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March 14, 2014

Hon. Tani Cantil-Sakauye, Chief Justice
Hon. Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Steen v. Appellate Division, Superior Court of Los Angeles County*, No. S174773

Dear Chief Justice Cantil-Sakauye and Associate Justices:

This original writ matter is fully briefed and awaiting oral argument.

On March 6, 2014, petitioner Jewerelene Steen filed a letter brief concerning *People v. Simpson*, 223 Cal.App.4th Supp. 6 (2014), a recent decision of the Appellate Division of the Superior Court of Los Angeles County (copy attached to this letter brief). In her letter, Steen claims that *Simpson* supports her argument that Penal Code section 959.1(c) ("section 959.1(c)") violates the separation of powers doctrine. Respondent Appellate Division, Superior Court of Los Angeles County submits this response and asks that the Court consider it with petitioner's letter brief. As explained below, *Simpson* does not undermine the Appellate Division's arguments that section 959.1(c) does not violate the separation of powers doctrine.

The Issue Before The Court In Steen

Penal Code section 959.1(c)(1) permits a court clerk, "[n]otwithstanding [Penal Code] Sections 740, 806, 949, and 959 or any other law to the contrary," to issue an "accusatory pleading" for the "offenses of failure to appear, pay a fine, or comply with an order of the court." The issue presented in this case is whether this statute violates the

separation of powers doctrine and/or federal and state due process guarantees. That issue was not presented in *Simpson.*

Background

This case arises from petitioner's failure-to-appear misdemeanor conviction. After being cited for driving with an expired registration and failing to provide evidence of financial responsibility, Steen signed a written promise to appear before the Los Angeles County Superior Court clerk, but then broke her promise and failed to appear. A court clerk issued a complaint charging Steen with failure to appear. Five years later, Steen appeared and demurred to the complaint on the grounds that section 959.1(c) violates the California Constitution's separation of powers doctrine and the federal and state Constitutions' due process clauses.

The trial court overruled the demurrer, accepted Steen's no contest plea, denied her probation, and sentenced her to county jail with credit for the time she had served. She appealed the conviction to the Appellate Division, which issued an unpublished opinion in June 2009, upholding both the order overruling her demurrer and her failure-to-appear conviction and rejecting her constitutional challenge. The panel consisted of Judges Debre K. Weintraub, Patti Jo McKay, and Fumiko H. Wasserman.

After Steen unsuccessfully petitioned the Court of Appeal for a transfer of the matter, she filed an original writ petition in this Court, which retained the matter and issued an OSC directing the People and the Appellate Division to file returns addressing the separation of powers issue. Approximately three years after they did so, this Court issued another OSC, directing the Appellate Division and the People to file returns addressing the due process issue and a statute of limitations issue that is unique to Steen's case. Those returns were filed in late 2012.

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People v. Simpson *And Petitioner's Letter Brief*

In her March 6 letter brief, petitioner claims that since the Appellate Division filed its second return, given *Simpson*—which was decided by a differently-constituted panel of the Appellate Division (Judges Alex Ricciardulli, Sanjay Kumar, and Gregory Keosian)—"the Appellate Division has changed its collective mind." (Ltr. at 2) To understand why that claim is an unfounded exaggeration, we explore *Simpson* in some detail and compare it to the arguments in this case.

Simpson began when Ms. Simpson was cited by a Los Angeles Police Department officer for unlawfully crossing a double yellow line to enter a high-occupancy vehicle (HOV) lane, a Vehicle Code violation, on a Los Angeles freeway. She invoked her right to a trial at which the officer testified that he observed her vehicle change lanes in front of him and cross over double yellow lines into the HOV lane, causing the officer to brake suddenly to avoid a collision. *Simpson*, 223 Cal.App.4th Supp. at 8.

The trial court then informed Simpson that it would find her guilty, and asked the officer whether Simpson's lane change was unsafe. The officer responded, "Yes." The court then added the charge of making an unsafe lane change and found Simpson guilty of both crossing double yellow lines into an HOV lane and making an unsafe lane change. The court fined Simpson, who then appealed. *Id.* at 9.

The Appellate Division ruled that the trial court's sua sponte amendment of the unsafe lane change charge was error because the trial court "did not have authority on its own motion to amend the complaint to add the charge." *Id.* at 8. The Appellate Division rested its holding on *statutory* grounds—an important detail Steen neglects to mention in her letter.

