.

2

Real party denies any contrary allegations in petitioner's petition filed July 20, 2009, and petitioner's traverse to real party's return filed December 8, 2009.

3

Following the filing of real party's return and petitioner's traverse, this Court accepted for filing on January 12, 2010, the amicus curie brief of the Los Angeles District Attorney's Office ("District Attorney"), which addressed the separation of powers issue.

4

Petitioner filed her reply to the District Attorney's amicus brief on January 28, 2010. And, real party filed its answer to the District Attorney's amicus brief on February 23, 2010.

5

On June 28, 2010, petitioner filed a request for judicial notice of pleadings and transcripts from an unrelated criminal proceeding handled in Fresno County. On July 14, 2010, real party filed its opposition to judicial notice of those documents, which were not before the trial court or the Appellate Division of the Los Angeles County Superior Court.

6

On September 12, 2012, this Court issued to real party and respondent a second order to show cause

> why the relief prayed for in the petition for writ of mandate filed July 20, 2009, should not be granted on the following two additional grounds:
>
> (1) Penal Code section 959.1, subdivision (c), violates due process. (See U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.)

(2) The prosecution in this case was not commenced within the statute of limitations. (See Pen. Code, §§ 802, subd. (a), 804.)

7

This Court's September 12, 2012, order to show cause further stated that "The court on its own motion takes judicial notice of the appellate record in *People v. Jewerelene Steen* (Super. Ct. App. Div., L.A. County, BR046020)."

Real party asserts that the record on appeal considered by the Appellate Division in *People v. Jewerelene Steen* (BR046020) consisted of the following documents, and real party will be relying on them in this supplemental return:

(1) Clerk's Certificate and Receipt for Record on Appeal, dated January 30, 2008.

(2) Clerk's Certificate and Receipt for Record on Appeal, dated March 10, 2008.

(3) Notice to Appear, Citation No. 6200307, dated June 8, 2002.

(4) Citation Correction Request for Citation No. 6200307.

(5) Complaint for failure to appear, Case No. 6200307, dated August 13, 2002.

(6) Case Action Summary (Misdemeanor Docket), dated July 27, 2007.

(7) Demurrer filed July 27, 2007.

(8) Misdemeanor Sentencing Memorandum, dated July 27, 2007.

(9) Verbal Notice of license suspension by Court Employee, dated July 27, 2007.

(10) Commitment Form, dated July 27, 2007.

(11) Notice of Appeal, filed August 27, 2007.

(12) Proposed Statement on Appeal.

(13) Request for Appointment of Counsel on Appeal.

(14) Notice of Filing Notice of Appeal sent to Judge.

(15) Notice of Filing Notice of Appeal sent to prosecution.

(16) Request for a Hearing date, dated September 6, 2007.

(17) Request for a Hearing Date – Response.

(18) Notice of Hearing to Settle Statement on Appeal, dated September 14, 2007.

(19) Case Action Summary (Misdemeanor Docket), dated January 8, 2008.

(20) Transcript of Proceedings of July 27, 2007.

8

In order to respond to this Court's second order to show cause, real party realleges the following facts from paragraph 2 of its return:

On June 8, 2002, petitioner was cited for driving a motor vehicle with an expired registration, driving a motor vehicle without a valid driver's license, and failing to provide evidence of financial responsibility. (Record on Appeal, BR046020, Notice to Appear, Citation No. 6200307 ["Notice to Appear"].) On the Notice to Appear citation, petitioner signed and declared, "Without admitting guilt, I promise to appear" on or before July 23, 2002, at the Clerk's Office of the Superior Court at 1945 South Hill Street, Los Angeles, California, 90007. (*Ibid.*)

Real party further alleges that petitioner did not appear on July 23,

2002, and there is nothing in the record indicating any appearance or answer to the charges until her appearance with counsel on July 27, 2007.

9

Real party realleges the following facts from paragraph 3 of its return:

After petitioner's failure to appear as promised, on August 13, 2002, a misdemeanor complaint was issued electronically charging petitioner with a violation of Vehicle Code section 40508, subdivision (a), willfully violating her written promise to appear in court. (Record on Appeal, BR046020, Complaint for failure to appear, Case No. 6200307 ["complaint"].)

Real party further alleges that the face of the complaint indicates it was issued in the Los Angeles Metropolitan "Judicial District." The complaint was signed under penalty of perjury by a "declarant and complainant." The complaint indicated that bail was set at $1,174.00, and named petitioner, listed her driver's license number, residence address, date of birth, gender, eye and hair color, height, and weight, and described her vehicle. It stated the relevant charge as follows:

> The undersigned says, upon information and belief, that the above named defendant willfully and unlawfully committed the offense set forth above in the above named judicial district, County of Los Angeles, State of California, to wit:
>
> Violation of the defendant's written promise to appear or a lawfully granted continuance of his promise to appear in court before a person authorized to receive a deposit of bail. . . .

(Record on Appeal, BR046020, Complaint.) The face of the complaint shows that it was filed on August 13, 2002.

The Expanded Traffic Record System ("ETRS") shows that an arrest warrant was issued on the same date. (Real Party's Supplemental Return, Ex. 2, p. 44.) The ETRS shows the same name, address, date of birth, and

driver's license number, and citation number for petitioner as set forth in the complaint and Notice to Appear. (*Ibid.*) The attached ETRS was obtained by real party on August 12, 2008. Real party unsuccessfully attempted to obtain a more recent copy. (Real Party's Supplemental Return, Ex. 1, pp. 40-41.) The November 9, 2012, ETRS printout indicates that the record for case no. 6200307 could not be found. (Real Party's Supplemental Return, Ex. 3, p. 52.)

10

Real party alleges that when petitioner appeared in court on July 27, 2007, the arrest warrant was recalled. (Record on Appeal, BR046020, Case Action Summary dated 7/27/07; Real Party's Supplemental Return, Ex. 2, p. 51.)

11

Real party asserts that at the hearing on the demurrer held July 27, 2007, petitioner did not challenge her prosecution as time-barred by the statute of limitations. Her challenge to the complaint was limited to the constitutional grounds of separation of powers and due process.

Petitioner's written demurrer, filed on that date, argued that "a charge purportedly filed by a clerk is constitutionally invalid, as violative of the separation of powers and due process, and is a nullity, which fails to provide jurisdiction to the court." (Record on Appeal, BR046020, Demurrer, p. 8.) The written demurrer made no mention of the statute of limitations. Likewise, defense counsel's argument at the hearing focused solely on whether a complaint filed by a clerk, rather than a prosecutor, commenced criminal proceedings. Defense counsel identified the issue to be determined by the demurrer, as follows:

> Your Honor, in this case, the only issue that the Court needs to address is who is authorized under California law and under the California Constitution to commence criminal prosecutions against those found in California, and, more narrowly, is the Court clerk one of those individuals who are, in fact, authorized to prosecute people in California.

(Petitioner's Ex. B., RT pp. 1-2.) Defense counsel argued that complaints filed by "private parties or members of other branches of government" were constitutionally invalid because they were the result of a violation of the separation of powers doctrine because filing of criminal charges was reserved exclusively to prosecutorial agencies in the executive branch. (Petitioner's Ex. B, RT pp. 2-4, 7.)

In response to petitioner's constitutional arguments, the court noted that under *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 206 (*Pellegrino*), the prosecution can constitutionally approve, authorize, or concur in complaints filed by private parties. The court noted that petitioner's argument failed to acknowledge the *Pellegrino* court's statement,

> "By this holding we do not mean to imply that criminal complaints need take any different form than they presently do, but only that their filing must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual."

(Petitioner's Ex. B, RT pp. 4-5.) When the court asked if the prosecutor was "authorizing or concurring in the complaint as presently constituted," the prosecutor replied, "yes." (*Id.* at p. 5.)

Relying on *Pellegrino*, the trial court found "that the fact that the prosecution has concurred in the complaint as it stands is sufficient to render it constitutional and provide the Court with adequate legal basis for denying your demur [sic]." (Petitioner's Ex. B, RT pp. 4-7.) Thereafter, at the trial court's invitation, the prosecutor made additional representations

for the record regarding the prosecution's awareness of complaints filed by the clerks using the process provided by section 959.1 and the prosecution's approval and concurrence in those complaints at the time they were filed.

> Briefly, regardless of the Court's question to the People as to whether or not we approve of the complaint, again, which we do, without having to say those words, the actions of the People of the State of California through the Los Angeles City Attorney's office demonstrates that we approve and concur in this complaint as well as all other complaints that are filed in all the other cases in this courthouse. We know the practice exists where a complaint is generated via a notice to appear in which a person cited in the notice to appear has failed to appear. We have not asked the Court and/or its clerk to stop.
>
> Moreover, we have not filed a motion to dismiss in this case. Additionally, when the case was presented to our office [on July 27, 2007], we reviewed the complaint and made an offer on that particular case. Therefore, based upon all those actions, we also not only explicitly approve and concur in this complaint, but our actions in this case and all other cases demonstrate, unless otherwise indicated that we approve and concur in these complaints.

(Petitioner's Ex. B, RT pp. 6-7.)

Responding to the trial court's finding and the prosecutor's comments, defense counsel reasserted his argument that in order for the clerk's complaint to be constitutionally valid, the separation of powers doctrine and the due process clause required the prosecution to approve or concur in the complaint at the time it was filed. Defense counsel stated:

> Concerning the concurrence by the City Attorney, your Honor, again the concurrence, even if it's approved ultimately, has to be timely. In this case, it is not. The failure to appear in this case occurred in 2002. Right now it is the year 2007. It is too late for the City Attorney to concur. If the City Attorney wished to concur in a complaint that was previously filed by a private judicial or quasi-judicial entity, specifically the clerk of the court, the City Attorney needed to concur at that time. Otherwise, your Honor, this Court will invite private parties to file criminal complaints en mass and

> have those individuals arrested and brought before the Court and then wait for the City Attorney to concur or not to concur in those complaints.
>
> And concerning the fact that the clerk was perhaps a witness to an individual's failure to appear, that may be so, but that still does not authorize that witness to bring criminal prosecution against an individual.
>
> The Court: [Defense Counsel], your arguments are noted. And, thank you, People, for your arguments. [¶] The Court finds that the demur [sic] is to be overruled, that there is no basis to find that the complaint is invalid on its face.

