

SUPREME COURT
FILED

JAN 10 2019

Jorge Navarrete Clerk

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By Appointment of the California Supreme Court
In Association With The Appellate Defenders, Inc. Assisted Case System

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Plaintiff and Respondent,

v.

J.F.,

Defendant and Petitioner.

Case No. S248046

Court of Appeal, Fourth Appellate
District, Division One, Case No.
D071733

San Diego County Superior Court, Case
No. SCD204906

**OPPOSITION TO
RESPONDENT'S REQUEST FOR JUDICIAL NOTICE**

TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-SAKAUYE
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF CALIFORNIA:

This letter is written in opposition to the request for judicial notice
filed by Respondent on December 13, 2018.

This Court should not take judicial notice of Exhibits A or B.

Exhibits A and B derive from the record in a separate appeal in the

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Second District Court of Appeal, case number F454357.¹ Exhibit A is part of the Clerk's Transcripts for case number F454357, including the minutes setting the hearing for January 10, 2011, in San Luis Obispo County. Exhibit B is the Reporter's Transcript for a hearing held in San Luis Obispo Superior Court on January 10, 2011.

Respondent requests Exhibits A and B be judicially noticed to provide "*relevant* factual background underlying Appellant's initial MDO commitment. As well as *relevant* details regarding the procedural background leading to this commitment." (Motion, p. 2, emphasis added.) Respondent cites Evidence Code section 452, subdivision (d), in support of augmenting the record with "records of any court in this state[.]" (Evid. Code, § 452, subd. (d).)

Evidence Code section 459, subdivision (a), permits but does not require a reviewing court to take judicial notice of matters specified in Evidence Code section 452. (Evid. Code, § 452, subd. (a).) Courts are cautioned against judicially noticing matters that were not before the trial court. (*People v. Hardy* (1992) 2 Cal.4th 86, 134.) "[A]s a general rule the [appellate] court should not take ... [judicial] notice if, upon examination of the entire record, it appears that the matter has not been presented to and considered by the trial court in the first instance." (*People v. Preslie* (1977) 70 Cal.App.3d 486, 493.) This rule prevents unfairness that would flow from permitting one side to press an issue or theory on appeal that was not raised below. (*People v. Hamilton* (1986) 191 Cal.App.3d, Supp. 13, 22.)

¹ Respondent's Motion for Judicial Notice identifies the case number as "B230766" but the documents included in Exhibits A and B are for case number "F454357." (Motion, p. 2.)

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Further, it is not the job of this court to resolve factual disputes or establish the truth of material contained within documents not submitted to the trial court or court of appeal. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1065; *Vons Companies, Inc. v. Seabest Foods Inc.* (1996) 14 Cal.4th 343, 444, fn. 3.)

Exhibits A and B contain facts that are not part of the record in the appeal on review by the Fourth District Court of Appeal, Division One, or the San Diego Superior Court. Petitioner was not afforded the ability to address the validity of the statements in the Court of Appeal.

Additionally, documents that are not relevant to the issue on review and irrelevant evidence are not proper for judicial notice. (See *Best Buy Stores, L.P. v. Superior Court* (2006) 137 Cal.App.3th 772, 779; *Surfrider Foundation v. California Regional Water Quality Control Bd.* (2012) 211 Cal.App.4th 557, 569, fn. 7 [denying request for judicial notice where documents were "not relevant to [court's] analysis"].)

Exhibits A and B are not relevant to the case presently under review. The issue on review, per the order of this Court dated July 9, 2018, is:

Must a commitment or recommitment as an mentally disordered offender be vacated if the underlying offense supporting the initial commitment is redesignated as a misdemeanor under Proposition 47?

This issue addresses whether the San Diego Superior Court erred in denying Petitioner's motion to dismiss his MDO recommitment and the Court of Appeal erred in affirming this decision. Petitioner's motion was denied after the San Diego Superior Court reduced the underlying felony to a misdemeanor under Proposition 47.

The issue on review involves a question of law. Neither of the exhibits pertain to the issue under review. Exhibit A includes documents regarding the setting of trial regarding Petitioner's initial commitment hearing in 2011 under the Mentally Disordered Offender ("MDO") Act in the San Luis Obispo Superior Court. Exhibit B includes the testimony of Dr. Kevin Perry regarding his evaluation of Petitioner at Petitioner's initial commitment hearing. Whether Petitioner met the qualification for an initial MDO commitment in 2011 is not relevant to this Court's review of the San Diego Superior Court's decision in 2017 to deny Petitioner's motion to dismiss the MDO commitment.

Moreover, Proposition 47 was implemented in 2014. (Pen. Code, § 1178.18; Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47.) The Superior Court was not able to consider the effect of Proposition 47 on the MDO Act at the January 2011 hearing. Therefore, the documents requested are not relevant to the issue on review and, therefore, are not proper for judicial notice.

This Court should deny the Respondent's request for judicial notice for the reasons stated above.

Thank you for your consideration.

Dated: December 31, 2018

Respectfully submitted,



MICHELLE D. PEÑA
State Bar No. 303744
Attorney for Petitioner, J.F.

RE: *People v. J.F.*, Supreme Court Case No. S248046;
Court of Appeal Case No: D071733;
San Diego County Superior Court Case No. SCD204096

PROOF OF SERVICE

(Code Civ. Proc. § 1013a, subd (2); Cal. Rules of Court, rules 8.71(f) and 8.77)

I am an active member of the State Bar of California and not a party to this action. My electronic service address is: mdplaw@outlook.com. My business address is: The Law Office of Michelle D. Peña, 3830 Valley Centre Dr., Ste. 705, PMB 706, San Diego, CA 92130.

On December 31, 2018, I served the persons and/or entities listed below by the method indicated a copy of the document: **OPPOSITION TO RESPONDENT'S REQUEST FOR JUDICIAL NOTICE**. For those marked "Served Electronically," I transmitted a PDF version of the above-entitled document by TrueFiling electronic service or by e-mail to the e-mail service address(es) as provided below. Transmission occurred at approximately 3:00 p.m.

For those marked "Served by Mail," I deposited in a mailbox regularly maintained by the United States Postal Service at San Diego, California, a copy of the above-entitled document in a sealed envelope with postage fully prepaid, addressed as provided below.

California State Court of Appeal
Fourth District, Division One
750 B Street, Suite 300
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 Served by Mail

Attn: Stacy Tyler, Esq.
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Attn: Hon. David J. Danielsen, Judge
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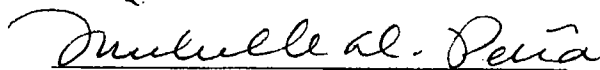
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J.F.
[Address of Record]
(Petitioner and Appellant)
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SUPREME COURT OF CALIFORNIA
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797
(Paper copy in addition to original)

I declare under penalty of perjury that the foregoing is true and correct, and this was executed on December 31, 2018, at San Diego, California.



Michelle D. Peña, Attorney at Law
Declarant
State Bar No. 303744