In the Supreme Court of the State of California

Case No. S252702

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

CODY WADE HENSON,

Defendant and Respondent.

Fifth Appellate District, Case No. F075101
Fresno County Superior Court, Case No. CF16903119
The Honorable W. Kent Hamlin, Judge

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

LISA A. SMITTCAMP
Fresno County District Attorney
ROBERT WHALEN
Chief Deputy District Attorney
DOUGLAS O. TREISMAN
Senior Deputy District Attorney
State Bar No. 131986
3333 E. American Ave., Ste. F
Fresno, CA 93725
Telephone: (559) 600-4923
FAX: (559) 600-4900
E-mail: dtreisman@co.fresno.ca.us
Attorneys for Plaintiff and Appellant

REQUEST FOR JUDICIAL NOTICE OF "CASE INFORMATION" RELATED TO SUPERIOR COURT CASES F16901499 AND F16903119 INCLUDED IN THE COURT'S ELECTRONIC DOCKET

TO THE HONORABLE PRESIDING JUSTICE TANI CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.252(a) of the California Rules of Court, appellant respectfully requests that the Court exercise its power under Evidence Code section 459 and take judicial notice of the Fresno County Superior Court electronic docket, entitled CASE INFORMATION for each of Superior Court case number F16901499 (hereinafter, case 499) and case number F16903119 (herein after case 119). Appellant specifically seeks the respective docket entries for November 29, 2016. However, to ensure that the entries sought are not out of context, a true and correct copy of the printed electronic docket for case 499 and 119 are attached hereto as Attachment "A" and Attachment "B" respectively for the convenience of the court.

A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code, § 459, subd. (a).) Section 452, subdivision (d), provides that judicial notice may be taken of records of any court of this state. And subdivision (d) of section 452 states current law. *Flores v. Arroyo* (1961) 56 Cal.2d 492, 496-497.)

The docket entries, particularly the respective entries made in each case on November 29, 2016, are relevant to the issue of when and how the Information filed by appellant in each of the respective cases and how the submission was treated by the courts' clerk. The entries demonstrate that the Information was placed into the court's respective files. This issue was touched on by both the majority and dissenting Justices in the Fifth District Court of Appeal Opinion in *People v. Henson* (2018) 28 Cal.App.5th 490.

Specifically, the Justices address that the Information submitted for filing by appellant on November 29, 2016 was "Received and Forwarded" for hearing on December 1, 2016. The entry further reads, "Information not entered sent to Dept for further hearing of 12/01/16 to be addressed in Court-Consolidation."

Thus, it is proper to judicially notice the courts records and records of the case. The Attached copies, labeled Attachment "A" and Attachment "B" are true and correct printouts of the court's electronic records. And this request is submitted contemporaneously with the filing of Appellant's Answer Brief On The Merits.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Fresno, California, on October 3, 2019.

Dated: October 3, 2019

Respectfully submitted,
LISA A. SMITTCAMP
Fresno County District Attorney

DOUGLAS O. TREISMAN
Senior Deputy District Attorney
Attorneys for Plaintiff and Appellant

ATTACHMENT "A"

Case Information

F16901499 | The People of the State of California vs. Cody Wade Henson

Case Number	Court	Judicial Officer
F16901499	Criminal	Penner, Don
File Date	Case Type	Case Status
03/07/2016	Felony	Consolidated

Party

Plaintiff	Active Attorneys ▾
The People of the State of California	Lead Attorney District Attorney

Defendant	Active Attorneys ▾
Henson, Cody Wade Aliases *AKA* Henson, Cody DOB XX/XX/XXXX	Lead Attorney Ciummo & Associates Court Appointed

Charge

Charges
Henson, Cody Wade

Description	Statute	Level	Date

	Description	Statute	Level	Date
001	Unlawful Taking Of Vehicle	VC	Felony	03/04/2016
002	Buying Or Receiving Stolen Vehicle Or Equipment	PC	Felony	03/04/2016
003	Resisting Public Or Peace Officer	PC	Misdemeanor	03/04/2016
004	Possession Of Burglary Tools	PC	Misdemeanor	03/04/2016

Bond Settings

Setting Date
3/7/2016
3/8/2016
5/31/2016
12/1/2016

Bond

Bond Type	Bond Number	Bond Amount	Current Bond Status

Bond Type	Bond Number	Bond Amount	Current Bond Status
Surety/Bail Bond	SV50-4722071	$46,000.00	Exonerated

Disposition Events

03/08/2016 Plea

Judicial Officer
Penner, Don

001	Unlawful Taking Of Vehicle	Not Guilty
002	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty
003	Resisting Public Or Peace Officer	Not Guilty
004	Possession Of Burglary Tools	Not Guilty

12/15/2016 Disposition

Judicial Officer
Penner, Don

001	Unlawful Taking Of Vehicle	Consolidated
002	Buying Or Receiving Stolen Vehicle Or Equipment	Consolidated
003	Resisting Public Or Peace Officer	Consolidated
004	Possession Of Burglary Tools	Consolidated

Events and Hearings

03/07/2016 Charging Document - Formal Complaint Filed

03/07/2016 Defendant in Custody ▾

Comment
Defendant is in custody at the Fresno County Jail

03/07/2016 JUS 8715 ▾

Comment
Filed

03/07/2016 Case Initiation Documents

03/08/2016 Arraignment ▾

Original Type
Arraignment

Judicial Officer
Penner, Don

Hearing Time
1:30 PM

Result
Heard

Comment
Department 34

03/08/2016 Court appoints Public Defender to represent Defendant

03/08/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: DJ Brickey Defendant Present: Yes

03/08/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

03/08/2016 Copy of charging document received by Defendant ▾

Comment
Document: Complaint

03/08/2016 Defendant waives reading/advisement ▾

Comment
The defendant waives reading of the complaining document, waives formal arraignment and waives reading of constitutional and statutory rights

03/08/2016 Defendant denies all enhancements and priors

03/08/2016 Hearing set within statutory time

Comment
Preliminary Hearing

03/08/2016 Tentative Preliminary Hearing date

Comment
Date: 3/18/16

03/08/2016 Defendant ordered to be present at next hearing

03/08/2016 Defendant remanded into custody

Comment
Bail Set at Amount: $46,000.00 Convicted: No

03/08/2016 Motion

Comment
Submitting Party: Defense Type of Motion: OR or PT release
Oral/Written: Oral

03/08/2016 Motion Denied

03/14/2016 Surety Bond Posted

Comment
Bond Number: SV50-4722071

03/14/2016 Previously set calendar date remains

Comment
Date: 3/15/2016

03/15/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Continued at Request of Defense

03/15/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: M. Pulido Defendant Present: Yes

03/15/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: S. Schroeder

03/15/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance to consider offer Oral/Written: Oral

03/15/2016 Motion Granted

03/15/2016 Defendant ordered to be present at next hearing

03/15/2016 Defendant Remains on Surety Bond

03/15/2016 Tentative Hearing Vacated

Comment
Date: 3/18/16

04/12/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

04/12/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

04/12/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: S. Schroeder

04/12/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Set Preliminary hearing and Pre-Preliminary hearing Oral/Written: Oral

04/12/2016 Motion Granted

04/12/2016 Defendant ordered to be present at next hearing

04/12/2016 Defendant Remains on Surety Bond

04/12/2016 Tentative Preliminary Hearing date ▾

Comment
Date: 05/24/16

05/10/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

05/10/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

05/10/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

05/10/2016 Text ▾

Comment
District Attorney offer of 3 years with 50/50 split, rejected by defendant.

05/10/2016 Preliminary Hearing is a go ▾

Comment
Time Estimate: 45 minutes

05/10/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Confirm Preliminary Hearing Oral/Written: Oral

05/10/2016 Motion Granted

05/10/2016 Defendant ordered to be present at next hearing

05/10/2016 Defendant Remains on Surety Bond

05/12/2016 Notice of Written Motion Filed

Comment
Submitted by:Defense Type of motion:Motion To Continue (Penal Code 1050)

05/24/2016 Preliminary Hearing

Original Type
Preliminary Hearing

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

05/24/2016 Motion - Continuance - Pre

Original Type
Motion - Continuance - Pre

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

Comment
Department 34

05/24/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: M. Pulido Defendant Present: Yes

05/24/2016 District Attorney appearing on behalf of the People

Comment

05/24/2016 Motion ▼

Comment
Submitting Party: Defense Type of Motion: Motion Oral/Written: Oral

05/24/2016 Motion Granted

05/24/2016 Time waiver withdrawn

05/24/2016 Tentative Preliminary Hearing date ▼

Comment
Date: 6/7/16

05/24/2016 Defendant ordered to be present at next hearing

05/24/2016 Hearing set within statutory time ▼

Comment
Preliminary Hearing

05/24/2016 Defendant Remains on Surety Bond

05/31/2016 Pre Prelim ▼

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

05/31/2016 Public Defender appearing with Defendant ▼

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

05/31/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: S. Schroeder

05/31/2016 Motion ▼

Comment
Oral motion by Defense requesting to vacate Preliminary

S

05/31/2016 Motion Granted

05/31/2016 Defendant enters specific time waiver ▾

Comment
Date: 06/23/2016 + Court Days: 10 court days and 10 day waiver, no 60.