(Petitioner's Ex. B, RT pp. 7-8.)

Real party asserts that nothing in this record shows that the trial court or the prosecutor was put on notice that petitioner was additionally challenging her prosecution as barred by the statute of limitations. Without an objection specifically on the basis of the statute of limitations, there was no opportunity to develop or present any additional facts, such as whether or when a warrant issued and the information contained therein, relevant to this issue. The failure to object on the basis of the statute of limitations or to object to the arrest warrant on this case constitutes a forfeiture of this claim.

12

Real party denies petitioner's claim in Argument III of the Petition that when petitioner appeared in court on July 27, 2007, the offense charged in the 2002 complaint was time-barred by the statute of limitations. (Petition, p. 22.) Real party asserts that the complaint on its face does not show that the offense of failure to appear was time-barred by the statute of limitations at the time the complaint was filed. The face of the complaint states that on July 23, 2002, petitioner committed the offense of failing to appear, a violation of Vehicle Code section 40508. The face of the

complaint further shows that the complaint was on August 13, 2002. Real party asserts that the face of the complaint shows that the prosecution of the offense was commenced within the one-year statute of limitations set forth in sections 802, subdivision (a) and 804, subdivision (b).

13

Real party asserts that with the issuance of the arrest warrant on August 13, 2002, the prosecution of the offense was commenced within the one-year statute of limitations set forth in sections 802, subdivision (a) and 804, subdivision (d).

14

Real party asserts that after petitioner's demurrer on constitutional grounds was denied, petitioner entered a no contest plea to the charge of failing to appear (Veh. Code, § 40508, subd. (a)) as alleged on the face of the complaint in case no. 6200307. (Petition, Ex. B, RT pp. 8-10.) Petitioner's no contest plea to a complaint that was facially sufficient for purposes of the statute of limitations admitted the sufficiency of that evidence and thereby forfeited her right to litigate the factual question of whether the offense was time-barred.

In this Supplemental Return, real party prays:

1. That the request for writ of mandate be denied;

2. For such other relief as this Court may deem just and proper.

Dated: November 13, 2012

Respectfully submitted,

CARMEN A. TRUTANICH, Los Angeles City Attorney
DEBBIE LEW, Assistant City Attorney
Supervisor, Criminal Appellate Division

By: Katharine H. MacKenzie
KATHARINE H. MACKENZIE
Deputy City Attorney

Attorneys for Real Party in Interest
PEOPLE OF THE STATE OF CALIFORNIA

VERIFICATION

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, KATHARINE H. MACKENZIE, declare as follows:

I am an attorney at law, duly licensed to practice in the courts of California, and I am employed as a deputy city attorney for the City of Los Angeles, County of Los Angeles.

In this capacity, I represent real party in the foregoing supplemental return to petition for writ of mandate and I make this verification on behalf of real party.

I have read the foregoing supplemental return, the pleadings, record, and all pertinent documents in this case, and I know the contents to be true as based upon my reading of what I know to be true copies of court documents on file in this action, the reporter's transcript of the proceedings in this action, and documents in real party's files for this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of November, 2012, at Los Angeles, California

Katharine H. MacKenzie

KATHARINE H. MACKENZIE
Deputy City Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I

There is No Violation of Due Process When the Prosecutor Institutes A Prosecution By Approving, Authorizing, or Concurring in a Complaint Filed Under the Process Provided By Section 959.1

Pursuant to this Court's September 9, 2009, order, in its first return, real party addressed the issue of whether the constitutional doctrine of the separation of powers was violated by a court clerk filing a complaint for failure to appear pursuant to section 959.1. In that return, real party set out that, historically, the discrete act of filing a criminal complaint was not a core function of the executive branch that could only be performed by a prosecutor. (Real Party's Return, pp. 14-27; see also Real Party's Answer to District Attorney's Amicus Brief, pp. 1-6.) Real party argued that even if filing was within a core zone of the executive branch, the ability of court clerks, as complainants, to file complaints in three extremely limited situations did not violate the separation of powers doctrine because it did not impede the prosecution's ability to exercise its independent discretion on whether to authorize or concur in the prosecution of the charge. (Real Party's Return, pp. 27-30; see also Real Party's Answer to District Attorney's Amicus Brief, pp. 6-7.)

Although a court clerk, as a complainant, has the ability to file a complaint without violating the separation of powers doctrine, whether that complaint can be effective in initiating or commencing a criminal proceeding is intertwined with the constitutional due process issue for which this Court has now asked for briefing.

While under limited circumstances, a citizen complainant can file a complaint, fundamental fairness or due process precludes that citizen complainant from instituting a legally effective criminal prosecution without the approval of the prosecution. "Due process of law requires that criminal prosecutions be instituted through the regular processes of law. These regular processes include the requirement that the institution of any criminal proceeding be authorized and approved by the district attorney." (*Pellegrino, supra*, 27 Cal.App.3d at p. 206.)

> [T]he *Pellegrino* court concluded that subjecting one citizen to criminal prosecution upon the whim of another citizen would deny the accused due process of law, since "all persons should be protected from having to defend against frivolous prosecutions and ... one major safeguard against such prosecutions is the function of the district attorney in screening criminal cases prior to instituting a prosecution."

(*People v. Viray* (2005) 134 Cal.App.4th 1186, 1204 (*Viray*), quoting *Pellegrino, supra*, 27 Cal.App. 3d at pp. 205-206.)

The facts in *Pellegrino* illustrate how a prosecutor must approve, authorize or concur in a complaint filed by a citizen in order for that complaint to institute or commence a legally effective prosecution. In *Pellegrino*, three private citizens (Pellegrino, Stromstad, and Bishop) were involved in a neighborhood dispute. Bishop, who was the victim of a battery, signed and filed a misdemeanor criminal complaint naming Pellegrino and Stromstad as defendants, and the district attorney's office reviewed and approved the filing. Pellegrino, in turn, signed and attempted to have the district attorney file a criminal complaint naming Bishop as defendant. However, the district attorney refused to approve the filing of her complaint. So, Pellegrino filed the complaint herself, had the trial court disqualify the district attorney, and had her personal attorney appointed as "special prosecutor." As a result, Bishop was charged with several criminal offenses that the district attorney had determined lacked merit and had

refused to authorize. (*Pellegrino*, *supra*, 27 Cal.App.3d at pp. 195-197.)

The Court of Appeal ordered Pellegrino's complaint dismissed. The court concluded that "[t]he complaints filed by Pellegrino against Bishop without the district attorney's authorization were nullities. The municipal court lacked discretion and in fact jurisdiction to do anything in the matter except to dismiss." (*Id.* at p. 206.)

However, contrary to petitioner's assertion, the court's holding was not based on the fact that the complaint was issued and filed by Pellegrino rather than by the prosecutor. (Petition, pp. 19-20.) Instead, the court determined the complaint filed by Pellegrino was a nullity because it was issued and filed *without authorization* by the prosecuting attorney. Conversely, the complaint issued and filed under Bishop's signature was not a nullity because its issuance and filing were done with the prosecutor's approval. (*Pellegrino*, *supra*, 27 Cal.App.3d at p. 196.) Thus, the form of the complaint – i.e., who signs, issues, or files it – is not dispositive of whether criminal proceedings have been legally instituted. Rather, as explained by the *Pellegrino* court:

> By this holding we do not mean to imply that criminal complaints need take any different form than they presently do, but only that their filing must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual.

(*Id.* at p. 206; accord, *Viray*, *supra*, 134 Cal.App.4th at p. 1204 [the *Pellegrino* court did not foreclose the possibility that the filing of a complaint by a private person might operate to commence a valid prosecution, rather it held that the filing must be "'approved, authorized or concurred in'" before the private person's complaint can be effective in instituting criminal proceedings].)

At bar, as required by *Pellegrino*, the complaint was issued and filed by a complaining witness (here the clerk of the court) pursuant to section 959.1 and the public prosecutor "approved, authorized or concurred" in that

complaint. As previously discussed in real party's informal response filed in this Court, section 959.1 was added in 1988, to Chapter 2, Title 5 of the Penal Code, which governs the "form" that an accusatory pleading may take. Consistent with the chapter's focus on form, section 959.1 was added to accommodate advances in computer technology by permitting prosecutors and law enforcement agencies to file the complaint with the court in the form of electronic data in place of the traditional physical document. Section 959.1 was amended in 1990 to approve filings by a clerk of the court of complaints in three extremely limited situations – "failure to appear, pay a fine, or comply with an order of the court." This amendment of section 959.1 is consistent with the purpose and function of a complaint: section 959.1, subdivision (c), permits court clerks – who have personal knowledge of the commission of an offense – to file complaints as complainants. A clerk of the court will either have personal knowledge or be in possession of credible information of the commission of the specific offense of failure to appear (or pay a fine or comply with a court order). Thus, the clerk is the best possible *complainant* to issue a complaint stating facts supportive of those allegations. (See Real Party's Informal Response, pp. 8-13.) Furthermore, having the clerk complainant issue and file the complaint for failure to appear meets the purpose of the 1990 amendment of the statute, which was "to improve court efficiency by maximizing use of electronic filings." (Sen. Com. on Judiciary, Rep. on Assem. Bill No. 3168 (1989-1990 Reg. Sess.) June 19, 1990.)[2]

As the record reflects, the City Attorney is aware of the clerk's practice of utilizing the complaint filing process authorized by section

---

[2] The Appellate Division took judicial notice of the legislative history pertaining to the 1990 amendment of section 959.1 (Stats. 1990, ch. 289, § 1). (Petition, Ex. F, Memorandum Judgment of the Appellate Division, pp. 5-6, fn. 3.) For this Court's convenience, real party has attached as Exhibit 4 to this supplemental return, the June 19, 1990, Senate Committee report cited by the Appellate Division in its memorandum judgment. (Real Party's Supplemental Return, Ex. 4, pp. 54-55.)