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Simpson noted that Penal Code section 1009 "only allows a court to 'order or permit .... the filing of an amended complaint,' *meaning that only a prosecutor may amend a complaint.* In the present case, the court did not grant a motion to amend by the prosecution, but rather itself amended the complaint by adding to the notice to appear the unsafe lane change violation. As such, it exceeded the *statutory authority* given to it by Penal Code section 1009." *Simpson*, 223 Cal.App.4th Supp. at 9 (ital. added).

Although *Simpson* rested its holding on statutory grounds, it went on to make comments about the separation of power doctrine—comments that, because the decision is based on statutory grounds, amount to pure dictum. It is that dictum on which Steen relies in her letter.

Simpson noted that "permitting a court *itself* to amend a notice to appear or a complaint would be unconstitutional based on a violation of separation of powers." *Id.* (orig. ital.) The totality of the Appellate Division's analysis on that point consists of the following:

> Article III, section 3 of the California Constitution provides: The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution. It is well settled that the prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring. [Citations.] This prosecutorial discretion to choose, for each particular case, the actual charges from among those potentially available arises from the complex considerations necessary for the effective and efficient administration of law enforcement. [Citation.] The prosecution's authority in this regard is founded, among other things, on the principle of separation of powers, and generally is not subject to

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> supervision by the judicial branch. [Citations.] (*People v. Birks* (1998) 19 Cal.4th 108, 134.) A court cannot authorize the institution of a criminal prosecution without the approval of the prosecutor. (*People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 204.) Thus, the trial court usurped the prosecutor's discretionary power to control the institution of criminal proceedings and violated the separation of powers by sua sponte adding a charge to the complaint.

Simpson, 223 Cal.App.4th Supp. at 9 (internal quotation marks omitted).

The Dictum In Simpson *Does Not Undermine The Appellate Division's Arguments In This Case*

The Appellate Division's dictum stating that the separation of powers doctrine prohibits a court from sua sponte "add[ing] a charge" to a criminal complaint must be understood in context. As noted, *Simpson* did not involve section 959.1(c), which authorizes a court clerk to issue a complaint for failure to appear, pay a fine, or comply; nor was there any other statutory authority for the amendment. Thus, *Simpson*'s statement that "[a] court cannot authorize the institution of a criminal prosecution without the approval of the prosecutor" must be understood as confined to a situation in which no *statutory* authority exists for the court to institute a criminal prosecution. In addition, contrary to what petitioner implies, *Simpson* did not purport to undermine the Appellate Division's decision in *this* case, in which the Appellate Division held that neither the separation of powers doctrine nor due process places in jeopardy, much less invalidates, the authority that section 959.1(c) gives a court clerk to initiate a complaint for the three offenses the statute specifies.

It is also questionable whether *Pellegrino*, which *Simpson* cited, supports *Simpson*'s broad statement that "[a] court cannot authorize the institution of a criminal prosecution without the approval of the

prosecutor." As we explained in our return, *Pellegrino* involved a situation very different from both *Simpson* and the case at bar.

Pellegrino involved a criminal action commenced by a private individual (Pellegrino), without the District Attorney's authorization or approval, after the trial court had disqualified the District Attorney and appointed Pellegrino as "Special Prosecutor." *See Pellegrino*, 27 Cal.App.3d at 195-97. The Court of Appeal upheld an order granting the writ petition of the District Attorney and Attorney General to vacate its orders disqualifying the District Attorney and appointing Pellegrino as Special Prosecutor and dismissing the prosecution. *Id.* at 198-206. The Court of Appeal held that the filing of criminal complaints by an individual "must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual." *Id.* at 206.

We also noted that what concerned the *Pellegrino* court was that private individuals could misuse the prosecutorial power in an effort to redress a personal grievance against an adversary and thereby undermine the fairness and efficiency of the criminal justice system. *See Pellegrino*, 27 Cal.App.3d at 201. To guard against such "misuse," we noted, *Pellegrino* held that a private individual *could* file a complaint and commence a criminal prosecution against another individual *but* that the complaint would not become "effective in instituting criminal proceedings" unless a prosecutor "approved, authorized or concurred in" it. *Id.* at 206.

We also noted the obvious: that *Pellegrino* did not involve section 959.1(c) or court clerk-initiated complaints; indeed, that statute was not enacted until 18 years after *Pellegrino* was decided. And we noted that nothing in *Pellegrino* suggests that a court clerk violates due process or the separation of powers doctrine in issuing complaints for the offenses permitted by that statute. Nor does *Pellegrino*, we noted, hold that due

process makes such a complaint "effective" only after a prosecutor approves, authorizes or concurs in it.