05/31/2016 Tentative Hearing Vacated ▾

Comment
Date: 06/07/2016 - Preliminary Hearing

05/31/2016 Tentative Preliminary Hearing date ▾

Comment
Date: 06/23/2016

05/31/2016 Defendant ordered to be present at next hearing

05/31/2016 Defendant remanded into custody ▾

Comment
Bail Set at Amount: $46,000.00 Convicted: No

05/31/2016 Surety Bond Exonerated ▾

Comment
Bond Number: SV50-4722071

06/07/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

06/07/2016 Surety Bond Exoneration Notice Sent ▾

Comment
Bond Number: SV50-4722071

06/07/2016 Public Defender appearing with Defendant ▾

Comment

Deputy Public Defender: R. Tychsen Defendant Present: Yes

06/07/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

06/07/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

06/07/2016 Motion Granted

06/07/2016 Defendant ordered to be present at next hearing

06/07/2016 Tentative Hearing Vacated ▾

Comment
Date: 06/23/2016 - Preliminary Hearing

06/07/2016 Defendant remains in custody at Fresno County Jail

07/05/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Oppliger, James R

Hearing Time
8:30 AM

Result
Continued at Request of Defense

07/05/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

07/05/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

07/05/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

s

07/05/2016 Motion Granted

07/05/2016 Defendant ordered to be present at next hearing

07/05/2016 Defendant remains in custody at Fresno County Jail

07/26/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Nunez, Ralph

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

07/26/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

07/26/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

07/26/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

07/26/2016 Motion Granted

07/26/2016 Defendant ordered to be present at next hearing

07/26/2016 Defendant remains in custody at Fresno County Jail

07/29/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Nunez, Ralph

Hearing Time

8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

07/29/2016 Public Defender appearing with Defendant ▼

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

07/29/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: M. Marsh

07/29/2016 Motion ▼

Comment
Submitting Party: Defense Type of Motion: Set Preliminary Hearing and Pre-Preliminary Hearing Oral/Written: Oral

07/29/2016 Motion Granted

07/29/2016 Defendant ordered to be present at next hearing

07/29/2016 Defendant remains in custody at Fresno County Jail

07/29/2016 Tentative Preliminary Hearing date ▼

Comment
Date: 9/1/16

08/23/2016 Pre Prelim ▼

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

08/23/2016 Public Defender appearing with Defendant ▼

Comment

s

08/23/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

08/23/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

08/23/2016 Motion Granted

08/23/2016 Tentative Hearing Vacated ▾

Comment
Date: 9/1/16

08/23/2016 Defendant ordered to be present at next hearing

08/23/2016 Defendant remains in custody at Fresno County Jail

08/23/2016 Case to trail another case ▾

Comment
Case number: F16905032

09/09/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Department 34

09/09/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

09/09/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

09/09/2016 Case to trail another case

Comment
Case number: F16905032

09/09/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance; defendant to hire private attorney Oral/Written: Oral

09/09/2016 Motion Granted

09/09/2016 Defendant ordered to be present at next hearing

09/09/2016 Defendant remains in custody at Fresno County Jail

09/09/2016 Tentative Preliminary Hearing date

Comment
Date: 11/17/16

10/18/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued Upon Court's Own Motion

Comment
Department 34

10/18/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

10/18/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

10/18/2016 Case to trail another case

Comment
Case number: F16905032

S

10/18/2016 Motion ▾

Comment
Defendant requests a Marsden Motion hearing

10/18/2016 Text: ▾

Comment
Court continues case for Marsden and Pre-Preliminary Hearing.

10/18/2016 Tentative Preliminary Hearing date ▾

Comment
Date: 11/17/2016-Remains.

10/18/2016 Defendant ordered to be present at next hearing

10/18/2016 Defendant remains in custody at Fresno County Jail

10/20/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

10/20/2016 Motion - Marsden ▾

Original Type
Motion - Marsden

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

10/20/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

10/20/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

10/20/2016 Preliminary Hearing is a go

Comment
Time Estimate: 2 days total

10/20/2016 Case to trail another case

Comment
Case number: F16905032

10/20/2016 Motion

Comment
Submitting Party: Defendant Type of Motion: To withdraw Marsden Oral/Written: Oral

10/20/2016 Motion Granted

10/20/2016 Motion taken off calendar

10/20/2016 Motion

Comment
Submitting Party: Defense Type of Motion: To confirm for Preliminary Hearing Oral/Written: Oral

10/20/2016 Motion Granted

10/20/2016 Time waiver withdrawn

10/20/2016 Text:

Comment
60th: 12/19/16

10/20/2016 Tentative Hearing Vacated

Comment
Date: 11/17/16 Preliminary Hearing

10/20/2016 Defendant ordered to be present at next hearing

10/20/2016 Text:

Comment
Defendant informs the Court of previous recusal of the Court under CCP 170.1 on other cases.

10/20/2016 Text:

S

Comment
Court makes a disclosure under Canon 3E and does not recuse itself on this case, as fully stated on the record.

10/20/2016 Defendant remains in custody at Fresno County Jail

11/10/2016 Preliminary Hearing ▾

Original Type
Preliminary Hearing

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

Comment
Dept 34

11/10/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

11/10/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyer

11/10/2016 Preliminary Hearing is a go ▾

Comment
Time Estimate: 4 hours total

11/10/2016 Case to trail another case ▾

Comment
Case number: F16905032

11/10/2016 Motion ▾

Comment
Submitting Party: People Type of Motion: To trail Preliminary Hearing to 11/16/16 Oral/Written: Oral

11/10/2016 Motion Granted

11/10/2016 Defendant ordered to be present at next hearing

11/10/2016 Text ▾

Comment
No opposition by Defense.

11/10/2016 Text:

Comment
60th: 12/19/16

11/10/2016 Defendant remains in custody at Fresno County Jail

11/16/2016 Preliminary Hearing

Original Type
Preliminary Hearing

Judicial Officer
Whitehead, Denise

Hearing Time
8:30 AM

Result
Continued at Request of People

Comment
Dept 34 PH

11/16/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: R. Tyson Defendant Present: Yes

11/16/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

11/16/2016 Motion

Comment
Submitting Party: People Type of Motion: Continuance - witness issues Oral/Written: Oral Defense counsel makes objection - fully stated on the record

11/16/2016 Motion Granted

11/16/2016 Defendant ordered to be present at next hearing

11/16/2016 Defendant remains in custody at Fresno County Jail

11/16/2016 Defendant enters specific time waiver

Comment
Date: 12/19/16 - REMAINS

11/16/2016 Case to trail another case

Comment
Case number: F16903119 and F16905032 matters set in Department 34 on 12/1/2016

11/22/2016 Preliminary Hearing

Original Type
Preliminary Hearing

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Prelim Commenced

11/22/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

11/22/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

11/22/2016 Defendant waives

Comment
Right to continuous Preliminary Hearing.