959.1. There is nothing in the record to suggest the City Attorney opposes or objects to any of these filings, including the filing in this case. Rather, the record shows that the filings are done with the prosecution's tacit approval. As the prosecutor stated below, the City Attorney's Office:

> approve[s] and concur[s] [with] this complaint as well as all the other complaints that are filed in all the other cases in this courthouse. We know the practice exists where a complaint is generated via a notice to appear in which a person cited in the notice to appear has failed to appear. We have not asked the Court and/or its clerk to stop. [] Moreover, we have not filed a motion to dismiss in this case. Additionally, when the case was presented to our office [on July 27, 2007], we reviewed the complaint and made an offer on that particular case. Therefore, based upon all those actions, we also not only explicitly approve and concur in this complaint, but our actions in this case and all other cases demonstrate, unless otherwise indicated that we approve and concur in these complaints.

(Petitioner's Ex. B, RT pp. 6-7.) As there is no record showing that the City Attorney objected to or otherwise opposed the complaint in this case, it was approved. (See *People v. Boyette* (2002) 29 Cal.4th 381, 430 [defense counsel was aware of court's decision not to answer jury's question, thus counsel "may be held to have given tacit approval of the trial court's decision"]; *People v. Ross* (2007) 155 Cal.App.4th 1033, 1048 ["Tacit approval" of the court's response, or lack of response (to jury question), may be found where the court makes clear its intended response and defense counsel, with ample opportunity to object, fails to do so."].) Given the approval by the prosecution of complaints filed pursuant to section 959.1, the complaint at bar was effective in instituting criminal proceedings against petitioner at the time it was filed.[3] Furthermore, in addition to the

---

[3] In *Pellegrino*, the reason Pellegrino's complaint did not effectively institute a criminal prosecution was not based on the fact that it was signed and filed by a complainant. It was ineffective in instituting criminal proceeding because the prosecution made it known it would not approve, authorize or concur in the complaint. Because the lack of prosecutorial

tacit approval of the complaint at the time of filing, the record in this case is very clear that the City Attorney expressly approved this individual complaint in open court the day appellant reappeared and plea negotiations apparently began soon thereafter. (Petition, Ex. B, RT p. 5.) Thus, at bar, criminal charges were effectively instituted by the prosecution. As a result, there was no due process violation in this case.

Petitioner, however, claims that the prosecution cannot properly exercise its discretion to institute charges unless it conducts a case-by-case review of the facts of every individual failure to appear "before that charge is filed." She maintains that due process is violated absent a prosecutorial review conducted in that manner. (Petition, pp. 12, 15-18, underlining in original.) Petitioner cites no authority to support this argument. Indeed, in *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101 (*Sundance*), this Court rejected a similar argument attempting to challenge the manner in which the prosecution exercised its charging discretion.

The plaintiffs in *Sundance* sought to enjoin on constitutional grounds the enforcement of section 647, subdivision (f), which prohibits being drunk in public. The Los Angeles Police Department ("LAPD") used a "Short Form Arrest Report" when making arrests for a violation of the statute. The arresting officer would check off on the arrest report form the objective symptoms of drunkenness that were observed. In general, the narrative portion of the form was limited to the following brief statement: "'Defendant observed drunk in public unable to care for himself.'" A carbon copy of the report served as the misdemeanor complaint filed against the section 647, subdivision (f) arrestee. (*Sundance*, *supra*, 42 Cal.3d at pp.

---

approval rendered the complaint a nullity, the trial court "lacked discretion and in fact jurisdiction to do anything in the matter except to dismiss." (*Pellegrino*, *supra*, 27 Cal.App.3d at pp. 196-197, 207.) Thus, if a prosecutorial agency was opposed to the filing of complaints pursuant to section 959.1, and it refused to approve, authorize, or concur in complaints filed under that section, then, as in *Pellegrino*, those complaints would be nullities and the trial court would have no option but to dismiss them.

1108-1110.) More than half of the section 647, subdivision (f) cases that were still pending on the day of trial were dismissed because the information in the short form report was so brief that it either did not refresh the officer's recollection of the arrest or the prosecutor concluded that the officer's testimony would not establish that the defendant was so intoxicated that he could not care for his own safety or the safety of others. (*Id.* at p. 1113.)

The plaintiffs argued that the prosecutor's "systemic failure to exercise prosecutorial discretion in section 647(f) cases violates due process." They maintained that the "defendant city attorney's office routinely filed section 647(f) charges without attempting to screen out cases that could not be successfully prosecuted. The criminal complaints in section 647(f) cases were simply carbon copies of the LAPD's short form arrest report." (*Sundance*, *supra*, 42 Cal.3d at p. 1132.) The plaintiffs asserted that "the city attorney's failure to exercise 'meaningful' prosecutorial discretion violates due process." (*Ibid.*) This Court rejected the plaintiffs' due process argument and affirmed the trial court's decision not to grant injunctive relief.

> Prosecutors have broad decisionmaking power in charging crimes. [Citation.] "The judiciary historically has shown an extraordinary deference to the prosecutor's decision-making function." [Citation.] Although relief may be available if a defendant can demonstrate selective prosecution [citation] or vindictive prosecution [citation], reversals on these grounds are rare. [Citation.]
>
> Plaintiffs cite no authority for the proposition that the prosecutor's failure to exercise sufficient, or indeed any, discretion in determining whether to file charges constitutes a denial of due process.

(*Ibid.*)

Likewise, at bar, petitioner's due process claim must be rejected. It is entirely premised on her dissatisfaction with the manner or the extent to

which the prosecution has exercised its discretion by approving, authorizing, or concurring in complaints filed by clerk complainants without conducting a case-by-case review of the facts of each individual case. Petitioner does not claim, and the record does not show, that there was any selective or vindictive prosecution. Thus, under this Court's reasoning in *Sundance*, there is "no authority for the proposition that the prosecutor's failure to exercise sufficient, or indeed any, discretion in determining whether to" approve or concur in the clerk's filing of the failure to appear "charges constitutes a denial of due process." (*Sundance*, *supra*, 42 Cal.3d at p. 1132; see also *People v. Adams* (1974) 43 Cal.App.3d 697, 707-708 [rejecting defendant's due process claim that § 496 gave prosecution unlimited discretion to decide to file a felony rather than a misdemeanor offense, prosecutor's exercise of discretion is neither reviewable by the appellate process, nor can a court control this exercise of power by mandamus].)

In fact, there is little to no discretionary review that is required to determine whether a failure to appear offense has been committed. There are no legal issues to evaluate. The evidence is indisputable because the defendant has either honored his or her promise to appear, or has not. There are also no witness problems to evaluate; a clerk of the court will have personal knowledge of the failure to appear offense or the court's own official records themselves will constitute evidence of the crime. In today's computerized era, as the clerk makes a computerized entry in the docket when a defendant fails to appear, a complaint based on the same reliable information could concurrently be issued. Such seems to be the plain legislative intent of section 959.1. It would be unnecessarily burdensome to require court clerks to submit documentation of thousands of failure to appear offenses to the prosecutor; no further investigation would be needed in as much as the official court records themselves – identical in every case – would constitute complete evidence of the crime. Such an unnecessary

and burdensome exchange of documentation would defeat the intent of the Legislature to provide an efficient and resource saving procedure consistent with the technological advances of our times. Given the narrow range of the offenses set forth in section 959.1, the volume of those violations, and the presumed reliability of the clerk complainants and the court records, it is imminently reasonable for the prosecution, in the exercise of its discretion, to forego a case-by case review and instead approve and concur in all failure to appear complaints filed by the clerks through the process provided by section 959.1.

Therefore, where as here, the prosecution approves, authorizes, or concurs in the complaints filed pursuant to the process provided by section 959.1, there is no violation of due process and a criminal prosecution is effectively instituted.

After the prosecution has been instituted, the prosecution, as part of its executive function, still retains the power to deem a prosecution inappropriate and seek termination of the action. Section 1385 authorizes the prosecution to move for a dismissal when it determines that such a dismissal is in the interest of justice. Section 1385 does not vest the judiciary with unfettered power to deny such a request. Rather, a court would abuse its discretion to deny a prosecution request for a dismissal where the prosecution has articulated good faith reasons supporting such a dismissal.

Instructive here is the reasoning of the United States Court of Appeals for the Fifth Circuit in *United States v. Cowan* (5th Cir. 1975) 524 F.2d 504 (*Cowan*). *Cowan* looked at the interplay of the powers and functions of the judicial branch and the executive branch when a motion to dismiss was made by the prosecution under rule 48(a) of the Federal Rules of Criminal Procedure. Rule 48(a) provides that "[t]he government may, *with leave of court*, dismiss an indictment, information, or complaint." (Italics added.) Thus, similar to section 1385, federal prosecutors do not

have absolute power to dismiss filed charges – a dismissal can only be granted if the court grants leave. The *Cowan* court noted that the purpose of granting the court the power of supervision over the termination of a prosecution was to protect defendants from harassment and to protect the public interest in the fair administration of justice. (*Id.* at pp. 509-512.) But, the *Cowan* court ruled that Rule 48(a) does not vest the courts with absolute authority to deny a prosecutorial motion for a dismissal.

> [T]he phrase "by leave of court" in Rule 48(a) was intended to modify and condition the absolute power of the Executive, consistently with the Framer's concept of Separation of Powers, by erecting a check on the abuse of Executive prerogatives. But this is not to say that the Rule was intended to confer on the Judiciary the power and authority to usurp or interfere with the good faith exercise of the Executive power to take care that the laws are faithfully executed. The rule was not promulgated to shift absolute power from the Executive to the Judicial Branch. Rather, it was intended as a power to check power. The Executive remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated. The exercise of its discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest. In this way, the essential function of each branch is synchronized to achieve a balance that serves both practical and constitutional values.

(*Cowan, supra*, 524 F.2d at p. 513.) The *Cowan* court concluded that the trial court abused its discretion when it denied the government's motion to dismiss, because nothing in the record overcame the presumption that the government motion was made in good faith for substantial reasons sufficiently articulated in the record. (*Id.* at pp. 513-515; see also *In Re United States of America* (7th Cir. 2003) 345 F.3d 450, 452-454 [appellate court held purpose of Rule 48(a) is to protect a defendant from government harassment by repeatedly filing and dismissing charges. Seventh Circuit Court of Appeals held that under Rule 48(a) a trial court could condition a

dismissal on its being with prejudice, but it would exceed the limits of judicial power under the Constitution if it refused to grant leave to dismiss a criminal charge "merely because [the court] was convinced that the prosecutor was acting in bad faith or contrary to the public interest."].)

