IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

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 OPPOSITION TO PETITIONER'S MOTION TO STRIKE EXHIBITS TO REAL PARTY'S RETURN

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

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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 OPPOSITION TO PETITIONER'S MOTION TO STRIKE EXHIBITS TO REAL PARTY'S RETURN

Real party in interest, the People of the State of California, opposes petitioner's motion to strike the exhibits attached to real party's return. Contrary to petitioner's contention, in order to resolve her statute of limitations claim, this Court can review these relevant records, which indisputably show that an arrest warrant was timely issued on the failure to appear offense.

PROCEDURAL AND FACTUAL BACKGROUND

This Court issued an order to show cause on September 12, 2012, directing real party and respondent to address whether "the prosecution in this case was [] commenced within the statute of limitations. (See Pen. Code, §§ 802, subd. (a), 804.)" (Order to Show Cause filed 9-12-12.)

In this case, petitioner, Jewerelene Steen, failed to appear in court on July 23, 2002, in accordance with the promise to appear that she signed on June 8, 2002. A complaint filed on August 13, 2002, charged petitioner with violating Vehicle Code section 40508, subdivision (a). On July 27, 2007, petitioner entered a no contest plea to the failure to appear offense, after the trial court denied her demurrer.

Petitioner filed a Petition for Writ of Mandate (Petition) on July 20, 2009, requesting this Court to vacate her misdemeanor conviction for failure to appear in court. Among the issues raised in her petition, petitioner claimed that the prosecution was barred by the statute of limitations. She maintained that the statute of limitations expired because, while the complaint was filed in 2002, it was not approved by a prosecutor and therefore was not effective as a charging document until 2007. (Petition, p. 22.)

No record was developed in the trial court on the statute of limitations issue.[1]

On November 13, 2012, real party, the People of the State of California, filed its Supplemental Return. In its supplemental return, real party argued, as a separate and independent basis, that the issuance of an arrest warrant on August 13, 2002, for petitioner's failure to appear offense commenced the prosecution for purposes of the statute of limitations (Pen. Code, § 804, subd. (d)). (Real Party's Supplemental Return, pp. 30-33.) In

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[1] It is real party's position that the statute of limitations was waived because petitioner did not make a specific objection on this ground in the trial court. (Real Party's Supplemental Return, pp. 8-12, 27-30.) Petitioner has denied that allegation. (Petitioner's Supplemental Traverse to Return of Real Party, pp. 2-3, 22-23.)

support of its argument, real party attached, as an exhibit to its supplemental return, a printout of the Los Angeles Expanded Traffic Record System (ETRS) for the petitioner's case no. 6200307 and a printout of the Los Angeles County Consolidated Criminal History System (CCHRS). (Real Party's Supplemental Return, Ex. 2, pp. 42-51.) The ETRS report documents the proceedings that occurred in this matter in the trial court. On the second page of the ETRS report, it lists violation no. 1 as "40508A" and it shows that an arrest warrant was issued on August 13, 2002, in Department 63. (Real Party's Supplemental Return, Ex. 2, p. 44.) The CCHRS report is identified at the top as "The Los Angeles County Criminal History System" and that it was generated at the request of the Los Angeles City Attorney's Office. The report shows that petitioner had a "VC 40508(A) FTA – Traffic Warrant" for case no. 6200307 and that she was arrested on that warrant. (Real Party's Supplemental Return, Ex. 2, pp. 45, 51.)

Petitioner filed her Supplemental Traverse to Return of Real Party on January 22, 2013. Petitioner admitted that "the statute of limitations issue never materialized in the trial court." Petitioner denied that the issuance of an arrest warrant constituted the commencement of criminal proceedings. And, as part of her denial in paragraph VI, petitioner moved to strike real party's exhibit. Appellant did not contest the authenticity or accuracy of the exhibit. Her only argument was that "those documents are not properly presented to this court in the first instance, and must be stricken." Petitioner further argued that "should this court agree that court clerk's cannot initiate criminal proceedings absent the prior screening and approval by the authorized prosecutor, petitioner suggests that this matter should be remanded to the trial court so that the People may have the opportunity to prove that the initiation of criminal proceedings in 2007 was not barred by the statute of limitations." (Petitioner's Supplemental Traverse, pp. 3-4.)