11/22/2016 Motion to exclude all witnesses

Comment
Motion by: Defense Granted/Denied: Granted

11/22/2016 Witness sworn and testified

Comment
Witness: Todd Burk, Fresno Sheriffs Office Deputy Behalf of the: People

11/22/2016 Witness sworn and testified

Comment
Witness: Vic Molano, Fresno Sheriffs Office Deputy Behalf of the: People

11/22/2016 The People rest

ls

11/22/2016 The Defense rests

11/22/2016 Matter submitted ▾

Comment
Matter submitted With/Without Argument: With

11/22/2016 Court finds Held to Answer ▾

Comment
It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER as to Count(s): 001 VC-10851(a), 002 PC-496d(a), 003 PC-148(a)(1), 004 PC-466 Parties ordered to appear: Defendant

11/22/2016 Defendant ordered to be present at next hearing

11/22/2016 Motion ▾

Comment
Submitting Party: People Type of Motion: Defendant be held to answer as charged Oral/Written: Oral

11/22/2016 Motion Granted

11/22/2016 Defendant remains in custody at Fresno County Jail

11/29/2016 Received and Forwarded ▾

Comment
Information not entered sent to Dept for future hearing of 12/01/16 to be addressed in Court-Consolidation

12/01/2016 Arraignment - Held to Answer Arraignment ▾

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

12/01/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

12/01/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

12/01/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continue held to answer arraignment to check for conflict Oral/Written: Oral

12/01/2016 Motion Granted

12/01/2016 Defendant waived statutory time

Comment
Hearing Type: Held to Answer Arraignment

12/01/2016 Defendant ordered to be present at next hearing

12/01/2016 Defendant remanded into custody

Comment
Bail Set at $46,000.00 Convicted: No

12/08/2016 Arraignment - Held to Answer Arraignment

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

12/08/2016 Public Defender appearing with Defendant

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

12/08/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: A. Cobb

S

12/08/2016 Motion ▼

Comment
Submitting Party: Defense Type of Motion: Continuance to argue filing of consolidated information Oral/Written: Oral

12/08/2016 Motion Granted

12/08/2016 Defendant waived statutory time ▼

Comment
Hearing Type: Arraignment

12/08/2016 Defendant ordered to be present at next hearing

12/08/2016 Defendant remains in custody at Fresno County Jail

12/15/2016 Arraignment - Held to Answer Arraignment ▼

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

Comment
Dept 34

12/15/2016 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: P. Seiler Defendant present: Yes

12/15/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: I. Aliyev

12/15/2016 Attorney conflict; new counsel appointed ▼

Comment
It appearing there is an attorney conflict. New counsel is appointed. Attorney relieved: Public Defender Attorney appointed: Ciummo and Associates Reason: Conflict

12/15/2016 Attorney relieved as Attorney of Record ▼

Comment
Attorney relieved: Public Defender

12/15/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: The Court to refuse the filing of the consolidated information. Oral/Written: Oral

12/15/2016 Motion Denied

12/15/2016 Court orders case consolidated. ▾

Comment
All proceedings will be recorded in: F16903199

12/15/2016 Defendant Released on all Counts

12/15/2016 Defendant released on this case only ▾

Comment
remains In-Custody on F16903199

12/30/2016 Copies of transcripts emailed by Court Reporter ▾

Comment
To: DA and PD

03/09/2017 Appeals Receipt Filed

01/11/2018 DMV Non-Reportable Violation

Financial

No financial information exists for this case.

ATTACHMENT "B"

Case Information

F16903119 | The People of the State of California vs. Cody Wade Henson

Case Number	Court	Judicial Officer
F16903119	Criminal	Hamlin, W Kent
File Date	Case Type	Case Status
05/19/2016	Felony	Dismissed

Party

Plaintiff	Active Attorneys ▾
The People of the State of California	Lead Attorney District Attorney

Defendant	Active Attorneys ▾
Henson, Cody Wade Aliases *AKA* Henson, Cody DOB XX/XX/XXXX	Lead Attorney Associates, Ciummo and Court Appointed

Charge

Charges
Henson, Cody Wade

Description	Statute	Level	Date

	Description	Statute	Level	Date
001	Unlawful Taking Of Vehicle	VC	Felony	03/04/2016
002	Buying Or Receiving Stolen Vehicle Or Equipment	PC	Felony	03/04/2016
003	Resisting Public Or Peace Officer	PC	Misdemeanor	03/04/2016
004	Possession Of Burglary Tools	PC	Misdemeanor	03/04/2016
005	Unlawful Taking Of Vehicle	VC	Felony	05/17/2016
006	Buying Or Receiving Stolen Vehicle Or Equipment	PC	Felony	05/17/2016
007	Buying Or Receiving Stolen Vehicle Or Equipment	PC	Felony	05/17/2016

Bond Settings

Setting Date
5/19/2016
5/20/2016
12/1/2016
12/15/2016

Disposition Events

05/24/2016 Plea

Judicial Officer
Penner, Don

001	Unlawful Taking Of Vehicle	Not Guilty
002	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty
005	Unlawful Taking Of Vehicle	Not Guilty
006	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty
003	Resisting Public Or Peace Officer	Not Guilty

12/15/2016 Plea

Judicial Officer
Penner, Don

001	Unlawful Taking Of Vehicle	Not Guilty
002	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty
005	Unlawful Taking Of Vehicle	Not Guilty
006	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty
003	Resisting Public Or Peace Officer	Not Guilty

12/15/2016 Plea

Judicial Officer
Penner, Don

004	Possession Of Burglary Tools	Not Guilty
007	Buying Or Receiving Stolen Vehicle Or Equipment	Not Guilty

ls

01/18/2017 Disposition

Judicial Officer
Hamlin, W Kent

001	Unlawful Taking Of Vehicle	Dismissal - Before Trial (E-995)
002	Buying Or Receiving Stolen Vehicle Or Equipment	Dismissal - Before Trial (E-995)
003	Resisting Public Or Peace Officer	Dismissal - Before Trial (E-995)
004	Possession Of Burglary Tools	Dismissal - Before Trial (E-995)

02/22/2017 Disposition

Judicial Officer
Hamlin, W Kent

005	Unlawful Taking Of Vehicle	Dismissal - Before Trial (D-1381/1381.5/1382 Delay)
006	Buying Or Receiving Stolen Vehicle Or Equipment	Dismissal - Before Trial (D-1381/1381.5/1382 Delay)
007	Buying Or Receiving Stolen Vehicle Or Equipment	Dismissal - Before Trial (D-1381/1381.5/1382 Delay)

Events and Hearings

05/19/2016 Charging Document - Formal Complaint Filed

05/19/2016 JUS 8715

Comment
Filed

Comment
Defendant is in custody at the Fresno County Jail

05/19/2016 Case Initiation Documents

05/20/2016 Arraignment ▾

Original Type
Arraignment

Judicial Officer
Penner, Don

Hearing Time
1:30 PM

Result
Continued at Request of Defense

Comment
Dept 34

05/20/2016 Public Defender appearing with Defendant ▾

Comment
Deputy Public Defender: DJ Brickey Defendant Present: Yes

05/20/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

05/20/2016 Court appoints Public Defender to represent Defendant

05/20/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Continuance to be heard with other cases Oral/Written: Oral

05/20/2016 Motion Granted

05/20/2016 Defendant waived statutory time ▾

Comment
Hearing Type: Arraignment

05/20/2016 Defendant remanded into custody ▾

Comment
Bail Set at Amount: $220,000.00 Convicted: No

05/20/2016 Defendant ordered to be present at next hearing

ls

05/20/2016 Special Report of Probation Officer Filed ▾

Comment
Pre Trial Report

05/24/2016 Arraignment ▾

Original Type
Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

05/24/2016 Attorney conflict; new counsel appointed ▾

Comment
It appearing there is an attorney conflict. New counsel is appointed. Attorney relieved: Public Defender Attorney appointed: Ciummo and Associates Reason: Other- Relieved

05/24/2016 Attorney relieved as Attorney of Record ▾

Comment
Attorney relieved: Public Defender

05/24/2016 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: K. Moore Defendant present: Yes

05/24/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: S. Schroeder

05/24/2016 Copy of charging document received by Defendant ▾

Comment
Document: Complaint

05/24/2016 Defendant waives reading/advisement ▾

Comment
The defendant waives reading of the complaining document, waives formal arraignment and waives reading of constitutional and statutory rights

ls

05/24/2016 Defendant denies all enhancements and priors

05/24/2016 Hearing set within statutory time ▼

Comment
Preliminary Hearing

05/24/2016 Tentative Preliminary Hearing date ▼

Comment
Date: 6/7/16

05/24/2016 Defendant ordered to be present at next hearing

05/24/2016 Defendant remains in custody at Fresno County Jail

05/31/2016 Pre Prelim ▼

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

05/31/2016 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: K. Moore Defendant present: Yes

05/31/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: S. Schroeder

05/31/2016 Motion ▼

Comment
Oral motion by Defense requesting to vacate Preliminary Hearing and reset dates to discuss new offer with defendant.