Here, too, the prosecution, in the exercise of its executive function, would be the best judge to determine if a pending prosecution should be terminated if it were to learn that a defendant had not committed the failure to appear offense wilfully or there was some other defect in the prosecution. If the reasons for the dismissal are sufficiently articulated, a court should not deny that request unless it was contrary to the interests of justice. In the unlikely event that a court refused a prosecution request to dismiss when "society as represented by the People" did not have a "legitimate interest" in the prosecution of the offense, the court would have overstepped the bounds of its judicial function and its ruling would be reviewable as an abuse of discretion. (*People v. Orin* (1975) 13 Cal.3d 937, 945-951; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530-532.)

Therefore, the prosecution's approval of complaints filed under the process set forth in section 959.1 does not violate due process or the separation of powers doctrine.

II

The Prosecution in This Case Was Commenced within the Statute of Limitations

The complaint in the instant case, filed on August 13, 2002, and alleging a failure to appear offense committed on July 23, 2002, shows on its face that the prosecution was timely commenced within the one-year statute of limitations. The record also shows that the arrest warrant, issued on August 13, 2002, likewise timely commenced the prosecution. Yet, in

her petition, petitioner claims that the prosecution in the instant case was barred by the statute of limitations. Attempting to go behind the facially sufficient complaint, she claims that "a complaint filed absent prior screening and prior authorization by the public prosecutor is a nullity." She concedes that once a complaint is screened and authorized, then it is effective as a charging document. However, she maintains that the statute of limitations expired because, while the complaint at bar was filed in 2002, it was not approved and therefore not effective as a charging document until 2007. (Petition, p. 22, underlining in original.) The record shows that petitioner did not raise the statute of limitations as a ground of her demurrer in the trial court and, as a result, no evidence relevant to this issue was developed in the trial court. Consequently, petitioner has forfeited her statute of limitations claim on appellate review. In any event, petitioner's claim fails on the merits.

"Once the statute of limitations for an offense expires without the commencement of prosecution, prosecution for that offense is forever time-barred." (*People v. Robinson* (2010) 47 Cal.4th 1104, 1112 (*Robinson*).) Section 802 sets forth the generally applicable statute of limitations for misdemeanor offenses. It provides in pertinent part,

> (a) Except as provided in subdivision (b), (c), or (d), prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.

Thus, a violation of Vehicle Code section 40508, must be commenced within one year of the offense, because it is a misdemeanor or an infraction offense that is not punishable in state prison. (§§ 19, 19.6, 19.8; Veh. Code. § 40508, subd. (a).)

Section 804 defines when "commencement" of a prosecution occurs for purposes of the statute of limitations. It states:

> Except as otherwise provided in this chapter, for the purposes

of this chapter, prosecution for an offense is commenced when any of the following occurs:

(a) An indictment or information is filed.

(b) A complaint is filed charging a misdemeanor or infraction.

(c) The defendant is arraigned on a complaint that charges the defendant with a felony.

(d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.

At bar, petitioner's prosecution was timely commenced under section 804. First, the prosecution was timely commenced under subdivision (b) of section 804 when the complaint was filed. At the time of her traffic stop on June 8, 2002, petitioner was issued a Notice to Appear indicating that she had violated Vehicle Code section 4000, subdivision (a)(1) (driving a vehicle with expired registration, Vehicle Code section 12500, subdivision (a) (driving without a driver's license), and Vehicle Code section 16028, subdivision (a) (driving without proof of insurance). Petitioner signed the Notice to Appear, promising to appear in court on July 23, 2002. (Record on Appeal, BR046020, Notice to Appear.) However, on July 23, 2002, petitioner failed to appear in court as promised. On August 13, 2002, a complaint was filed charging petitioner with failure to appear on July 23, 2002, in violation of Vehicle Code section 40508, subdivision (a). (Petitioner's Ex. A, Complaint; Record on Appeal, BR046020, Complaint.) Thus, the face of the complaint indisputably shows that the prosecution commenced within the one-year statute of limitations as governed by sections 802, subdivision (a) and 804, subdivision (b).

Because she cannot show that the August 13, 2002, complaint on its face was time-barred by the statute of limitations, petitioner tries to go behind the face of the complaint. She maintains that the complaint was a

"nullity" on constitutional grounds and therefore any "belated screening and approval" of the charge in the complaint in 2007 was time-barred because it did not occur within the statute of limitations. (Petition, p. 22.) Petitioner's claim should be rejected as forfeited because she did not raise the statute of limitations as a ground of her demurrer in the trial court and she entered a no contest plea to a complaint that was facially sufficient for purposes of the statute of limitations.

In *People v. Williams* (1999) 21 Cal.4th 335 (*Williams*), this Court clarified that a statute of limitations claim can be forfeited for failure to raise it in the trial court. The *Williams* court noted the failure to raise the statute of limitations in the trial court does not forfeit a defendant's right to raise it on appellate review, when "the prosecution files a charging document that, on its face, indicates the offense is time-barred." However, the claim will be forfeited if the charging document is facially sufficient. (*Id.* at pp. 344-345.) As this Court explained, the nonforfeiture rule

> does not apply to an information that, as it should, either shows that the offense was committed within the time period or contains tolling allegations. Although, under our cases, defendants may not forfeit the statute of limitations if it has expired as a matter of law, they may certainly lose the ability to litigate factual issues such as questions of tolling.
>
> This point was explained in *People v. Padfield* (1982) 136 Cal.App.3d 218 [185 Cal.Rptr. 903]. There the information alleged discovery of the crime within the limitations period, an allegation that, if true, would make the prosecution timely. The defendant pleaded nolo contendere, then sought to assert the statute of limitations on appeal. While recognizing the *McGee* line of cases, the appellate court held the defendant had waived his right to litigate the factual question whether the offense was time-barred. "[W]hen the pleading is facially sufficient, the issue of the statute of limitations is solely an evidentiary one. The sufficiency of the evidence introduced on this issue does not raise a question of jurisdiction in the fundamental sense." [Citation.] "By pleading nolo contendere, defendant admitted the sufficiency of the evidence establishing that the statute of limitations was tolled

> . . . . Having admitted the sufficiency of that evidence by his plea, he cannot now challenge it with a forked tongue on appeal." [Citation.]

(*Williams*, *supra*, 21 Cal.4th at pp. 344-345.)

At bar, petitioner did not raise the statute of limitations in her written demurrer or in any of her arguments at the hearing on the demurrer. Although defense counsel argued that the prosecution's approval or concurrence in a complaint filed by a private person "has to be timely," and that in 2007, "it was too late" for the prosecution to concur in a complaint filed in 2002, defense counsel was not raising a statute of limitations claim. (Petitioner's Ex. B, RT pp. 7-8.) Rather, the context of defense counsel's argument shows that he was still arguing that there was a violation of due process unless the prosecution had screened and approved of the complaint prior to or at the moment it was filed. Defense counsel's argument was in reply to the prosecutor's assertion that due process was satisfied under *Pellegrino* because petitioner's complaint had been approved by not filing a motion to dismiss and reviewing the complaint when it was presented to a prosecutor on July 27, 2007. Defense counsel responded,

> It is too late for the City Attorney to concur. If the City Attorney wished to concur in a complaint that was previously filed by a private judicial or quasi-judicial entity, specifically the clerk of the court, *the City Attorney needed to concur at that time*. Otherwise, your Honor, this Court will invite private parties to file criminal complaints en mass and have those individuals arrested and brought before the Court and then wait for the City Attorney to concur or not to concur in those complaints.

(Petition, Ex. B, RT pp. 7-8, italics added.) Consistent with the written demurrer, defense counsel's concern was with the filing of complaints without prosecutorial approval. Hence, it was his position that approval must be given before or "at that time" of filing to avoid the due process problem of persons being arrested without prior prosecutorial review of the

charges. This is the identical due process argument petitioner repeats in Argument I of her petition in this Court. (Petition, pp. 12-18.) Petitioner was not claiming that the statute of limitations had run in this case. Thus, by pleading no contest to a complaint that was facially sufficient, petitioner admitted the sufficiency of the evidence establishing that the statute of limitations was timely commenced. (*Williams*, *supra*, 21 Cal.4th at pp. 344-345; *People v. Padfield*, *supra*, 136 Cal.App.3d at pp. 224-227.)

In any event, petitioner's claim fails on the merits. As set forth in Argument I, *ante*, the prosecution approved of complaints alleging failures to appear, including the instant complaint, filed by the clerk under the process provided by section 959.1. There is simply no authority for petitioner's assertion that the complaint was not an "effective charging document" unless and until it underwent a prior individual screening process by a prosecutor – a process she contends did not occur until 2007. Thus, the complaint, filed on August 13, 2002, with the prosecution's approval, not only instituted criminal proceedings at the time of its filing for purposes of due process, but also "commenced" the prosecution under section 804, subdivision (b) for purposes of the statute of limitations. The prosecution commenced well-within the one-year statute of limitations of section 802, subdivision (a).

Second, in addition to the filing of the complaint, the prosecution was also timely commenced under section 804, subdivision (d) when the warrant was issued on August 13, 2002, for her failure to appear offense. Vehicle Code section 40504 allows a person stopped for a traffic violation to secure his or her release by signing a written notice promising to appear in court on a future date. Vehicle Code section 40508, subdivision (a), makes it a separate misdemeanor offense to violate that promise to appear. Vehicle Code section 40515 grants a magistrate authority to issue an arrest warrant for the commission of the offense of failure to appear. Vehicle Code section 40515, declares in part:

> (a) When a person signs a written promise to appear . . . at the time and place specified in the written promise to appear . . . and has not posted full bail . . . , the magistrate may issue and have delivered for execution a warrant for his or her arrest within 20 days after his failure to appear before the magistrate . . . , or if the person promises to appear before an officer authorized to accept bail other than a magistrate and fails to do so on or before the date on which he or she promised to appear, then, within 20 days after the delivery of the written promise to appear by the officer to a magistrate having jurisdiction over the offense.
>
> (b) When a person violates his promise to appear before an officer authorized to receive bail other than a magistrate, the officer shall immediately deliver to a magistrate having jurisdiction over the offense charged the written promise to appear and the complaint, if any, filed by the arresting officer.