Finally, we noted that even *if* under *Pellegrino*, the court clerk's filing of the complaint against Steen under section 959.1(c) had to be "approved, authorized or concurred in" by the City Attorney before it became "effective in instituting criminal proceedings against" her, *Pellegrino* does not require that such complaints "must be approved, authorized or concurred in" by a prosecutor before they are *filed.* Rather, *Pellegrino* states that a prosecutor must approve, authorize, or concur in their filing "*before they are effective* in instituting criminal proceedings against an individual." 27 Cal.App.3d at 206 (italics added). In our case, at the hearing on Steen's demurrer, the City Attorney *did* "approve, authorize, or concur" in the filing of the court clerk's complaint. (Pet. Ex. B at 7 ("[W]e explicitly approve and concur in" the filing of the complaint.).

As noted, *Simpson* did not involve section 959.1(c). It involved a judge who, acting without statutory authority, took it upon herself to amend a complaint to add a charge after the evidence at trial—which came exclusively from the testimony of a police officer—revealed support for the charge. Unlike in this case, that unilateral action was unaccompanied by the *Pellegrino*-mandated "approval, authorization, or concurrence" in the amendment by a prosecutor. Thus, to uphold such an amendment would have undermined the Legislature's delegation of exclusive power to prosecutors to amend complaints and would have permitted judges, without statutory authority, to exercise that power. In addition, there was the element of surprise that was no doubt offensive to the Appellate Division. Had Simpson had advance warning of the additional charge, she could have determined whether she wished to proceed to trial on what would be two charges rather than one.

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There is another aspect of *Simpson* that is different from the situation in *Steen*: In *Simpson*, the evidence on which the court-ordered amendment was based came from events that occurred outside the court system—there, "on the 405 Freeway north of the Avalon exit" [*Simpson*, 223 Cal.App.4th Supp. at 8]—and supported by the testimony of an executive branch witness unconnected to the court system—an officer of the Los Angeles Police Department.

As we emphasized in our return, unlike all other criminal offenses, the three offenses in section 959.1(c) whose prosecution a court clerk may initiate are limited in kind—authorized only for failure to appear, pay a fine, or comply with a court order; traditional in character—similar to the prosecutions that courts have commenced for indirect contempt since California was admitted to the Union in 1850;[1] and supported by probable cause—i.e., evidence that court clerks have actual or constructive knowledge of in the form of data in county computer systems. In that limited circumstance, the initiation of a complaint by a court clerk does not violate the separation of powers doctrine because it does not "necessarily result[ ] in a material impairment" of another branch's "inherent power[.]" *Obrien v. Jones*, 23 Cal.4th 40, 50 (2000).

Simpson, of course, had no reason to consider these points because the unsafe lane offense at issue is *not* among the three court-related offenses that the Legislature has permitted court clerks to initiate under

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[1] As we noted in our return, courts possess the authority to commence criminal contempt prosecutions independently of prosecutors. *See, e.g., In re Michael G.*, 44 Cal.3d 283, 295-96 & n.10 (1988) (describing the "inherent contempt power of the courts"); *In re Buckley*, 10 Cal.3d 237, 247-48 (1973) (same); *see also In re Shortridge*, 99 Cal. 526, 532 (1893) (court have the "inherent right ... to punish as a contempt an act, whether committed in or out of its presence, which tends to impede, embarrass, or obstruct the court in the discharge of its duties...").

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section 959.1(c). The dictum in *Simpson* can thus be read as standing for a very limited proposition: that a judge's sua sponte, in-court, and mid-trial amendment of a charge that is *not* among the offenses specified in that statute and that is based on evidence from a non-court-related witness testifying about an event that occurred outside the court system "necessarily" "materially impairs" the prosecutor's "inherent power" because the Legislature has delegated the power to amend with such charges exclusively to prosecutors and withheld it from judges.