05/31/2016 Motion Granted

05/31/2016 Defendant enters specific time waiver ▼

Comment
Date: 06/23/2016 + Court Days: 10 court days and 10 day

05/31/2016 Time Out Date:

Comment
07/25/2016

05/31/2016 Tentative Hearing Vacated

Comment
Date: 06/07/2016

05/31/2016 Tentative Preliminary Hearing date

Comment
Date: 06/23/2016

05/31/2016 Defendant ordered to be present at next hearing

05/31/2016 Defendant remains in custody at Fresno County Jail

06/07/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

06/07/2016 Special appearance by Attorney

Comment
Attorney: R. Tychsen For Attorney: Ciummo and Associates - K. Moore Defendant present: Yes

06/07/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: S. Schroeder

06/07/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance - Mr. Moore unavailable Oral/Written: Oral

06/07/2016 Motion Granted

ls

06/07/2016 Time Out Date:

Comment
07/25/2016

06/07/2016 Defendant ordered to be present at next hearing

06/07/2016 Tentative Hearing Vacated

Comment
Date: 06/23/2016 - Preliminary Hearing

06/07/2016 Defendant remains in custody at Fresno County Jail

07/05/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Oppliger, James R

Hearing Time
8:30 AM

Result
Continued at Request of Defense

07/05/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: K. Moore Defendant present: Yes

07/05/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: S. Schroeder

07/05/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

07/05/2016 Motion Granted

07/05/2016 Defendant ordered to be present at next hearing

07/05/2016 Defendant remains in custody at Fresno County Jail

07/26/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Nunez, Ralph

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

07/26/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: K. Moore Defendant present: Yes

07/26/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

07/26/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

07/26/2016 Motion Granted

07/26/2016 Defendant ordered to be present at next hearing

07/26/2016 Defendant remains in custody at Fresno County Jail

07/29/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Nunez, Ralph

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

07/29/2016 Ciummo and Associates appearing on behalf of Defendant

ls

Comment
Attorney: K. Moore Defendant present: Yes

07/29/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: M. Marsh

07/29/2016 Motion ▼

Comment
Submitting Party: Defense Type of Motion: Set Preliminary Hearing and Pre-Preliminary Hearing Oral/Written: Oral

07/29/2016 Motion Granted

07/29/2016 Defendant ordered to be present at next hearing

07/29/2016 Tentative Preliminary Hearing date ▼

Comment
Date: 9/1/16

07/29/2016 Defendant remains in custody at Fresno County Jail

08/23/2016 Pre Prelim ▼

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

08/23/2016 Public Defender appearing with Defendant ▼

Comment
Deputy Public Defender: R. Tychsen Defendant Present: Yes

08/23/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: I. Aliyev

08/23/2016 Motion ▼

ils

Comment
Submitting Party: Defense Type of Motion: Continuance
Oral/Written: Oral

08/23/2016 Motion Granted

08/23/2016 Tentative Hearing Vacated

Comment
Date: 9/1/16

08/23/2016 Defendant ordered to be present at next hearing

08/23/2016 Defendant remains in custody at Fresno County Jail

08/23/2016 Case to trail another case

Comment
Case number: F16905032

09/09/2016 Pre Prelim

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Department 34

09/09/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

09/09/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

09/09/2016 Case to trail another case

Comment
Case number: F16905032

09/09/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance; defendant to hire private attorney Oral/Written: Oral

09/09/2016 Motion Granted

09/09/2016 Defendant ordered to be present at next hearing

09/09/2016 Defendant remains in custody at Fresno County Jail

09/09/2016 Tentative Preliminary Hearing date ▼

Comment
Date: 11/17/16

10/18/2016 Pre Prelim ▼

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued Upon Court's Own Motion

Comment
Department 34

10/18/2016 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: P. Seiler Defendant present: Yes

10/18/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: I. Aliyev

10/18/2016 Case to trail another case ▼

Comment
Case number: F16905032

10/18/2016 Motion ▼

Comment
Defendant requests a Marsden Motion hearing

10/18/2016 Tentative Preliminary Hearing date ▼

ls

Comment
Date: 11/17/2016-Remains.

10/18/2016 Defendant ordered to be present at next hearing

10/18/2016 Defendant remains in custody at Fresno County Jail

10/18/2016 Text ▾

Comment
Court continues case for Marsden and Pre-Preliminary Hearing.

10/20/2016 Pre Prelim ▾

Original Type
Pre Prelim

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

10/20/2016 Motion - Marsden ▾

Original Type
Motion - Marsden

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

10/20/2016 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: P. Seiler Defendant present: Yes

10/20/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

10/20/2016 Case to trail another case ▾

Comment

10/20/2016 Motion ▼

Comment
Defendant requests a Marsden Motion hearing

10/20/2016 Court finds good cause ▼

Comment
to hold In-Camera Marsden Motion hearing in closed courtroom setting

10/20/2016 Marsden motion by Defendant for new counsel is denied

10/20/2016 Court orders ▼

Comment
the transcripts of the In-Camera Marsden proceedings to be filed confidentially until further order of the Court.

10/20/2016 Preliminary Hearing is a go ▼

Comment
Time Estimate: 2 hours total

10/20/2016 Motion ▼

Comment
Submitting Party: Defense Type of Motion: To confirm Preliminary Hearing Oral/Written: Oral

10/20/2016 Motion Granted

10/20/2016 Text: ▼

Comment
Defendant informs the Court of previous recusal of the Court under CCP 170.1 on other cases.

10/20/2016 Text: ▼

Comment
Court makes a disclosure under Canon 3E and does not recuse itself on this case, as fully stated on the record.

10/20/2016 Time waiver withdrawn

10/20/2016 Text: ▼

Comment
60th: 12/19/16

ls

10/20/2016 Defendant remains in custody at Fresno County Jail

11/10/2016 Preliminary Hearing ▼

Original Type
Preliminary Hearing

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of People

Comment
Dept 34

11/10/2016 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: P. Seiler Defendant present: Yes

11/10/2016 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: I. Aliyer

11/10/2016 Preliminary Hearing is a go ▼

Comment
Time Estimate: 4 hours total

11/10/2016 Case to trail another case ▼

Comment
Case number: F16905032

11/10/2016 Motion ▼

Comment
Submitting Party: People Type of Motion: To trail Preliminary Hearing to 11/16/16 Oral/Written: Oral

11/10/2016 Motion Granted

11/10/2016 Defendant ordered to be present at next hearing

11/10/2016 Text: ▼

Comment

11/10/2016 Text:

Comment
60th: 12/19/16

11/10/2016 Defendant remains in custody at Fresno County Jail

11/16/2016 Preliminary Hearing

Original Type
Preliminary Hearing

Judicial Officer
Whitehead, Denise

Hearing Time
8:30 AM

Result
Prelim Commenced

Comment
Dept 34 PH

11/16/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

11/16/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

11/16/2016 Motion to exclude all witnesses

Comment
Motion by: Defense Granted/Denied: Granted

11/16/2016 Witness sworn and testified

Comment
Witness: Dustin Dimmer Behalf of the: People

11/16/2016 Witness sworn and testified

Comment
Witness: Derrick Saldana Behalf of the: People

11/16/2016 The People rest

11/16/2016 The Defense rests

11/16/2016 Matter submitted ▾

Comment
Matter submitted with argument

11/16/2016 Court finds Held to Answer ▾

Comment
It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER as to Count(s): Ct 1 VC10851(a), Ct 2 PC496d(a), Ct 3 VC10851(a), Ct 4 PC496d(a) - NO HOLDINGS as to PC666.5 on any counts Parties ordered to appear: Defendant and counsel in Department 34 at 8:30 a.m. for HTA

11/16/2016 Defendant ordered to be present at next hearing

11/16/2016 Certified Law School Student appearing ▾

Comment
On Behalf of: People Name: Ashley Borba

11/16/2016 Motion ▾

Comment
Submitting Party: People Type of Motion: Dismiss Count 5 Oral/Written: Oral

11/16/2016 Motion Granted

11/16/2016 Court finds ▾

Comment
Finding: in regard to alleged charges and Prop 47 fully stated on the record

11/16/2016 Motion ▾

Comment
Submitting Party: People Type of Motion: No reduction in bail Oral/Written: Oral

11/16/2016 Motion Denied

11/16/2016 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Reduce bail based on holding order Oral/Written: Oral

11/16/2016 Motion Granted

ils

11/16/2016 Defendant remanded into custody

Comment
Bail Reduced to Amount: $160,000.00 Convicted: No

11/16/2016 Defendant remains in custody at Fresno County Jail

11/28/2016 Copies of transcripts emailed by Court Reporter

Comment
To: DA and Ciummo & Associates

11/29/2016 Received and Forwarded

Comment
Information not entered sent to Dept for future hearing of 12/01/16 to be addressed in Court-Consolidation

12/01/2016 Arraignment - Held to Answer Arraignment

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

12/01/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: D. Foster Defendant present: Yes

12/01/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

12/01/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance held to answer Oral/Written: Oral