Contrary to petitioner's assertion in her Reply to Preliminary Opposition (p. 12), no complaint for a violation of section 40508, subdivision (a) is required before the magistrate may exercise his or her authority under Vehicle Code section 40515 to issue a valid arrest warrant for the failure to appear offense. The Court of Appeal in *People v. Superior Court of San Diego County (Copeland)* (1968) 262 Cal.App.2d 283, 285, held that Vehicle Code section 40515

> by [its] language [does] not require a magistrate to determine from a complaint if an offense occurred and if reasonable grounds implicate the defendant, as generally required by Penal Code section 813. The offense, failure to appear, occurs in front of the magistrate, satisfying the requirements of Penal Code section 813, and *People v. Sesslin* (1968) 68 Cal.2d 418.

In fact, the *Copeland* court upheld a warrant as validly issued without a judge ever seeing the warrant where the warrant was generated by a computer following a clerk's docket entry that the defendant failed to appear. (*Id.* at pp. 284-285.) Relying on *Copeland*, the Attorney General rendered an opinion that a magistrate could issue a valid warrant under the

authority of Vehicle Code section 40515 without also filing a complaint. (56 Ops.Cal.Atty.Gen. 165 (1973).)

> The offenses here being examined [Vehicle Code section 40515 and Penal Code section 853.8], however, occur in front of the magistrate, if not literally, at least to the extent that they are documented in the court's own records. In other words, and contrary to the usual situation, the magistrate does not need to be independently persuaded as to the defendant's guilt. No judicial discretion is involved or required.
>
> . . . .
>
> [W]e conclude that no complaint need be filed in conjunction with issuing an arrest warrant for either offense. Obviously, this result is not intended to preclude complaints for these offenses from being filed with the court in jurisdictions which desire to do so. Rather, we conclude only that such complaints are not required under the law as it exists today.

(56 Ops.Cal.Atty.Gen., *supra*, at p. 166.)

At bar, petitioner secured her release on June 8, 2002, by signing the Notice to Appear. Her violation on July 23, 2002, of this written promise to appear constituted the separate misdemeanor offense of Vehicle Code section 40508, subdivision (a). The ETRS shows that a valid arrest warrant issued on August 13, 2002, under the authority of section 40515, for petitioner's misdemeanor offense of failure to appear. The warrant was recalled when petitioner was brought before the court on July 27, 2007. (Record on Appeal, BR046020, Case Action Summary dated 7/27/07.) The ETRS, which reflected the issuance of the warrant, described petitioner by her name, address, date of birth, and driver's license number – the same description on the citation and the complaint. Therefore, under section 804, subdivision (d), the prosecution was timely commenced for purposes of the statute of limitations on August 13, 2002, when a warrant issued. (*Robinson*, *supra*, 47 Cal.4th at pp. 1111-1115, 1129-1130, 1142-1143 [under section 802, subdivision (d) "the prosecution in this case was

properly commenced within the six-year statute of limitations by the filing of the John Doe arrest warrant that described the person suspected of committing the offenses" by his DNA profile].)[4]

Therefore, because the issuance of the arrest warrant satisfied commencement of the prosecution for purposes of the statute of limitations, the failure to appear offense set forth in the complaint was not time-barred regardless of whether the complaint was tacitly approved by the prosecution when it was filed or expressly approved on July 27, 2007, at the time petitioner finally appeared in court and the warrant was recalled. (*People v. Price* (2007) 155 Cal.App.4th 987, 996-998, including fn. 10 [because the prosecution's augmented documents on appeal showed a warrant issued "well within any applicable limitations period," appellate court found it unnecessary to resolve whether charging document on its face was sufficient to satisfy statute of limitations].)

Finally, related to the statutory commencement of the action under

---

[4] Petitioner has waived any challenges to the warrant by failing to object below.

The warrant was issued 21 days after petitioner committed her failure to appear offense. But there is no statutory sanction should a magistrate delay in complying with the direction in Vehicle Code section 40515 that the warrant "may be issued and delivered for execution . . . within 20 days" after the failure to appear. (Compare *People v. Valenzuela* (1978) 86 Cal.App.3d 427, 430 [dismissal of a criminal case under Penal Code section 825, which provides that a criminal "defendant must in all cases be taken before a magistrate without unnecessary delay," was reversible error because section 825 does not "contain language authorizing or requiring a dismissal of a prosecution by reason of delay in arraignment"] and *Woods v. Department of Motor Vehicles* (1989) 211 Cal.App.3d 1263, 1266-1272 [where statute contained no sanction for the DMV's failure to timely comply with the statutory time requirement to hold a hearing within 30 days of driver's demand, there was no loss of jurisdiction or invalidation of the order of suspension that issued at the belated hearing], with § 40805 [statute expressly provides court is without jurisdiction to render a judgment of conviction if evidence is based on a speed trap].)

Petitioner also did not object to the sufficiency of the warrant's description of her as required by section 804, subdivision (d). Because petitioner failed to raise the statute of limitations evidentiary claim in the trial court, she lost "the ability to litigate [the] factual issue[]" of whether the arrest warrant described her with sufficient particularity. (*Williams*, *supra*, 21 Cal.4th at p. 344.)

subdivision (d) of section 804, petitioner's fugitive status precluded her from relying on the statute of limitations as a bar because she failed to submit herself to the authority of the court. In *People v. Abayhan* (1984) 161 Cal.App.3d 324 (*Abayhan*), the Court of Appeal applied the fugitive disentitlement doctrine to the statute of limitations. In *Abayhan*, a felony complaint was filed on February 10, 1970, for crimes committed on February 8, 1970. The defendant was held to answer on April 9, 1970, and his trial was set for June 17, 1970. The defendant failed to appear on the day of trial and a bench warrant was issued for his arrest. For over 10 years and three months the warrant remained outstanding, until the defendant surrendered and the warrant was recalled on October 27, 1980. The matter was called for trial on January 21, 1981, but was dismissed on that date under section 1385 when the People were unable to proceed due to a missing witness. The felony complaint was refiled on February 13, 1981, and the defendant was held to answer on April 17, 1981. After the defendant was unsuccessful in having the information set aside as barred by the statute of limitations, he was convicted at a court trial. (*Id.* at pp. 327-328.)

On appeal, the defendant claimed the 1981 information was barred by the statute of limitations and should have been set aside because it was not filed within three years of the commission of the offense. (*Abayhan, supra*, 161 Cal.App.3d at p. 328.) The *Abayhan* court upheld the trial court's ruling that the defendant, who had been a fugitive from justice, was not now in a position to take advantage of the bar of the three-year statute of limitations. Applying the fugitive disentitlement doctrine, the *Abayhan* court held,

> The concept that as a fugitive from justice in a pending criminal prosecution a defendant is disentitled to call upon the resources of the court or processes of the law for a determination of his claims, has long existed. It reflects the invocation by the courts of their inherent equitable powers to

> refuse to extend their resources or processes to an absconding defendant in a pending criminal prosecution, a rationale later codified by statute in 1981 (§ 802.5, Pen. Code)[5]. . . .
>
> Any argument that now that he has voluntarily surrendered he may claim the benefits of the time statute that ran against the People while he was a fugitive is specious. If an absconding defendant could not call upon the resources of the court while he was a fugitive it simply makes no sense to permit him now, after flouting the processes of the law for over 10 years by refusing to submit himself to the jurisdiction of the court, to invoke them to his benefit to bar the criminal prosecution he sought in this manner to avoid.

(*Abayhan, supra*, 161 Cal. App. 3d at pp. 331-332.) Thus, although the first information – which had been timely filed shortly after the offense was committed – had been dismissed and the second information was not filed until over 11 years later, the Court of Appeal found that the defendant was not entitled to claim the benefit of the statute of limitations for the 10-year and 3-month period that the defendant was a fugitive. Thus, after excluding the time that the defendant was a fugitive, the court held that the new information was filed well within the three-year statute of limitations. (*Id.* at pp. 333-334, including fn. 4.)

At bar, petitioner, likewise, should not be entitled to invoke the statute of limitations during the period that she had absconded from the court's jurisdiction. Having signed the promise to appear, petitioner was well aware of the date, time, and location she was to appear in court. Petitioner did not appear on the July 23, 2002, date as promised, and refused to submit herself to the jurisdiction of the court for five years until the warrant was recalled on July 27, 2007. Thus, under the reasoning of *Abayhan*, petitioner cannot claim the benefit of the statute of limitations for

---

[5] Former section 802.5, which related to the tolling of time limitations for the commencement of criminal actions upon the issuance of an arrest warrant or the finding of an indictment, was added by Stats. 1981, ch. 1017, § 3, and repealed by Stats. 1984, ch. 1270, § 1. The substance of former section 802.5 is now contained in section 804, subdivisions (a) and (d).

the five years she was a fugitive. Consequently, the complaint timely commenced the prosecution within the one-year statute of limitations, regardless of whether it was approved by the prosecution in 2002 or 2007.

CONCLUSION

Penal Code section 959.1, subdivision (c)(1), is a legislative effort to increase court efficiency with a resource-saving procedure that permits clerk complainants to file complaints in a very narrow class of offenses of a special nature: failures to appear, pay a fine, or comply with a court order. The statute's limited filing authorization does not violate the separation of powers because it does not materially infringe on a core function of the executive branch that can only be performed by a prosecutor. Due process is not violated because nothing in the statute interferes with the prosecution's right to approve, authorize, and concur in the complaints filed pursuant to the process provided in section 959.1. Reading section 959.1, as we must, in harmony with the separation of powers doctrine and the due process clause, the dispositive factor is not who physically issues and files a complaint, or even whether each complaint is individually reviewed by a prosecutor before it is filed. The dispositive question is whether the prosecutor has "approve[d], authorize[d], or concur[red]" in the complaint that was issued and filed.

Here, the record shows that the prosecution was well-aware of the clerk's utilization of the process provided by section 959.1 and tacitly approved, authorized, and concurred in complaints filed under that process. Furthermore, because a complaint and a warrant were issued on August 13, 2002, the prosecution was timely commenced within the one-year statute of limitations.

Based on the arguments made in its informal response, real party's initial return, and in this supplemental return, real party urges this Court to

deny the petition for writ of mandate.