Petitioner's motion to strike and suggestion for remand are not well-taken in this case. Under decisional authority, when resolving a statute of limitations claim, this Court may consider the available records in this case

pertaining to petitioner's failure to appear, which show the issuance of an arrest warrant for that offense.

ARGUMENT

Petitioner's Motion to Strike Should Be Denied — To Resolve Her Statute of Limitations Claim, This Court May Review The Available Record in this Case Showing the Issuance of a Warrant for Petitioner's Failure to Appear

Petitioner argues that this Court may not undertake a review of the exhibits attached to real party's return to determine whether the prosecution was timely commenced for purposes of the statute of limitations. (Petitioner's Supplemental Traverse, pp. 3-4.) Thus, she asks this Court to strike those exhibits. Petitioner's motion should be denied, because decisional authority permits this Court's acceptance and review of these documents.

Where a defendant has not raised in the trial court a claim that the prosecution is barred by the statute of limitations, under some circumstances, she may still be able to raise the issue before the appellate court. (*People v. Williams* (1999) 21 Cal.4th 335, 344-345 (*Williams*) [defendant's ability to raise statute of limitations for first time in appellate court is limited to "cases in which the prosecution files a charging document that, on its face, indicates the offense is time-barred.") """If the [appellate] court cannot determine from the available record whether the action is barred . . . it should remand for a hearing."""" (*People v. Delgado* (2010) 181 Cal.App.4th 839, 849.) However, "[t]he appellate record may be augmented with a complaint, arrest warrant, or other appropriate material to facilitate this determination." (*Ibid.*; *People v. Price* (2007) 155 Cal.App.4th 987, 996-998, including fn. 10 (*Price*).) If, after the argumentation, the appellate court is "able to '"determine from the available record whether the action is barred,"' there is no need to remand the matter

to the trial court for an evidentiary hearing. (*Delgado*, *supra*, at p. 850; *Price*, *supra*, at pp. 997-998.)

At bar, real party maintains petitioner forfeited her statute of limitations claim not only by failing to raise it in the trial court, but also by entering a no contest plea to a facially sufficient charging document. (Real Party's Supplemental Return, pp. 27-30.) However, should this Court decide to reach the statute of limitations issue, then in light of the absence of a record here the reasoning of *Price* should apply to allow this Court to review "appropriate materials," such as those submitted by real party, "to facilitate [the] determination" of the issue.

In *Price*, the defendant committed a burglary on November 23, 2002. Although a burglary offense is subject to a three-year statute of limitations, the information was not filed until April 13, 2006. On appeal, the defendant claimed for the first time that the burglary offense was barred by the statute of limitations. The prosecution filed a motion to augment the record on appeal with a printout of court minute orders showing that an arrest warrant was issued on April 25, 2003. Granting the motion to augment, the Court of Appeal rejected the defendant's argument that "[the appellate court] could not undertake review of these documents to determine whether the charges are timely." And, further rejecting the defendant's claim that it would be making factual determinations, the court ruled that from its review of the documents, "we need not make any such factual determinations. The record clearly shows that the arrest warrant was issued on April 25, 2003, well within any applicable statute of limitations. We therefore conclude that the prosecution of Price for burglary . . . was timely." (*Id.* at pp. 990, 996-998, including fn. 10.)

At bar, the ETRS and the CCHRS documents contained in real party's Exhibit 2, are properly before this Court as "appropriate material to facilitate" the determination of whether the prosecution was timely commenced under the statute of limitations. Like the court's minute orders in *Price*, the ETRS report documents the trial court proceedings in this case, including the issuance of an arrest warrant on August 13, 2002, by

Department 63, for a violation of Vehicle Code section 40508, subdivision (a).