12/01/2016 Motion Granted

12/01/2016 Defendant waived statutory time

Hearing Type: Held to answer arraignment

12/01/2016 Defendant ordered to be present at next hearing

12/01/2016 Defendant remanded into custody

Comment
Bail Set at $160,000.00 Convicted: No

12/01/2016 Information Filed

12/08/2016 Arraignment - Held to Answer Arraignment

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

12/08/2016 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

12/08/2016 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: A. Cobb

12/08/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Continuance to argue filing of consolidate information. Oral/Written: Oral

12/08/2016 Motion Granted

12/08/2016 Defendant waived statutory time

Comment
Hearing Type: Arraignment

12/08/2016 Defendant ordered to be present at next hearing

ls

12/06/2016 Defendant remains in custody at Fresno County Jail

12/15/2016 Arraignment - Held to Answer Arraignment ▾

Original Type
Arraignment - Held to Answer Arraignment

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

Comment
Dept 34

12/15/2016 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: P. Seiler Defendant present: Yes

12/15/2016 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

12/15/2016 Copy of charging document received by Defendant ▾

Comment
Document: Consolidated Complaint

12/15/2016 Defendant waives reading/advisement ▾

Comment
The defendant waives reading of the complaining document, waives formal arraignment and waives reading of constitutional and statutory rights

12/15/2016 Defendant denies all enhancements and priors

12/15/2016 Hearing set within statutory time ▾

Comment
Trial

12/15/2016 Defendant ordered to be present at next hearing

12/15/2016 Defendant remanded into custody ▾

Comment

Bail Set at $200,000.00 Convicted: No

12/15/2016 Court orders case(s) consolidated with this case

Comment
Case #: F16901499

12/15/2016 Court orders

Comment
This case as lead case with case F16901499 consolidated into this case.

12/15/2016 Motion

Comment
Submitting Party: Defense Type of Motion: Requesting the Court to refuse the filing of the consolidated information Oral/Written: Oral

12/15/2016 Motion Denied

12/15/2016 Tentative Jury Trial date

Comment
Date: 1/23/17

12/15/2016 Time Out Date:

Comment
2/14/17

12/21/2016 Notice of Written Motion Filed

Comment
Submitted by:Defense Type of motion:Notice Of Motion And Motion To Dismiss [Penal Code 995]; Points and Authorities in Support Thereof.

01/04/2017 Opposition Paper Filed

Comment
Filed by:District Attorney Type:People's Opposition To Defendant's Motion To Set aside Information Pursuant To Penal Code 995

01/12/2017 Settlement Conference

Original Type
Settlement Conference

Judicial Officer

ls

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

01/12/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

01/12/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

01/12/2017 Motion

Comment
Submitting Party: Defense Type of Motion: Continue Settlement Conference leaving Jury Trial and 995 motion set. Oral/Written: Oral

01/12/2017 Motion Granted

01/12/2017 Defendant ordered to be present at next hearing

01/12/2017 Previously set calendar date remains

Comment
1/13/17 at 1:30 PM in Department 73

01/12/2017 Tentative Jury Trial date

Comment
Date: 1/23/17 remains

01/12/2017 Fingerprint card Filed

01/12/2017 Time Out Date:

Comment
2/14/17

01/12/2017 Defendant remains in custody at Fresno County Jail

01/13/2017 Motion - Set Aside Information PC 995

Original Type

ils

Motion - Set Aside Information PC 995

Judicial Officer
Hamlin, W Kent

Hearing Time
1:30 PM

Result
Continued at Request of People

Comment
Department 73

01/13/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

01/13/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

01/13/2017 Motion to set aside pursuant to Penal Code 995 is denied

Comment
Document: Information

01/13/2017 Motion

Comment
Submitting Party: People Type of Motion: A continuance to allow further research Oral/Written: Oral

01/13/2017 Motion Granted

01/13/2017 Defendant ordered to be present at next hearing

01/13/2017 Defendant remains in custody at Fresno County Jail

01/13/2017 Court orders

Comment
The people is to submit, if any, briefs to the court and defense counsel on or before January 17, 2017 and on or before 4:00 PM

01/13/2017 Minute Order Corrected/Amended

Comment
Corrected

01/18/2017 Motion - Set Aside Information PC 995

Original Type
Motion - Set Aside Information PC 995

Judicial Officer
Hamlin, W Kent

Hearing Time
8:30 AM

Result
Commenced

Comment
9:00

01/18/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: Ismael Aliyev

01/18/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: Pauline Seiler Defendant present: Yes

01/18/2017 Motion to set aside pursuant to Penal Code 995 is granted

Comment
Document: Information As to counts 001, 002, 003, 004.

01/18/2017 Previously set calendar date remains

Comment
Settlement Conference on 1/19/17 at 8:30 a.m. in Dept. 34.

01/18/2017 Defendant ordered to be present at next hearing

01/18/2017 Defendant remains in custody at Fresno County Jail

01/19/2017 Settlement Conference

Original Type
Settlement Conference

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

Comment
Dept 34

ls

01/19/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

01/19/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

01/19/2017 Defendant provided proof

Comment
Proof: Documents on brother's funeral.

01/19/2017 Text:

Comment
Defense's request for funeral to be addressed on 01/26/2017.

01/19/2017 Motion

Comment
Submitting Party: Defense Type of Motion: To vacate Jury Trial and reset dates within time out date. Oral/Written: Oral

01/19/2017 Motion Granted

01/19/2017 Defendant ordered to be present at next hearing

01/19/2017 Tentative Hearing Vacated

Comment
Date: 01/23/2017

01/19/2017 Tentative Jury Trial date

Comment
Date: 01/30/2017

01/19/2017 Defendant remains in custody at Fresno County Jail

01/19/2017 Time Out Date:

Comment
02/10/2017

01/26/2017 Settlement Conference

ils

Settlement Conference

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

01/26/2017 Hearing- Pre ▼

Original Type
Hearing- Pre

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Heard

01/26/2017 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: P. Seiler Defendant present: Yes

01/26/2017 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: I. Aliyev

01/26/2017 Motion ▼

Comment
Submitting Party: Defense Type of Motion: To vacate Jury Trial and reset dates to subpoena a necessary witness. Oral/Written: Oral

01/26/2017 Motion Granted

01/26/2017 Motion ▼

Comment
Submitting Party: Defense Type of Motion: Requesting Compassionate Release to attend half-brother's funeral. Oral/Written: Oral

01/26/2017 Motion Denied

01/26/2017 Defendant enters specific time waiver ▼

Comment
Date: 2/6/2017 + Court Days: 10 and speedy trial.

01/26/2017 Tentative Hearing Vacated ▾

Comment
Date: 1/30/2017

01/26/2017 Tentative Jury Trial date ▾

Comment
Date: 2/6/2017

01/26/2017 Defendant ordered to be present at next hearing

01/26/2017 Defendant remains in custody at Fresno County Jail

02/02/2017 Settlement Conference ▾

Original Type
Settlement Conference

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Result
Continued at Request of Defense

02/02/2017 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: P. Sieler Defendant present: Yes

02/02/2017 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

02/02/2017 Trial - Go/No Go ▾

Comment
Go / No Go: Go Time Estimate: 4-5 days

02/02/2017 Motion ▾

Comment
Submitting Party: Defense Type of Motion: To Confirm Jury Trial
Oral/Written: Oral

ils

02/02/2017 Defendant ordered to be present at next hearing

02/02/2017 Defendant remains in custody at Fresno County Jail

02/02/2017 Notice of Appeal Filed

02/02/2017 Notification of Filing of Notice of Appeal ▼

Comment
with Clerk's Certificate of Mailing

02/02/2017 Notice to Court Reporter ▼

Comment
with Clerk's Certificate of Mailing/Electronic Transmission

02/02/2017 Minute Order Corrected/Amended ▼

Comment
Corrected

02/06/2017 Jury Trial ▼

Judicial Officer
Penner, Don

Hearing Time
8:30 AM

Cancel Reason
Clerical Error

02/06/2017 Jury Trial ▼

Original Type
Jury Trial

Judicial Officer
Gaab, Kimberly

Hearing Time
8:30 AM

Result
Continued at Request of People

Comment
D54

02/06/2017 Ciummo and Associates appearing on behalf of Defendant ▼

Comment

ils

02/06/2017 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

02/06/2017 Motion ▾

Comment
Submitting Party: People Type of Motion: Motion for continuance (1050), witness unavailability Oral/Written: Written