Conclusion

Simpson does not constitute the "game-changer" that Steen claims it is. It thus furnishes no basis for this Court to do what Steen urges—to "rule[ ], in conformance with People v. Simpson, that the initiation of the misdemeanor proceeding against her by a court clerk was constitutionally invalid." (Ltr. at 3)

Respectfully submitted,

REED SMITH LLP
By _____
Paul D. Fogel

Attorneys for Respondent Appellate Division, Superior Court of Los Angeles County

PDF:pf
cc: See attached service list

WORD COUNT CERTIFICATE

Pursuant to California Rule of Court 8.520(d)(2), this Letter Brief contains 2,437 words (including footnotes, but excluding the salutation, the signature block and this certificate). In so stating, I have relied on the word

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count of Microsoft Office Word 2010, the computer program used to prepare the return.

Executed on March 14, 2014 at San Francisco, California.

Paul D. Fogel

223 Cal.App.4th Supp. 6, 167 Cal.Rptr.3d 396, 14 Cal. Daily Op. Serv. 920
(Cite as: 223 Cal.App.4th Supp. 6, 167 Cal.Rptr.3d 396)

C

Appellate Division, Superior Court,
Los Angeles County.
PEOPLE of the State of California, Plaintiff and Respondent,
v.
Erica **SIMPSON**, Defendant and Appellant.

No. BR 050810.
Jan. 24, 2014.
Certified For Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part III.B.

Background: Defendant was convicted in the Superior Court, Los Angeles County, Metropolitan Trial Court, No. B717240,Deborah Christian, J., of crossing double yellow lines into a high-occupancy vehicle (HOV) lane, and making an unsafe lane change. Defendant appealed.

Holding: The Superior Court, Appellate Division, Ricciardulli, J., held that court usurped prosecutor's authority and violated separation of powers when it amended complaint itself.

Reversed.

West Headnotes

[1] Criminal Law 110 28

110 Criminal Law
110I Nature and Elements of Crime
110k28 k. Degrees of offenses. Most Cited Cases

Criminal Law 110 1714

110 Criminal Law
110XXXI Counsel
110XXXI(B) Right of Defendant to Counsel
110XXXI(B)1 In General
110k1711 Offenses, Tribunals, and Proceedings Involving Right to Counsel
110k1714 k. Nature or degree of offense. Most Cited Cases

Jury 230 22(.5)

230 Jury
230II Right to Trial by Jury
230k20 Criminal Prosecutions
230k22 Misdemeanors and Minor Offenses
230k22(.5) k. In general. Most Cited Cases

An infraction is a criminal matter subject generally to the provisions applicable to misdemeanors, except for the right to a jury trial, the possibility of confinement as a punishment, and the right to court-appointed counsel if indigent. U.S.C.A. Const.Amend. 6; West's Ann.Cal.Penal Code §§ 16, 19.6.

[2] Indictment and Information 210 162

210 Indictment and Information
210XI Amendment
210k162 k. Complaint or affidavit. Most Cited Cases

A complaint may be amended at any stage of the

proceedings, so long as the amendment does not prejudice the substantial rights of the defendant; an amendment may be made even at the close of trial where no prejudice is shown.

[3] Constitutional Law 92 2545(2)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)3 Encroachment on Executive
92k2542 Particular Issues and Applications
92k2545 Criminal Law
92k2545(2) k. Prosecutors. Most Cited Cases

District and Prosecuting Attorneys 131 8(6)

131 District and Prosecuting Attorneys
131k8 Powers and Proceedings in General
131k8(6) k. Charging discretion. Most Cited Cases

Indictment and Information 210 162

210 Indictment and Information
210XI Amendment
210k162 k. Complaint or affidavit. Most Cited Cases

Court usurped the prosecutor's discretionary power to control the institution of criminal proceedings and violated the separation of powers when court itself amended complaint to add charge of making an unsafe lane change. West's Ann.Cal. Const. Art. 3, § 3; West's Ann.Cal.Penal Code § 1009; West's Ann.Cal.Vehicle Code § 21658.

[4] Constitutional Law 92 2620

92 Constitutional Law
92XX Separation of Powers
92XX(D) Executive Powers and Functions
92k2620 k. Nature and scope in general. Most Cited Cases

District and Prosecuting Attorneys 131 8(6)

131 District and Prosecuting Attorneys
131k8 Powers and Proceedings in General
131k8(6) k. Charging discretion. Most Cited Cases

Prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring; this prosecutorial discretion to choose, for each particular case, the actual charges from among those potentially available arises from the complex considerations necessary for the effective and efficient administration of law enforcement. West's Ann.Cal. Const. Art. 3, § 3.