DATED: November 13, 2012

Respectfully submitted,

CARMEN A. TRUTANICH, Los Angeles City Attorney
DEBBIE LEW, Assistant City Attorney
Supervisor, Criminal Appellate Division

By: Katharine H. MacKenzie
KATHARINE H. MACKENZIE
Deputy City Attorney

Attorneys for Real Party in Interest
PEOPLE OF THE STATE OF CALIFORNIA

CERTIFICATE OF WORD COUNT

Counsel of record for real party, People of the State of California, hereby certifies that pursuant to the California Rules of Court, rules 8.204(c) and 8.486(a)(6), the Supplemental Return in this action contains 10,473 words, excluding the cover sheet, tables, verification, and supporting documents. Counsel relies on the word count of the WordPerfect X3 program used to prepare this brief.

Katharine H. MacKenzie

Katharine H. MacKenzie

TABLE OF CONTENTS FOR SUPPORTING DOCUMENTS

DECLARATION OF KATHARINE H. MACKENZIE

I, KATHARINE H. MACKENZIE, am a Deputy City Attorney for the City of Los Angeles assigned to the Criminal Appellate Division and in that capacity declare as follows:

I am the attorney assigned to prepare the supplemental return in the instant matter ("*Steen*").

In 2008, I was the attorney who was initially assigned to handle the appeal before the Appellate Division of the Los Angeles County Superior Court. In August 2008, I requested from the trial branch of my office at the Metropolitan Courthouse copies of reports for petitioner from the Expanded Traffic Record System ("ETRS") and the Los Angeles County Consolidated Criminal History System ("CCHRS"), which would show the existence of an arrest warrant for petitioner's failure to appear in case number 6200307.

I received a facsimile ("fax") copy of those reports on August 12, 2008. That complete fax is attached as Exhibit 2 to this supplemental return. It is a 10-page document. On the top of each page, the fax machine printed the page number, the words "LA City Attorney," and the fax machine phone number for the trial branch office that sent the fax. From 2008 through the present date, that fax was retained in the Los Angeles City Attorney's Office Criminal Appellate Division case files for petitioner.

The ETRS report I received in 2008 for petitioner's case no. 6200307, sets out the proceedings that occurred on this matter in the trial court. It contains an entry of "AW" on the date of "081302" documenting the issuance of an arrest warrant for petitioner on August 12, 2002. (Ex. 2, ETRS p. 44.) The CCHRS report shows that petitioner had a failure to appear warrant for case no. 6200307 and was arrested on that warrant. (Ex. 2, CCHRS, pp. 45, 51.)

On November 9, 2012, I requested that the trial branch obtain a more recent copy of the ETRS from the Metropolitan Courthouse in Los Angeles, so that I could supply a current copy to this Court as an exhibit to the instant supplemental return. However, I was informed by the supervising attorney of the trial branch at the Metropolitan Courthouse that the ETRS record for case no. 6200307 could not be found. Attached as Ex. 3 to this supplemental return is a copy of the screen capture using petitioner's case no. 6200307. It shows that "Cit/Case 6200307" "was not found." (Ex. 3, p. 52.) This document was certified by the clerk of the court as part of 63 documents that were on file at the Metropolitan Courthouse in case no. 6200307. (Ex. 3, p. 53.)

Consequently, I am attaching the 2008 fax copy of the ETRS, which is a true and correct copy of the document I received on August 12, 2008, because I am unable to attach a more recent copy of that document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of November, at Los Angeles, California.

Katharine H. MacKenzie

KATHARINE H. MACKENZIE

FAX COVER SHEET

LOS ANGELES CITY ATTORNEY'S OFFICE
METROPOLITAN BRANCH
1945 S. HILL STREET, ROOM 501
LOS ANGELES, CA 90007

FAX: (213) 485-8243
VOICE: (213) 978-2400

TO: Kathy McKenzie **FROM:** Ellen Sarmiento

DATE: Appellate 8/12/08 **PAGES (INCLUDING THIS ONE):** 10

MESSAGE: ETRS + CHHRS Printouts

EXPANDED TRAFFIC RECORD SYSTEM - NUMBER RESPONSE

CIT/CASE 6200307 LEA/COURT 1942 LAM ABSTRACT Y ID# 07213D052 VLN 4LOF622
NAME JEWERELENE STEEN OLN P0741447 OLN ST CA
ADDRESS 2703 S COCHRAN ST LOS ANGELES CA 900163319 DOB 041038 T/S N
VIO-DATE APR-DATE ENT-DATE VIOL 1 VIOL 2 VIOL 3 VIOL 4 SPEED
060802 072302 013008 40508A 29
RECPT NO. $ 75.00 $ $ $ CONV
PR CNT 0 PP FINE 0.00 W/O PROOF 0.00 T/S AMT 0.00 COMHAZ
ST AP DSP CMPL DATE 072707D AMT JUD JSO DUE 1174.00 RF
BAIL 1174.00W BASE 425.00 PA 731.00 NC 1.00 WA 7 SB P/C/WA 10.00H

ACT	ACT DATE	SEQ	DPT	CASE/TD#	RECEIPT#	AMT PAID	ENTRY DATE	P CD/DATE
CS	011209						011408	
RS	010809		060	0100A040			080107	
AT	013008		APP	SETTLED			013008	
CS	011608			ERROR			011408	
SC	092507		064	AHEARING			091207	
PS	082807		APP	STATMENT			090607	
AP	082707		APP	APPEAL			090607	
AR	072707		066	CUSTODY			072707	

** THERE IS MORE INFORMATION DEPRESS "PA1" KEY FOR NEXT PAGE
PF1-NAME PF2-OLND PF3-NMBR PF4-CITN PF5-DMVM PF6-RSRV
PF7-DSPO PF8-WRNT PF9-CONT PF10-CCAL PF11-TMEN PF12-ACME * NMBR *

EXPANDED TRAFFIC RECORD SYSTEM - NUMBER RESPONSE

CIT/CASE 6200307 LEA/COURT 1942 LAM ABSTRACT Y ID# 07213D052 VLN 4LOF622
NAME JEWERELENE STEEN OLN P0741447 OLN ST CA
ADDRESS 2703 S COCHRAN ST LOS ANGELES CA 900163319 DOB 041038 T/S N

VIO-DATE	APR-DATE	ENT-DATE	VIOL 1	VIOL 2	VIOL 3	VIOL 4	SPEED
060802	072302	013008	40508A	29			

RECPT NO. $ 75.00 $ $ $ CONV
PR CNT 0 PP FINE 0.00 W/O PROOF 0.00 T/S AMT 0.00 COMHAZ
ST AP OSP CMPL DATE 0727070 AMT JUD J50 DUE 1174.00 RF
BAIL 1174.00W BASE 425.00 PA 731.00 NC 1.00 WA 7 SB P/C/WA 10.00H

ACT	ACT DATE	SEQ	DPT	CASE/TD#	RECEIPT#	AMT PAID	ENTRY DATE	P	CD/DATE
AW	081302		063				081302		

** NO MORE INFORMATION AVAILABLE **

PF1-NAME PF2-OLND PF3-NMBR PF4-CITN PF5-DMVM PF6-RSRV
PF7-DSPO PF8-WRNT PF9-CONT PF10-CCAL PF11-TMEN PF12-ACME * NMBR *

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM Date: 08/12/2008
Time: 16:32

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name: (4) STEEN, JEWERELENE ***Date Name First Used:*** 07/24/2007
SID/CII: A23979323 ***MAIN:*** 01051845 ***FBI:*** 167285TC5 ***ARN:***

Requested By: LTCA132 SARMIENTO, ELLEN
Agency: CA019741A LACA - HILL STREET BRANCH
Reason: 6200307 TIX
Search Criteria: Search Type: Other ID Identifier: BKG; ID Number: 9877912: State: CA

ACHS Data Included: YES
Multi-Source Record: NO

DEPT. OF JUSTICE AND DMV MAY HAVE ADDITIONAL INFORMATION

SUMMARY

Bookings		Convictions		Juvenile		Warrants		Probations		INS
Felony:	1	Felony:	0 *1	Sustained:	0	Bench:	0	Open:	0 *1	Deport:
Misd:	0	Misd:	0	Dismissed:	0	Arrest:	0 *1	Expired:	0	Removal:
						Infract.(FTA)	0			Illegal Entry:

LATEST INFORMATION

ALERTS

*Probation

Latest Name: STEEN, JEWERELENE ***Date Name Last Used:*** 07/24/2007

Sex	Race	Hair	Eyes	Hgt	Wgt	DOB	Updated
Female	BLACK	RED	BROWN	503	208	04/10/1938	08/01/2007

Latest Address: 2703 S COCHRAN AVE LOS ANGELES CA

Type	Start Date	End Date	Charge/Description	Case Number	Updated
* PROBATION FRML	05/16/2008	05/15/2013	487(A)	XONBA32400302	05/17/2008

Registration	Reg Number	Location	Reg Date
PALM PRINT ON FILE	A23979323PLM		01/01/0001
DNA/DOTS COLLECTED	23979323		08/11/2008

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE ***Date Name First Used:*** 07/24/2007
SID/CII: A23979323 ***MAIN:*** 01051845 ***FBI:*** 167285TC5 ***ARN:***

DESCRIPTORS

#/Names/AKAs/Count

(1) STEEN, JEWERLENE	1	(2) SMITH, JEWERELENE	1
(3) STEEN, JEWERELENE	*1	(4) STEEN, JEWERELENE	*2
(5) PINKSTON, JEWERELENE	1		

Dates of Birth/Count

04/10/1938 3 04/10/1938 *1

Scars/Marks/Tattoos

Other Identifiers

*DL P0741447 CA *SSN 459585062 *SID2 23979323 SSN 459585062
FBI 167285TC5 DL P0741447 CA

Address/Count

2703 SOUTH COCHRAN AVE LOS ANGELES CA 90016 *1 2703 S COCHRAN AVE LOS ANGELES CA 1

Birth Place/Count

TX 2

Moniker/Count

JEWEL 1

Gang Membership/Count

JUVENILE SUSTAINED PETITIONS

No Juvenile Information

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE *Date Name First Used:* 07/24/2007
SID/CII: A23979323 *MAIN:* 01051845 *FBI:* 167285TC5 *ARN:*

CONVICTIONS/ACTIVE DIVERSIONS

Arr Date	Name	Arresting Agency				Booking Number	
	Sex	Race	Hair	Eyes	Height	Weight	DOB
	F	BLACK	GRAY	BROWN	503	200	04/10/1938