02/06/2017 Motion Granted

02/06/2017 Trial - Go/No Go ▾

Comment
Go Time Estimate: 4-5 Days

02/06/2017 Time Out Date: ▾

Comment
2/22/2017

02/06/2017 Defendant ordered to be present at next hearing

02/06/2017 Witness ordered to return ▾

Comment
Witness Name: Sierra Sullivan Return Date: 2/14/2017 Return Time: 8:30 am Dept.: 54 Hearing Type: Jury Trial

02/06/2017 Motion ▾

Comment
Submitting Party: Defense Type of Motion: Requesting appearing witness Sierra Sullivan ordered to be present on 2/14/2017 Oral/Written: Oral

02/06/2017 Motion Granted

02/06/2017 Defendant remains in custody at Fresno County Jail

02/14/2017 Jury Trial ▾

Original Type
Jury Trial

Judicial Officer
Conklin, Jonathan

Hearing Time
8:30 AM

Result
Continued at Request of People

02/14/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

02/14/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

02/14/2017 Motion

Comment
Submitting Party: People Type of Motion: Request for continuance Oral/Written: Oral

02/14/2017 Motion Granted

02/14/2017 Trial - Go/No Go

Comment
Go Time Estimate: 4-5 Days

02/14/2017 Time Out Date:

Comment
2/22/2017

02/14/2017 Defendant ordered to be present at next hearing

02/14/2017 Defendant remains in custody at Fresno County Jail

02/16/2017 Jury Trial

Original Type
Jury Trial

Judicial Officer
Gaab, Kimberly

Hearing Time
8:30 AM

Result
Continued at Request of People

02/16/2017 Ciummo and Associates appearing on behalf of Defendant

ils

Attorney: P. Seiler Defendant present: Yes

02/16/2017 District Attorney appearing on behalf of the People ▼

Comment
Deputy District Attorney: D. Walters specially appearing for I. Aliyev

02/16/2017 Motion ▼

Comment
Submitting Party: People Type of Motion: Requesting to trail to tomorrow 2/17/2017 Oral/Written: Oral

02/16/2017 Motion Granted

02/16/2017 Trial - Go/No Go ▼

Comment
Go Time Estimate: 4-5 Days

02/16/2017 Time Out Date: ▼

Comment
2/22/2017

02/16/2017 Defendant ordered to be present at next hearing

02/16/2017 Defendant remains in custody at Fresno County Jail

02/17/2017 Jury Trial ▼

Original Type
Jury Trial

Judicial Officer
Simpson, Alan

Hearing Time
8:30 AM

Result
Continued at Request of People

02/17/2017 Ciummo and Associates appearing on behalf of Defendant ▼

Comment
Attorney: P. Seiler Defendant present: Yes

02/17/2017 District Attorney appearing on behalf of the People ▼

ils

Comment
Deputy District Attorney: M. Anderson specially appearing for I. Aliyev

02/17/2017 Motion ▾

Comment
Submitting Party: People Type of Motion: Request to continue to 2/21/2017 Oral/Written: Oral

02/17/2017 Motion Granted

02/17/2017 Trial - Go/No Go ▾

Comment
Go Time Estimate: 4-5 Days

02/17/2017 Time Out Date: ▾

Comment
2/22/2017

02/17/2017 Defendant ordered to be present at next hearing

02/17/2017 Defendant remains in custody at Fresno County Jail

02/21/2017 Jury Trial ▾

Original Type
Jury Trial

Judicial Officer
Simpson, Alan

Hearing Time
8:30 AM

Result
Continued at Request of People

02/21/2017 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: P. Seiler Defendant present: Yes

02/21/2017 District Attorney appearing on behalf of the People ▾

Comment
Deputy District Attorney: I. Aliyev

02/21/2017 Motion ▾

ils

Comment
Submitting Party: People Type of Motion: Request to trail case to 2/22/2017 Oral/Written: Oral

02/21/2017 Motion Granted

02/21/2017 Trial - Go/No Go ▾

Comment
Go Time Estimate: 4-5 Days

02/21/2017 Time Out Date: ▾

Comment
2/22/2017

02/21/2017 Defendant ordered to be present at next hearing

02/21/2017 Defendant remains in custody at Fresno County Jail

02/22/2017 Jury Trial ▾

Original Type
Jury Trial

Judicial Officer
Gaab, Kimberly

Hearing Time
8:30 AM

Result
Continued Upon Court's Own Motion

02/22/2017 Jury Trial ▾

Original Type
Jury Trial

Judicial Officer
Hamlin, W Kent

Hearing Time
8:30 AM

Result
Heard

02/22/2017 Ciummo and Associates appearing on behalf of Defendant ▾

Comment
Attorney: P. Seiler Defendant present: Yes

ils

Comment
Deputy District Attorney: I. Aliyev

02/22/2017 Trial - Go/No Go

Comment
Go Time Estimate: 4-5 days

02/22/2017 Time Out Date:

Comment
2/22/17

02/22/2017 Defendant remains in custody at Fresno County Jail

02/22/2017 Defendant ordered to be present at next hearing

02/22/2017 Ciummo and Associates appearing on behalf of Defendant

Comment
Attorney: P. Seiler Defendant present: Yes

02/22/2017 District Attorney appearing on behalf of the People

Comment
Deputy District Attorney: I. Aliyev

02/22/2017 Day of Trial

Comment
Day: 1

02/22/2017 Court finds

Comment
The District Attorney is not ready to proceed with the trial, court order the case dismiss

02/22/2017 Defendant Released on all Counts

02/22/2017 Defendant released on this case only

02/22/2017 Minute Order Corrected/Amended

Comment
Corrected

02/27/2017 Notice of Completion of Transcripts on Appeal

Comment
with Clerk's Certificate of Mailing

ils

03/03/2017 Order Filed Appointing Attorney for Appeal

Comment
DCA Number: F075101

03/09/2017 Appeals Receipt Filed

Comment
F075101

06/02/2017 Order Augmenting Record on Appeal

Comment
5th DCA case number: F075101

06/02/2017 Notice to Court Reporter to Augment Record

Comment
with Clerk's Certificate of Mailing/Electronic Transmission

07/07/2017 Appeal Certificate of Mailing

Comment
with Clerk's certificate of mailing. Documents mailed:

07/11/2017 Corrected Appeal Document Filed

Comment
Document Filed: Corrected Notice to Court Reporter

07/14/2017 Appeal Certificate of Mailing

Comment
with Clerk's certificate of mailing. Documents mailed: Corrected Augmented Reporter's Transcript DCA F075101

07/14/2017 Appeals Receipt Filed

Comment
from Atty Smith

08/01/2018 DMV Non-Reportable Violation

10/22/2018 Opinion from the 5th DCA Filed

Comment
5TH DCA case number: F75101. Action Required.

Financial

No financial information exists for this case.

MEMORANDUM

DATE: September 25, 2019
TO: Misdemeanor Team
FROM: Kelsey Peterson, Writs & Appeals
RE: Speedy Trial Rights and Continuances

A. **Speedy Trial rights of the Defendant**

Speedy Trial rights of a defendant attach at different procedures of the case. To understand the difference we must first go through the time frame for each stage. Initially, Pre accusation delay occurs between the time of the commission of the offense and the time the defendant is charged with a complaint this is governed by the statute of limitations- you all know you have 1 year from the date of the incident to file your misdemeanor complaints. Next is the post accusation stage, that is a complaint has been filed timely but defendant wasn't brought to court and arraigned for some time. You have all argued *Serna* motions. In a *Serna* motion a complaint has been filed and the defense is arguing that the delay in the filing of the case and the day the defendant has actually been brought to court caused a speedy trial issue and that the case should be dismissed because this length of *delay has caused a prejudice to the defendant*. Please note, that it is only in this portion of the analysis of a speedy trial right. That is in Speedy trial rights with *Serna* prejudice to the defendant is the main analysis.

After a defendant is arraigned a speedy trial right can attach in a different way. This final stage is from the date after the arraignment (a plea of not guilty is entered) to the end of the jury trial. Do not confuse the tests or arguments for *Serna* after a defendant is arraigned and pre trials are set. We are still talking about their right to a speedy trial but in a different stage, and under different statutory law. Therefore, the term speedy trial rights covers from the date of the incident through the jury trial in these three different stages and every stage has a different

analysis and application of the law. Do not confuse them. In this memo we are focusing on the speedy trial analysis at this later stage, after the defendant has been arraigned.