[5] Constitutional Law 92 2545(2)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)3 Encroachment on Executive
92k2542 Particular Issues and Applications
92k2545 Criminal Law
92k2545(2) k. Prosecutors. Most Cited Cases

The prosecution's authority to determine whom to charge and what charges to bring is founded, among other things, on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. West's Ann.Cal. Const. Art. 3, § 3.

[6] Constitutional Law 92 2545(2)

223 Cal.App.4th Supp. 6, 167 Cal.Rptr.3d 396, 14 Cal. Daily Op. Serv. 920
(Cite as: 223 Cal.App.4th Supp. 6, 167 Cal.Rptr.3d 396)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)3 Encroachment on Executive
92k2542 Particular Issues and Applications
92k2545 Criminal Law
92k2545(2) k. Prosecutors. Most Cited Cases

A court cannot authorize the institution of a criminal prosecution without the approval of the prosecutor. West's Ann.Cal. Const. Art. 3, § 3.

[7] Criminal Law 110 1032(1)

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1 In General
110k1032 Indictment or Information
110k1032(1) k. In general. Most Cited Cases

Defendant's failure to object to trial court's act in amending complaint to add charge of making an unsafe lane change did not preclude appellate review; defendant did not have the opportunity to object, as court ordered the amendment and immediately thereafter found defendant guilty, and, in any event, issue raised involved only questions of law based on undisputed facts. West's Ann.Cal.Penal Code § 1009.
See 4 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Pretrial Proceedings, § 242.

****397** Erica Simpson, in pro. per., for Defendant and Appellant.

Michael N. Feuer, City Attorney, Debbie Lew, Assistant City Attorney, John R. Winandy, Deputy City Attorney, for Plaintiff and Respondent.

OPINION

RICCIARDULLI, J.

**8 I. INTRODUCTION*

Appellant and defendant Erica Simpson appeals the judgment of conviction following****398** a court trial for crossing double yellow lines into a high-occupancy vehicle (HOV) lane, and for making an unsafe lane change. (Veh.Code, §§ 21655.8, subd. (a), 21658, subd. (a), respectively.) Pursuant to Government Code section 68081, the parties were provided with an opportunity to submit supplemental briefs addressing the issue of whether the trial court violated the separation of powers doctrine or its statutory authority by amending the complaint sua sponte to add the charge of making an unsafe lane change during the trial.

As discussed below in the published portion of this opinion, we reverse the judgment of conviction for making an unsafe lane change. The court did not have authority on its own motion to amend the complaint to add the charge. In the unpublished portions of this opinion, we reject defendant's arguments that the judgment should be reversed with respect to her conviction for crossing double yellow lines into an HOV lane.

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 9, 2012, defendant was issued a citation for crossing double yellow lines into an HOV lane in violation of section 21655.8, subdivision (a). Defendant signed a promise to appear in court on or before June 14, 2012. Defendant requested and was provided a trial by written declaration. The ticketing officer submitted a declaration concerning the infraction. After being found guilty, defendant requested a trial de novo.

At the trial de novo on March 11, 2013, Los Angeles Police Department Officer Schoop testified that he observed defendant's vehicle traveling south-

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(Cite as: 223 Cal.App.4th Supp. 6, 167 Cal.Rptr.3d 396)

bound on the 405 Freeway north of the Avalon exit. Defendant changed lanes in front of the officer into the HOV lane, crossing over a set of clearly visible double yellow lines which were in good repair. Defendant caused Schoop to brake suddenly in order to avoid a traffic collision.

***9** Schoop testified that he originally wrote on the citation that the incident occurred "South of Avalon," but prior to defendant signing her promise to appear, he made a correction to the citation indicating that the violation occurred "North of Avalon." Defendant asked Schoop at trial why he wrote "south" in his declaration, and he responded that he "made a mistake." Defendant requested that the case be dismissed because her citation stated that the violation occurred south of Avalon, and she prepared her defense relying on the location specified in her citation. The court denied her request, pointing out that the court's copy of the citation provided that the location of the violation was north of Avalon. The court further stated that the correction on the original citation regarding the location must not have gone through the carbon paper onto defendant's copy of the citation.

The court told defendant that it was going to find her guilty, and asked Schoop whether defendant's lane change was unsafe. The officer responded, "Yes." The court then added the charge of making an unsafe lane change under Vehicle Code section 21658, subdivision (a), and found defendant guilty both of crossing double yellow lines into an HOV lane, and of making an unsafe lane change. The court imposed a fine, and defendant filed a timely notice of appeal.