File Date	Name	CaseNumber/County	Last Dept/Div	Warrants Issued
*04/09/2008	3	XCNBA32450302/LOS ANGELES	123	1

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE ***Date Name First Used:*** 07/24/2007
SID/CII: A23979323 ***MAIN:*** 01051845 ***FBI:*** 167285TC5 ***ARN:***

Cnt	Filed Charges	Dispo Date	Dispo	Sentence/Probation Type
09	PC 487(A) GRAND THEFT PROPERTY	05/16/2008	Convicted	FRML PROB 5 YEAR(S)
12	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
13	PC 487(A) GRAND THEFT PROPERTY	05/16/2008	Dismissed Due to Plea Negotiation	
14	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
15	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
16	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
17	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
18	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
19	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
20	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
21	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
22	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
23	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
24	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
25	PC 118(A) PERJURY	05/16/2008	Dismissed Due to Plea Negotiation	
26	PC 118(A) PERJURY			
27	PC 118(A) PERJURY			
28	PC 118(A) PERJURY			
29	PC 118(A) PERJURY			

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE ***Date Name First Used:*** 07/24/2007
SID/CII: A23979323 ***MAIN:*** 01051845 ***FBI:*** 167285TC5 ***ARN:***

30 PC 118(A)
PERJURY
31 PC 118(A)
PERJURY
32 PC 118(A)
PERJURY
33 PC 118(A)
PERJURY
34 PC 118(A)
PERJURY
35 PC 118(A)
PERJURY

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE ***Date Name First Used:*** 07/24/2007
SID/CII: A23979323 ***MAIN:*** 01051845 ***FBI:*** 167285TC5 ***ARN:***

PENDING CASES

No Pending Cases.

LOS ANGELES COUNTY
CONSOLIDATED CRIMINAL HISTORY SYSTEM

CRIMINAL HISTORY TRANSCRIPT FOR OFFICE USE ONLY - UNAUTHORIZED USE IS A CRIMINAL OFFENSE
INFORMATION FINGERPRINT VERIFIED UNLESS OTHERWISE NOTED BY AN ASTERISK(*)

Key Name:(4) STEEN, JEWERELENE **Date Name First Used:** 07/24/2007
SID/CII: A23979323 **MAIN:** 01051845 **FBI:** 167285TC5 **ARN:**

ARRESTS/CASES NOT REPORTED ABOVE

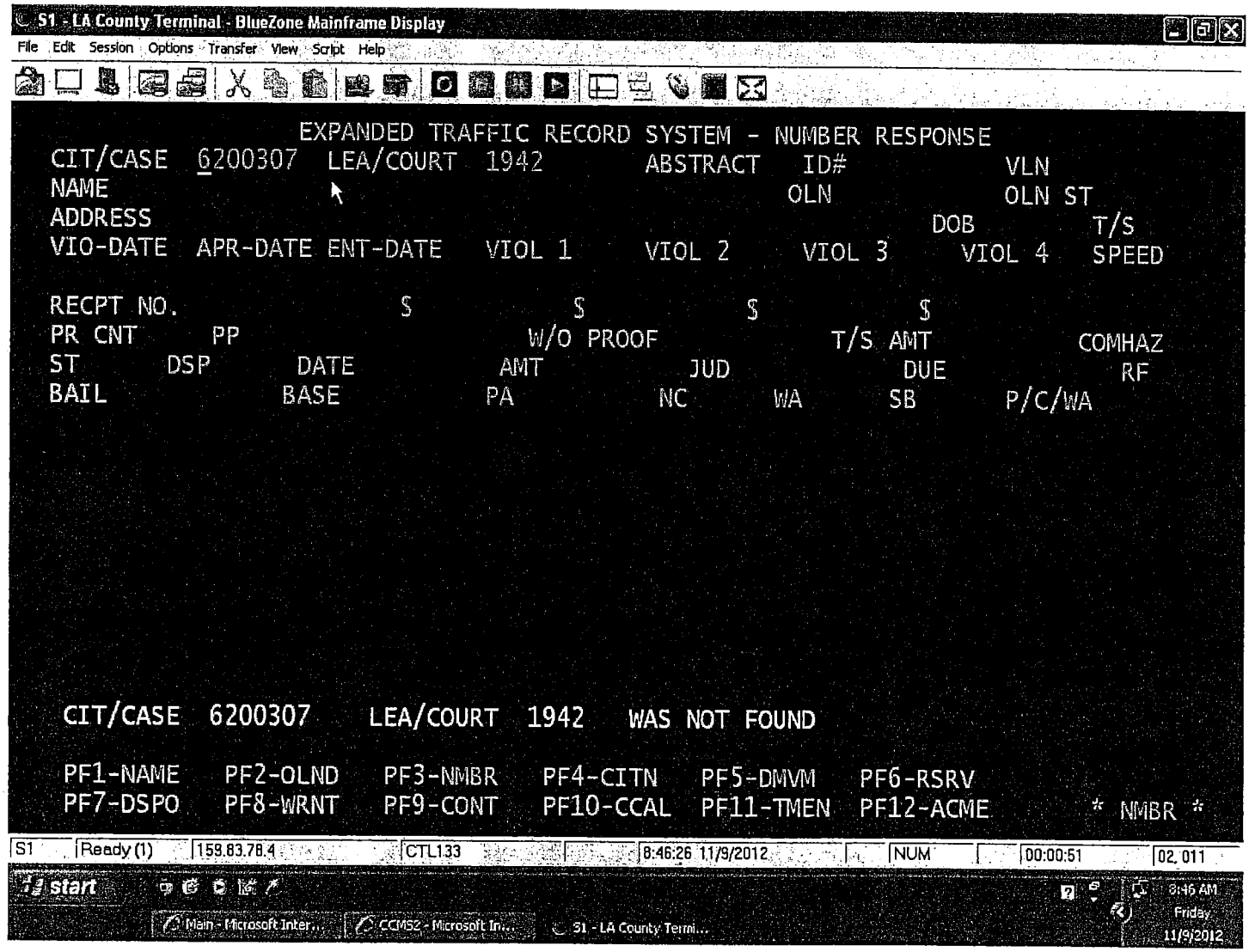
Arr Date	Name	Arresting Agency	Booking Number
07/24/2007	4	LACO DISTRICT ATTORNEY HDQ (CRIMINAL COURTS)	009877912

Sex	Race	Hair	Eyes	Height	Weight	DOB
F	BLACK	RED	BROWN	503	208	04/10/1938

Cnt	Arrest Charges	Dispo Date	Result	
1	WI 10980(C) WELFARE FRAUD	UNKNOWN	Own Recognizance	
2	VC 40508(A) FTA - TRAFFIC WARRANT	UNKNOWN	Case Adjudicated	WARRANT # LACBA32450302 WARRANT # LAC6200307194

(CASE FILING INFORMATION NOT MATCHED IN L.A. COUNTY)

END OF TRANSCRIPT


S1 - LA County Terminal - BlueZone Mainframe Display
File Edit Session Options Transfer View Script Help
EXPANDED TRAFFIC RECORD SYSTEM - NUMBER RESPONSE
CIT/CASE 6200307 LEA/COURT 1942 ABSTRACT ID# VLN
NAME OLN OLN ST
ADDRESS DOB T/S
VIO-DATE APR-DATE ENT-DATE VIOL 1 VIOL 2 VIOL 3 VIOL 4 SPEED
RECPT NO. $ $ $ $
PR CNT PP W/O PROOF T/S AMT COMHAZ
ST DSP DATE AMT JUD DUE RF
BAIL BASE PA NC WA SB P/C/WA
CIT/CASE 6200307 LEA/COURT 1942 WAS NOT FOUND
PF1-NAME PF2-OLND PF3-NMBR PF4-CITN PF5-DMVM PF6-RSRV
PF7-DSPO PF8-WRNT PF9-CONT PF10-CCAL PF11-TMEN PF12-ACME * NMBR *
S1 Ready (1) 159.83.78.4 CTL133 8:46:26 11/9/2012 NUM 00:00:51 02, 011
start
Main - Microsoft Inter...
CCM52 - Microsoft In...
S1 - LA County Termi...
8:46 AM
Friday
11/9/2012

62 00307 CITY OF LOS ANGELES

X MISDEMEANOR

NOTICE TO APPEAR

DATE: JUNE 8 02 TIME: 8:40 X AM ☐ PM

NAME (LAST, FIRST, MIDDLE): LOCKELOVE STEEN

CURRENT ADDRESS: 903 S. COCHRAN ST APT. NO

CITY: LOS ANGELES STATE: CA ZIP CODE: 90036

DRIVER LICENSE NO.: P0744447 STATE: CA BIRTHDATE: 10-3-58 JUVENILE: Y (N)

SEX	DESCENT	EYES	HAIR	HEIGHT	WEIGHT	MISC. DESCRIPTIVE INFO.
M	B	BRO	BLK	5'3	200	

VEHICLE LIC. NO.: 4LUF602 STATE: CA PASSENGERS M F: 0 ☐ C.V. (VC. 15270(b))

YEAR	MAKE	VEH.	BODY STYLE	COLOR	☐ H.M. (VC. 460)
1985	CHEV	VAN	VN	BRN	

REGISTERED OWNER OR LESSEE: ADDRESS: X SAME

EVIDENCE OF FINANCIAL RESPONSIBILITY

ELIGIBLE FOR DISMISSAL (VC 40610) ☐ BOOKING REQUIRED ☐ CONSTRUCTION ZONE

YES	NO	VIOLATIONS
X	☐	4000(A)(1) V.C. SPIZED REG
☐	☐	3-2-01
☐	X	16028(A) V.C. NO VERIFICATION
☐	X	23103(A) V.C. NO CT. OD

NON-USE OF SEATBELT ☐ 27315 ( ) VC

APPROX. SPD.	ZONE SPD.	POSTED SPD. LIMIT	AREA OF OCCUR	CONTINUATION ☐ FORM USED
35	35		X	

LOCATION OF VIOLATION: ON 6TH AT 8TWN, OR NEAREST CROSS ST. MAPLE IN CITY OF LOS ANGELES

CLERK'S OFFICE OF THE SUPERIOR COURT, ON OR BEFORE JULY 23 20 02

(NIGHT COURT SESSION AVAILABLE)

