

In the Supreme Court of the State of California

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

Plaintiff and Respondent,

v.

**PAUL BIANE, MARK KIRK, JAMES
ERWIN, JEFFREY BURUM,**

Defendants and Appellants.

**SUPREME COURT
FILED**

Case No. S207250

MAY -1 2013

Frank A. McGuire Clerk

Deputy

Fourth Appellate District, Division Two, Case No. E054422
San Bernardino County Superior Court, Case No. FSB1102102
The Honorable Brian McCarville, Judge

OPPOSITION TO BURUM'S REQUEST FOR JUDICIAL NOTICE

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Respondent Jeffrey Burum requests this Court to take judicial notice of Exhibits A through F attached to his motion. (Motion, p. 1.) Respondent fails to mention that the Court of Appeal denied his request for judicial notice of Exhibits A, E and F in a reasoned opinion. This Court should similarly deny the motion as to those Exhibits. The People do not oppose Respondent's request for judicial notice of Exhibits B, C and D.

Exhibit A is a Judgment of Validation from Civil Case No. SCVSS 146272 dated March 29, 2007. Pursuant to Evidence Code section 454, subdivision (a)(2), Respondent's request for judicial notice of this item should be denied because it is irrelevant, and its probative value is substantially outweighed by the probability that it will confuse the issues within the meaning of Evidence Code section 352.

The Court of Appeal correctly stated:

Defendant Burum, in connection with his petition for writ of mandate, requests this court take judicial notice of the judgment of validation in San Bernardino Superior Court case No. SCVSS146272, dated March 29, 2007, attached as Exhibit A to his judicial notice request. The judgment of validation is not relevant to any issue defendant Burum raises in his writ petition, and he only mentions the document in the "factual background" section of that petition. Therefore, the request for judicial notice is denied.

(Slip Opn., p. 11.)

Pursuant to Evidence Code section 459, subdivision (a), this Court has discretion to take judicial notice of any matter specified in section 452. Section 452 specifies that the court may take judicial notice of "(d) Records of (1) any court of this state ..." Respondent offers the Judgment of Validation as a court record under this provision.

However, Evidence Code section 459, subdivision (b), specifies that "In determining the propriety of taking judicial notice of a matter, or the tenor thereof, the reviewing court has the same power as the trial court

under section 454.” Under Section 454, subdivision (a)(2), “Exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.”

Section 352, in turn, provides, “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will ... (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” Exhibit A is wholly irrelevant to the issues presented in the instant case, and offers nothing but confusion.

The validation judgment involves a civil case, with different parties than the instant case, and it post-dates much of the criminal conduct alleged herein. Respondent Burum asserts that “[T]he Judgment of Validation from the proceedings in the San Bernardino County Superior Court action filed by the San Bernardino County Flood Control District provides necessary context for understanding the actions taken by the prosecutors and related state and county agencies in this matter.” (Motion, p. 2.) But Exhibit A provides no context at all. The prosecutors were not a party to the civil suit, and the “related state and county agencies” are not a party to this criminal case.

Exhibit A has no tendency in reason to prove or disprove any disputed fact in these proceedings. It does, however, carry great potential for confusing the issues, because it is offered to improperly imply that the settlement was judicially sanctioned. Moreover, the validation judgment is hearsay, and cannot be used as a shield to prevent inquiry into the criminal conduct which led up to the settlement.

Exhibits E and F contain documents that purportedly pertain to the legislative histories of Government Code sections 1090 and 9054. The Court of Appeal held “[t]he documents purportedly related to the legislative histories of the noted Government Code sections are irrelevant because, as

we discuss below, neither statute is ambiguous; therefore, we need not determine the Legislature's intent. Accordingly, the judicial notice requests are denied.” (Slip Opn. at p. 12.)

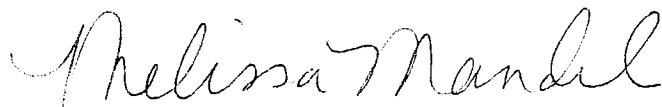
This Court should similarly find the proffered material is irrelevant because the statutes at issue are not ambiguous. Moreover, Exhibit E is illegible, and to the extent it pertains to the legislative history of Government Code section 9054, it is not pertinent to any issue which has been granted review.¹

Based on the foregoing, Respondent Burum's request for judicial notice of Exhibits A, E and F should be denied.

Dated: April 30, 2013

Respectfully submitted,

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¹ Respondent's Answer to the Petition for Review asked this Court to review the additional issue of the constitutionality of Government Code section 9054. This Court has the authority to consider any issue raised in the Answer (Cal. Rules of Court, rule 8.516, sub (b)(1)) but did not indicate its intention to do so in the order, which states "Petition for Review granted."

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Biane, et al**

No.: **S207250**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 30, 2013, I served the attached **OPPOSITION TO BURUM'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

SEE ATTACHED LIST (2 pages)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 30, 2013, at San Diego, California.

C. Pasquali
Declarant

C. Pasquali
Signature

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