III. DISCUSSION

A. The Court's Amendment to Add a Charge

[1][2] An infraction is a criminal matter subject generally to the provisions applicable to misdemeanors, except for the right ****399** to a jury trial, the possibility of confinement as a punishment, and the right to court-appointed counsel if indigent. (Pen.Code, §§ 16, 19.6.) A written notice to appear filed with the trial court constitutes a complaint charging a person with an infraction. (Veh.Code, § 40513, subds. (a), (b).) A complaint may be amended at any stage of the proceedings, so long as "the amendment does not prejudice the substantial rights of the defendant [citations]." (*People v. Valles* (1961) 197 Cal.App.2d 362, 371, 17 Cal.Rptr. 204.) "An amendment may be made even at the close of trial where no prejudice is shown. [Citations.]" (*People v. Witt* (1975) 53 Cal.App.3d 154, 165, 125 Cal.Rptr. 653.)

[3] Penal Code section 1009 only allows a court to "order or permit ... the filing of an amended complaint," meaning that only a prosecutor may ***10** amend a complaint. In the present case, the court did not grant a motion to amend by the prosecution, but rather *itself* amended the complaint by adding to the notice to appear the unsafe lane change violation. As such, it exceeded the statutory authority given to it by Penal Code section 1009. Moreover, as explained below, permitting a court *itself* to amend a notice to appear or a complaint would be unconstitutional based on a violation of separation of powers.

[4][5][6] Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." "It is well settled that the prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring. [Citations.] This prosecutorial discretion to choose, for each particular case, the actual charges from among those potentially available arises from ' "the complex considerations necessary for the effective and efficient administration of law enforcement." ' [Citation.] The prosecution's authority in this regard is founded, among other things, on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. [Citations.]" (*People v. Birks* (1998) 19 Cal.4th 108, 134, 77 Cal.Rptr.2d 848, 960

P.2d 1073.) A court cannot authorize the institution of a criminal prosecution without the approval of the prosecutor. (*People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 204, 103 Cal.Rptr. 645.) Thus, the trial court usurped the prosecutor's discretionary power to control the institution of criminal proceedings and violated the separation of powers by sua sponte adding a charge to the complaint.

[7] We reject the People's argument in their supplemental brief that defendant failed to preserve the issue by not objecting on this ground in the trial court. Based on the court's action of ordering the amendment and immediately thereafter finding defendant guilty, we find defendant did not have the opportunity to object, and, in any event, because the issue raised "involve [s] only questions of law based on undisputed facts" (*People v. Rosas* (2010) 191 Cal.App.4th 107, 115, 119 Cal.Rptr.3d 74), we conclude that the issue is properly before us.

B. Contentions Regarding Crossing Double Yellow Lines Conviction FN**

FN** See footnote *, *ante.*

***11** *IV. DISPOSITION*

The judgment of conviction for making an unsafe lane change is reversed. The judgment of conviction is affirmed regarding**400** the conviction for crossing double yellow lines into an HOV lane.

We concur. KUMAR, ACTING P.J., and KEOSIAN, J.

Cal.Super.A.D.,2014.
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END OF DOCUMENT

PROOF OF SERVICE

Jewerelene Steen vs. Los Angeles Superior Court, Appellate Division (People of the State of California, Real Party in Interest),
Supreme Court No. S174773,
Los Angeles Appellate Division No. BR046020,
Los Angeles Superior Court No. 6200307

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On March 14, 2014, I served the following document(s) by the method indicated below:

LETTER BRIEF

☑ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

John Hamilton Scott, Esq. Albert J. Menaster, Esq. Office of the Public Defender 320 W. Temple Street, Room 590 Los Angeles, CA 90012	Attorneys for Petitioner Jewerelene Steen
Charles W. McCoy, Esq. Los Angeles County Superior Court 111 North Hill Street, Room 546 Los Angeles, CA 90012	Attorneys for Respondent Los Angeles County Superior Court, Appellate Division

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Attorney General Los Angeles Office Office of the Attorney General 300 South Spring Street, 5th Floor Los Angeles, CA 90013	Attorneys for Real Party in Interest The People of the State of California
Phyllis Chiemi Asayama Deputy District Attorney Los Angeles County District Attorney Office 320 W. Temple Street, Suite 540 Los Angeles, CA 90012	Attorneys for Amicus Curiae Los Angeles County District Attorney

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 14, 2014, at San Francisco, California.

Eileen Kroll