This stage is governed statutorily by Penal Code Section 1382 and focuses on the time frame in which the case gets taken to trial. That is the defendant still has a right to have a speedy trial but this is subject to time waivers. A defendant charged with a misdemeanor who was in custody when arraigned (enters a not guilty plea) must be brought to trial within 30 calendar days after arraignment (Penal Code Section 1382(a)(3)). A defendant charged with a misdemeanor in all other cases must be brought to trial within 45 calendar days after the date of arraignment (Penal Code Section 1382(a)(3)). But, the defendant can waive the deadline for trial to begin either by entering a general time waiver (Penal Code Section 1382(a)(2)(A)) or by requesting or consenting to a trial date beyond the statutrory deadline (sometimes called "limited" or "specific" time waivers) (Penal Code Section 1382(a)(2)(B)). When a defendant has entered into a general waiver then, after notice and in open court, withdraws that waiver, the defendant must be brought into court within 30 days on a misdemeanor case. (Penal Code Section 1382(a)(2)(A)).

These time waivers and time periods are the defendant waiving their right to a speedy trial. In most cases the issue arises when the prosecution needs to trail the case outside of this time waiver, that is trail outside the speedy trial right. To do so the prosecution must show good cause. Dismissal is required only if a defendant is not brought to trial within statutory time limits without good cause. (Penal Code Section 1382(a)). What constitutes good cause for delay depends on the circumstances of each case. (People v. Johnson (1980) 26 C3d 557, 570; Jensen v. Superior Court (2008) 160 CA4th 266, 274. In considering a motion to dismiss based on lack of good cause for a continuance beyond the statutory time limits, the court may consider all relevant information that is timely presented by the parties. (Mendez v. Superior Court (2008) 162 CA4th 827, 836.) Good cause can be based on many reasons, as shown by the following examples.

- **Unavailable witness:** Counsel requesting a continuance to secure a witness. (This is covered in depth in the next section because it is most applicable in our cases.)
    - **Penal Code Section 1050** provides guidelines for courts to use when ruling on motions to continue.
- Defense Counsel and Defendant: Delays attributed to the defendant or counsel, and that are not attributable to the state can constitute good cause. (People v. Lomax (2010) 49 C4th 530, 556)
- Peremptory Challenge against Judge (Bryant v. Superior Court (1986) 186 CA3d 483, 501.)
- Absence of Judge (Lewis v. Superior Court (1981) 122 CA3d 494.)
- Court Congestion (People v. Engream (2010) 50 C4th 1131.)
- Geographical Circumstances (People v. Hajjaj (2010) 50 C4th 1184.)

If the court finds that a party has not shown good cause for a continuance, the court must deny the motion to continue (Penal Code Section 1050(e).) If the prosecution delays trial beyond statutory time limits without good cause and over defendant's objection, the court must grant a timely motion to dismiss. (Penal Code Section 1382.)

However, Penal Code 1050 does not authorize the court to dismiss an action when the prosecution fails to show good cause for a continuance if the delay would not exceed statutory time limits. (People v. Hernandez (2004) 115 CA4th 922, 934; Penal Code Section 1050(l) ("this section is directory only and does not mandate dismissal.")

In Henderson, the reviewing court upheld the trial court's conclusion that the prosecutor had failed to establish good cause for the delay of the preliminary hearing under Penal Code 1050, but reversed the order of dismissal. It concluded that neither Penal Code 1050 nor 1050.5 (sanctions court may impose violation of 1050) authorized dismissal and that no other statutory provision authorized dismissal when the delay would not have continued the case beyond the time permitted under Penal Code Section 859b and the defendant had shown no detriment from the delay. (115 CA4th at 936.) **Thus, trial courts "must postpone the hearing to another date within the statutory period," although not necessarily the date the prosecutor has requested (115 CA4th at 940.) See also People v Rubaum (1980) 110 CA3d 930 (court has no power to deny prosecution's unjustified motion to continue trial unless delay would exceed Penal Code Section 1382 time limits.)**

A violation of the deadlines of Penal Code Section 1382 entitles the defendant to a dismissal if the prosecution cannot show good cause for the delay. (Sykes v. Superior Court (1973) 9 C3d 83, 88.) To invoke the right to a dismissal under section 1382 the defendant must (1) first object to a continuance beyond the applicable statutory period and (2) thereafter must move to dismiss under 1382. Counsel should not move to dismiss until **after** statutory time limits have expired, but should do so as soon therefore as possible. A motion to dismiss made before expiration of the statutory time period, even if made on the day the statutory time limit expires, is premature, and the granting of the motion at that time could be reversed even if the case would have been delayed had the motion not been made. (People v Martinez (1956) 145 CA2d 361; People v Wilson (1963) 60 C2d 139, 146.)

In misdemeanor cases, the only remedy following dismissal on statutory speedy trial grounds is appeal (Penal Code Section 1466(a)), because no recharging is allowed after one dismissal. (Penal Code Section 1387; Marler v. Municipal Court (1980) 110 CA3d 155, 162.)

To summarize: The law governing a request for a continuance is 1050, the law governing speedy trial rights with timeouts is 1382. If you are asking for a continuance inside or outside the time waiver it is always a good practice to state your good cause for a continuance on the record. Although good cause is not required while trailing within the timeout it makes a good record, and makes it easier on the judge. Good cause is shown by an unavailable witness which

is thoroughly explained in the next section. If you fail to establish good cause, but are requesting to trail within the statutory period the court should grant this with no issue, especially if it is a general time waiver. If the court is not willing to do so dismissal is not the remedy but sanctions (although these are rarely ordered), and it is at this time the court may put the reasons on the record. If the court dismisses, we will appeal and prevail. If you are trailing to outside of the timeout and show good cause the court should allow it, if they do not and dismiss your case, again we will appeal it and prevail. If you are trailing outside the timeout and fail to show good cause this is a violation of the defendant's speedy trial rights and a dismissal is appropriate. It is only appropriate if defendant objected to the continuance, and once the case is called outside the timeout. It is not appropriate the day you request to continue outside the timeout. Because you are mostly dealing with general time waivers on out of custody defendants you can see how you should rarely have to deal with speedy trial issues. But if you continually state on the record the good cause for the continuance if the issue ever arises you will have formed a record for the appeal.

B. **What Must Be Shown For The Court to Continue Due to Unavailability Of A Witness?**

At this point you are asking to continue your case and are attempting to show good cause based on a witness's unavailability. This is necessary due to defendant's speedy trial rights governed under penal code section 1385. Again, if you are asking to trail within the timeout although this is not necessary it is a good idea to state your good cause on the record. If you are requesting to trial outside the timeout you must show good cause. This request for a continuance is pursuant to Penal Code Section 1050. Again, this applies to motions and jury trials in misdemeanor cases.

Penal Code section 1050 permits a continuance of a jury trial at the request of either the defense or prosecution upon a showing of "good cause." (Cal.Pen. Code § 1050(e).) "When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers." (Pen. Code, § 1050, subd. (g)(1).) Determination of good cause for delay of a criminal trial lies within the discretion of the trial court. (People v. Johnson (1980) 26 Cal.3d 557, 570.)

Owens v. Superior Court (1980) 28 Cal.3d 238, set forth the legal criteria of good cause: " '(1) That the movant has exercised due diligence in an attempt to secure the attendance of the witness at the trial by legal means; (2) that the expected testimony is material; (3) that it is not merely cumulative; (4) that it can be obtained within a reasonable time; and (5) that the facts to which the witness will testify cannot otherwise be proven.' " (Id. at p. 251.)

Therefore, to show that we have good cause to continue the case inside or outside of the timeout due to a witness unavailability we are stating on the record that these 5 things are met. The main factor that becomes an issue for us is the due diligence in an attempt to secure the witness. This

really goes to our office and subpoena system. As you know you tell our office staff to sub the officer for the date of the hearing and they electronically send a sub to the agency. If the agency at that time knows the officer is unavailable, they reject it. We should then immediately file a motion for a continuance pursuant to 1050. If they do not reject it it's assumed the officer is available. A few days before a jury trial it is a good practice to call and make sure nothing has changed since the date the sub was sent. But with motions and sometimes jury trial's we don't have time to do this on every case. Maybe it's the day before the hearing and you find out the officer is unavailable or as I'm sure you have all had the experienced- the motion is called in court and everyone confirms they are ready so you email WIN to have your officer arrive within the hour and then WIN emails you that the agency said your officer is sick, or took a vacation, or has no child care, or some reason that he cant come. What do you do then? You will see from the next section as long as you can tell the court the sub was sent to the agency and not rejected, then you did you your due diligence, and good cause exists for the continuance, and there is no violation of the defendants speed trial rights to continue the case inside or outside the timeout.