- ☐ 900 THIRD ST., SAN FERNANDO, 91340
- ☐ 505 SO. CENTRE ST., SAN PEDRO, 90731
- ☐ 11701 SO. LA CIENEGA BLVD., LOS ANGELES, 90045
- ☐ 14400 ERWIN STREET MALL, 2ND FLOOR, VAN NUYS*, 91401
- ☐ 1633 PURDUE AVE., WEST LOS ANGELES, 90025
- X 1945 SO. HILL ST., LOS ANGELES*, 90007
- ☐ 21001 SHERMAN WAY NO. 12, CANOGA PARK, 91303

INFORMAL JUVENILE & TRAFFIC COURT (ACCOMPANIED BY PARENT OR GUARDIAN) ON _____ 20___ AT 8:30 A.M. OR 1:30 P.M. (CIRCLE APPEARANCE TIME)

- ☐ 1945 SO. HILL ST., 8TH FLOOR, LOS ANGELES
- ☐ 1725 MAIN ST., SANTA MONICA
- ☐ 6230 SYLMAR AVE., VAN NUYS
- ☐ 415 W. OCEAN BL., LONG BEACH

FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA REV 1-1-90 VC40500 40513(B) 40522 PC 853.6

☐ VIOLATIONS NOT COMMITTED IN MY PRESENCE, DECLARED ON INFORMATION AND BELIEF

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATE _____ ISSUING OFCR. STRONG SER NO 3269

DIVISION	DETAIL	UNAVAILABLE DATES	AM/PM	COURT TIME REQUESTED	W	N
SID	☐ CI ☐ PI	PAST				

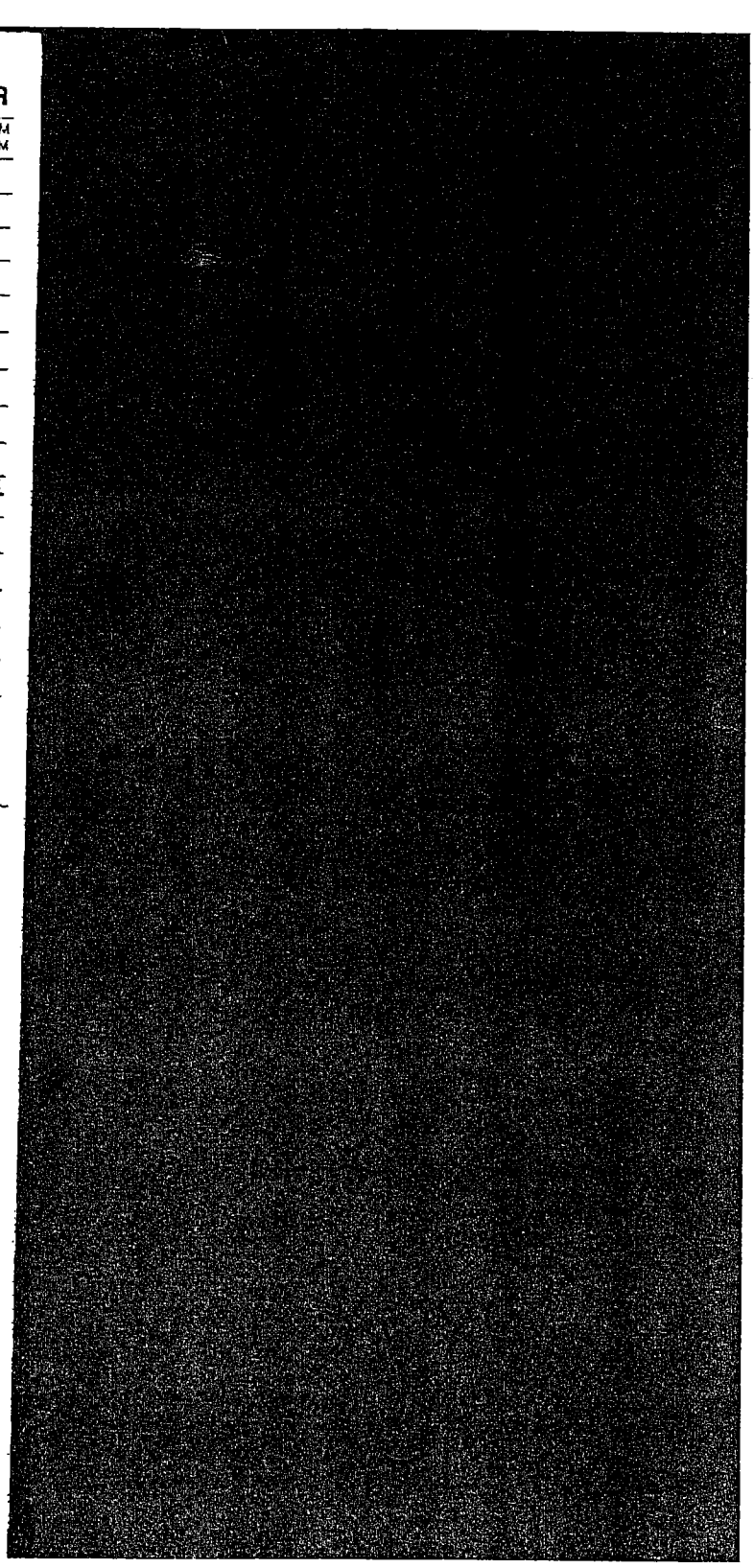
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE CHECKED ABOVE

X SIGNATURE Lockelove Steen

S E

* 6200307 *

Made from recycled waste



I certify that this is a true and correct copy of the original DOCUMENTS on file in this office consisting of 1 & 3 pages. JOHN A. CLARKE, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles.

Date: 11-9-12 By _____, Deputy

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

AB 3168 (Frazee)
As introduced
Hearing date: June 19, 1990
Penal Code
Gww/jm

CRIMINAL PLEADINGS

- ELECTRONIC FILING -

HISTORY

Source: Association of Municipal Court Clerks

Prior Legislation: AB 3864 (1988) - Chaptered

Support: Unknown

Opposition: No Known

Assembly Floor vote: Ayes 67 - Noes 0

KEY ISSUE

SHOULD COURT CLERKS BE ALLOWED TO FILE CRIMINAL COMPLAINTS ISSUED FOR THE OFFENSES OF FAILURE TO APPEAR, FAILURE TO PAY A FINE, OR FAILURE TO COMPLY WITH AN ORDER OF THE COURT, IN AN ELECTRONIC FORM?

PURPOSE

Existing law permits accusatory pleadings to be filed electronically by prosecutors and law enforcement agencies. These pleadings include the complaint, the information, the indictment, and any citation or notice to appear issued on a form approved by the Judicial Council.

Existing law also permits a notice of parking violation or a notice to appear to be received and filed by the court in electronic form.

This bill would allow court clerks to file electronically complaints issued for the offenses of failure to appear, failure to pay a fine, or failure to comply with an order of the court.

The purpose of this bill is to improve court efficiency by maximizing use of electronic filings.

COMMENT

1. Stated need

According to the author, some courts are in the process of

developing automated systems that eliminate the need for hard paper. To maximize the savings from an automated system, proponents assert that court clerks should also be permitted to file an electronic complaint for offenses of failure to appear, pay a fine, or comply with a court order. The proponent points out that a notice to appear may already be filed electronically, and asserts that it logically follows that a complaint for failing to appear in response to the notice should also be capable of being filed electronically.

Finally, the proponent contends that electronic filing should increase court efficiency by streamlining the filing of pleadings by court clerks.

2. Conditions for electronic filing

Under the bill and existing law, a magistrate or court would be authorized to receive and file complaints issued for the specified offenses and orders only if (a) the magistrate or court has the facility to electronically store the accusatory pleading for the statutory period of record retention, and (b) the magistrate or court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved.

END OF REPORT

PROOF OF SERVICE BY MAIL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

STEEN V. APPELLATE DIVISION, Case No. S174773
(Ct. of App. No. B217263, App. Div. Sup. Ct. No. BR046020,
Trial Court No. 6200307)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-referenced action. My business address is 200 North Main Street, 500 City Hall East, Los Angeles, California 90012.

I am readily familiar with the practice of the Los Angeles City Attorney's Office, City Hall East, for collection and processing correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On **November 13, 2012,** I served the following document

SUPPLEMENTAL RETURN TO PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; EXHIBITS

by placing a true copy in a sealed envelope(s) for collection and mailing, following ordinary business practice, at 200 North Main Street, 500 City Hall East, Los Angeles, California 90012. The person(s) served, as shown on the envelope(s), are:

John Hamilton Scott
Deputy Public Defender
Appellate Division
590 Hall of Records
320 West Temple Street
Los Angeles, CA 90012
Attorney for Petitioner, Jewerelene Steen

Joseph Lane, Clerk of the Court
California Court of Appeal
Second Appellate District
Division 4
2nd Floor-North Tower
300 South Spring Street
Los Angeles, CA 90013

Clerk of the Court
Appellate Division
Los Angeles Superior Court
Department 70, Room 607
111 North Hill Street
Los Angeles, CA 90012

Honorable Lee Smalley Edmon
Presiding Judge
Los Angeles Superior Court
Department One
111 North Hill Street
Los Angeles, CA 90012

Honorable Elizabeth Munisoglu
Commissioner of the Superior Court
Beverly Hills Courthouse
Department 5
9355 Burton Way
Beverly Hills, CA 90210

Office of the Attorney General
State of California
300 South Spring Street
5th Floor-North Tower
Los Angeles, CA 90013

Office of the Los Angeles District Attorney
Phyllis C. Asayama
Deputy District Attorney
540 Hall of Records
320 West Temple Street
Los Angeles, CA 90012
Attorney for Amicus Curiae, in support of Real Party

Frederick Raymond Bennett
Court Counsel, Los Angeles Superior Court
111 North Hill Street, #546
Los Angeles, CA 90012

Paul Fogel
Reed Smith
101 Second Street, Suite 1800
San Francisco, CA 94105-3659
Attorney for Respondent

I declare under penalty of perjury that the foregoing is true and correct. Executed on **November 13, 2012**, at Los Angeles, California.

YOLANDA FLORES, Secretary