Furthermore, although not introduced in the trial court, the Los Angeles County CCHRS criminal history report is properly subject to judicial notice by this Court under Evidence Code sections 459 and 452, subdivision (c), as an "Official act[] of the . . . executive . . . department [] . . . of any state . . .." (*Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1076, including fn. 5 [even though not introduced at trial, Supreme Court took judicial notice of county redevelopment agency's records; because a county is a legal subdivision of the state, county agency constituted state entity for purposes of judicial notice].) And, under this Court's holding in *People v. Martinez* (2000) 22 Cal.4th 106, 134-138, the Los Angeles County CCHRS printout reporting petitioner's criminal history information is admissible under the official records exception to the hearsay rule (Evid. Code, § 1280). In *Martinez*, this Court upheld the admission of the Los Angeles County Sheriff's Department printout of the defendant's local criminal history information. The official records exception requires that (1) the writing was made by and within the scope of duty of a public employee; (2) the writing was made at or near the time of the act, condition or event; and (3) that the sources of information and method and time of preparation were such as to indicate its trustworthiness. (Evid. Code, § 1280.) This Court found that all three requirements were met by taking judicial notice of the statutory duties imposed on local law enforcement agencies to accurately and timely collect, compile, and report criminal history information (Pen. Code, §§ 11107, 13150, 11115, 13151, and 13300 et seq.) and, because under Evidence Code section 664, "'it is presumed'" that these statutory duties "were 'regularly performed.'" (*Ibid.*) For the same reasons as in *Martinez*, this Court may accept as evidence and review petitioner's criminal history in the Los Angeles County CCHRS printout, which documents that petitioner was arrested on a Vehicle Code section 40508 failure to appear warrant in this case. (Pen. Code, § 13125 [arrest data that must be recorded by law enforcement agencies in both the state

and local criminal history systems includes the date of arrest, the offense, and the statute citation].)

Petitioner's reliance on *People v. Peevy* (1998) 17 Cal.4th 1184, 1207 (*Peevy*), to argue that this Court cannot consider the facts presented in real party's exhibits is misplaced for two reasons. (Petitioner's Supplemental Traverse to Return of Real Party, p. 3.) First, petitioner's quote from *Peevy* omits the word "generally."[2] *Peevy* did not hold that an additional factual record can never be presented in the appellate court. Rather, this Court stated in *Peevy*, "an appellate court *generally* is not the forum in which to develop an additional factual record . . . ." (*Ibid.*, italics added.) As fully set forth, *ante*, appellate courts have looked to the additional available record in a case to determine a statute of limitations claim and have taken judicial notice of documents not presented in the trial court. Second, *Peevy* is distinguishable. In *Peevy*, the defendant claimed that the San Bernardino Sheriff's Department had ignored his invocation of his right to counsel. To support that claim on appeal, he sought to introduce evidence not presented in the trial court of the practices of *other* law enforcement agencies. This Court found that even if the exhibits could be judicially noticed, the appellate court's refusal to do so was appropriate because evidence of the practices other law enforcement agencies was irrelevant to the practices of the agency that interrogated the defendant. (*Ibid.*, including fn. 4.) Here, however, real party has presented exhibits containing relevant evidence involving the issuance of and petitioner's arrest on a Vehicle Code section 40508 warrant *in this case*. Therefore, this case does not fall within the "general" policy contemplated by *Peevy*.

Finally, if this Court is able to determine from the available record in this case whether the action is or is not barred, then, contrary to petitioner's assertion, there is no need to remand the matter to the trial court for an evidentiary hearing. (*Delgado*, *supra*, 181 Cal.App.4th at p. 850; *Price*,

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[2] Petitioner quotes *Peevy* as follows: "[A]n appellate court is not the forum in which to develop an additional factual record . . . ." (Petitioner's Supplemental Traverse to Return of Real Party, p. 3.)

supra, 155 Cal.App.4th at pp. 997-998.)

CONCLUSION

For all the foregoing reasons, real party respectfully requests this Court deny petitioner's motion to strike real party's exhibits to its supplemental return.

DATED: February 1, 2013

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN V. APPELLATE DIVISION
S174773
(Ct. of App. 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 **February 1, 2013,** I served the following document

REAL PARTY'S OPPOSITION TO PETITIONER'S MOTION TO STRIKE EXHIBITS TO REAL PARTY'S RETURN

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I declare under penalty of perjury that the foregoing is true and correct. Executed on **February 1, 2013**, at Los Angeles, California.

YOLANDA FLORES, Secretary