C. Prosecutor Was Not Required to Show More than Service of a Subpoena in Order to Establish Due Diligence and Therefore Good Cause Existed to Continue the Case

This section includes facts from a case we won on appeal where the prosecutor submitted a written 1050 asking to trail outside the timeout due to a witness's unavailability. (Note: under 1385 defendant's timeout was near and we were asking to continue the case pursuant to 1050 outside the statutory period so we were required to show good cause to do so.) The court granted the 1050 finding good cause trailing the case outside the timeout. Then defense filed a motion for a dismissal pursuant to 1382 claiming defenses speedy trial rights had been violated. The judge that heard the 1382 dismissal motion and granted it dismissing the case.

Below is a discussion by the Fresno Court of Appeals that will educate you on this procedure, how to correctly argue for good cause based on your witness's unavailability, and case law to rely on should you have issues. It specifically goes through our sub procedure and how we exercise due diligence when we send the sub and it is not rejected. This is important to understand. Having authority to build your record is very important on appeal. The entire opinion is also attached for you. Although it is an unpublished case, it is extremely persuasive, because it is from our own Court of Appeal. And Never, Never, dismiss your own case no matter how much pressure the court puts on you. The court can dismiss a case on their own motion should they choose to do so and then we can appeal it.

To establish good cause for a continuance because of the unavailability of a witness, a party must show, among other factors, that he or she "exercised due diligence to secure the witness's attendance" (Jensen v. Superior Court (2008) 160 Cal.App.4th 266, 270, internal citations omitted.) "'The failure to attempt to secure the attendance of a witness for whom a continuance is sought indicates a lack of due diligence. ' Moreover, the fact that a witness will be on vacation on

the date set for trial does not by itself constitute good cause for a continuance. This is because a defendant' s right to a speedy trial may not be violated solely to serve the convenience of the prosecution s witnesses. " (Baustert v. Superior Court, supra, 129 Cal.App.4th at p. 1277, internal citations omitted.)

Generally, the question of whether the prosecution was diligent in seeking to compel the attendance of a police officer comes down to whether the prosecutor served the officer with a subpoena or not. "Cases concerning continuances sought because a material witness is unavailable fall generally into two categories: cases in which the witness was subpoenaed and cases in which the witness was not subpoenaed. When a witness was served with a subpoena but fails to appear as commanded, there is usually good cause for a continuance. 'To penalize and dismiss the case of a litigant who has no advance knowledge of a witness' default is unreasonable and unwarranted. We think a subpoenaed material witness' failure to appear for trial may constitute good cause under section 1382 for the continuance of a trial beyond its statutory period.' When a witness is not under subpoena, his or her absence generally does not constitute good cause for the continuance of a trial. (Jensen, supra, 160 Cal.App. 4th at p. 271, internal citations omitted.)

"This distinction between subpoenaed witnesses and unsubpoenaed witnesses rests on the question of due diligence. A prosecutor who issues subpoenas is exercising the requisite due diligence in securing the attendance of witnesses at trial, while a prosecutor who does not issue subpoenas has not made sufficient effort to ensure their presence. " (Id. at pp. 271-272, internal citations omitted; see Baustert, supra, 129 Cal.App. 4th at pp. 1277- 1278 [no due diligence where prosecution withdrew subpoena a when she learned officer would be on vacation at time of trial and issued new subpoena for a date after the statutory time-out date]; Cunningham v. Municipal Court (1976) 62 Cal.App. 3d 153, 155-156 [no due diligence where prosecutor knew of officer 's planned vacation and failed to subpoena officer]; Pickett v. Municipal Court (1970) 12 Cal.App. 3d 1158, 1162 [no due diligence here prosecutor failed to subpoena witnesses with no showing that he would be unable to do so because witnesses would be out of state] .)

In Jensen, supra, 160 Cal.App.4th 266, the Court of Appeal found that service of a subpoena on the officer 's immediate superior or agent pursuant to Penal Code section 1328, subdivision (c) was sufficient to show due diligence to obtain the witness 's appearance at trial. (Id. at p. 272.) This was true even though the superior or agent failed to deliver the subpoena to the officer and the officer never received the subpoena. (Id. at pp. 272-273.)

"Indeed, to hold otherwise would prevent attorneys from relying on the subpoenas they issue, require them to supervise internal police department procedures over which they have no legal control, or 'demand that prosecutors [and other counsel] become clairvoyants.' In order to establish due diligence, attorneys would be required to personally contact every police officer served with a subpoena pursuant to section 1328, subdivision (c) and confirm his or her actual

receipt of the served subpoena. We cannot imagine that when the Legislature enacted this procedure ostensibly to streamline service of subpoenas on peace officers, it actually intended to create a more onerous mechanism by which counsel issuing subpoenas to peace officers would be required to monitor the police department's practices for distributing subpoenas and contact every peace officer who is subpoenaed to verify that he or she received the subpoena. The Court of Appeal has declined to impose additional due diligence requirements on counsel beyond serving subpoenas to compel witnesses' attendance at trial. Service of the subpoena is the responsibility of the attorney, and once service was effected, counsel is 'not required to employ any additional mode of process, either formal or informal' to ensure the witness's availability or attendance." (Id. at p. 273, internal citations omitted; see also Mendez v. Superior Court, supra , 162 Cal .App.4th 827, 836 [due diligence found where prosecutor had subpoenaed the officer, the officer had not been released from subpoena, but officer nonetheless took his vacation outside the court 's jurisdiction] .)

In the present case, the Fresno county prosecutor clarified at the dismissal hearing that the subpoena was served by his office (that is our office) by electronic delivery to the immediate supervisor of the officer, and that the subpoena was accepted. This type of service is allowed under Penal Code section 1328, subdivision (c). Also, Jensen expressly finds that such service is sufficient to demonstrate due diligence in procuring an officer 's appearance at trial. (Jensen, supra, at pp. 272-273.) The Judge in the present case (as your judges do) believed that the Baustert decision required a showing of something more than just the officer being on vacation in order to show unavailability of the witness. However, Baustert was decided in a situation where the prosecutor failed to keep the officer under subpoena after learning that he was going on vacation. (Baustert, supra, 129 Cal.App. 4th at pp. 1277-1278.) Under these circumstances, the court found it was also relevant to consider whether the officer was truly unavailable because he was out of the jurisdiction.

Here, on the other hand, there is no evidence that the prosecutor withdrew the subpoena after it was served, or that the officer 's superior or agent refused to accept service of the subpoena on behalf of the officer. Therefore, service of the subpoena on the officer was sufficient to establish due diligence by the prosecutor in ensuring the officer 's attendance at the trial. The prosecutor could not have anticipated at the time of service that the officer would go on vacation and be unavailable for trial. As soon as he learned of the officer 's vacation, he promptly moved for a continuance. This was all that he was required to do in order to show due diligence. Other factors, such as where the officer had gone on vacation and whether he was truly unable to return in time for the trial, would only have been relevant if the prosecutor had failed to serve him with a subpoena, or had later withdrawn the subpoena and allowed the officer to leave. Since the prosecutor did serve the officer with a subpoena pursuant to section 1328, subdivision (c).

In Summary: The court found that the prosecutor had done their due diligence by having the officer served and this established good cause to continue the case (pursuant to penal code

section 1050) outside of the timeout (set by penal code 1385) and that this did not violate the defendants speedy trial rights and therefore dismissal by the court was not appropriate. Note that the court dismissed the case, we appealed it, and we won. The case was then remanded back to the superior court and proceeded at the stage it was set when dismissed.

Hopefully this has helped you understand speedy trial rights and you will be able to educate and help the court correctly continue such hearings. Please contact me should you have any questions on this.

2220 Tulare Street / Suite 1000 / Fresno, California 93721
(559) 600-3141 / Fax (559) 600-4400
Equal Opportunity Employer

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Henson**
No.: **S252702/ F075101**

I declare:
I am employed in the Office of the District Attorney, 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 District Attorney for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the District Attorney is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 3, 2019, I electronically served the attached **APPELLANT'S REQUEST FOR JUDICAL NOTICE** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on October 3, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the District Attorney at 3333 East American Avenue, Bldg. 701, Suite F, Fresno, CA 93725, addressed as follows:

Clerk of the Superior Court
Criminal Department, Room 401
1100 Van Ness Avenue
Fresno, CA 93724-0002
(By U.S. Mail)

Clerk, Court of Appeal
Fifth Appellate District
(Served by Truefiling)

Office of the Attorney General
(Served by Truefiling)

Barbara A. Smith
Attorney for Defendant and Respondent
(Served by Truefiling)

CCAP
(Served by Truefiling)

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 October 3, 2019, at Fresno, California.

Declarant, Denise Roberts
Paralegal