IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff/Appellant, v. CODY WADE HENSON Defendant/Respondent/Petitioner.	No.: S252702

APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE FOR PERMISSION TO APPEAR AS AMICUS CURIAE ON BEHALF OF PETITIONER;

AMICUS BRIEF IN SUPPORT OF PETITIONER.

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APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE TO APPEAR AS AMICUS CURIAE ON BEHALF OF PETITIONER CODY HENSON

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

California Attorneys for Criminal Justice (hereafter CACJ) applies to appear as amicus curiae on behalf of petitioner Cody Wade Henson pursuant to California Rules of Court, rule 8.520. This application is made in compliance with Rule 8.520. Petitioner's reply brief was filed on November 19, 2019, and this application and brief are being filed within 30 days of that date.

A. Identification of CACJ[1]

CACJ is a nonprofit California corporation. According to its bylaws, CACJ's objectives include "defend[ing] the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of California and other applicable law."

1 The undersigned counsel for CACJ certifies that no party involved in this litigation has tendered any form of compensation, monetary or otherwise, for legal services related to the writing or production of this brief, and additionally certifies that no party to this litigation has contributed any monies, services or other form of donation to assist in the production of this brief.

CACJ is administered by a Board of Governors consisting of criminal defense lawyers practicing within California. The organization has approximately 1,500 members, almost all of whom are criminal defense lawyers practicing before federal and state courts. These lawyers work in both the public and private sectors.

CACJ has often appeared before this Court, the United States Supreme Court, and the California Court of Appeal on issues of importance to its membership. CACJ's appearance as amicus curiae before this Court has been recognized in a number of the Court's decisions.

B. Statement of interest of CACJ

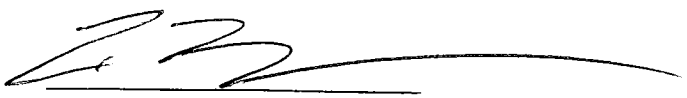
CACJ is statewide leader in advocating for the rights and interests of both the criminal defense bar and criminal defendants. CACJ members represent clients whose rights and interests they defend within the meaning of the constitutional right to counsel. CACJ members are criminal defense attorneys, and most practice primarily if not exclusively in the courts of California. CACJ members and their clients will be directly affected by this Court's determination as to the legality of a "unitary information."

In the present case, the filing of a unitary information created significant confusion regarding representation, in part because at the preliminary examinations petitioner had been represented by private counsel on one case and a public defender on another. As CACJ's membership includes both private attorneys and public defenders, it is uniquely suited to foresee how the resolution of this case will impact both private and public attorneys in their efforts to efficiently and effectively represent criminal defendants.

In sum, CACJ and its legal representatives have the necessary experience and interest in the issues framed in this case to serve this Court as amicus curiae. CACJ therefore respectfully asks this Court to grant it permission to appear as amicus curiae supporting the arguments of petitioner Cody Wade Henson.

Dated: December 18, 2019

Respectfully Submitted,



Matthew Missakian

AMICUS BRIEF IN SUPPORT OF PETITIONER

Question Presented

When a defendant is held to answer following separate preliminary hearings on charges brought in separate complaints, can the People file one "unitary information" that includes charges from both those cases, or must all charges in a given information be supported by the evidence presented to one magistrate at one preliminary hearing that resulted in one holding order?[2]

Introduction

The answer to the question presented is simpler than the opinion of the lower court and the parties' briefing implies. Penal Code section 739 resolves the issue. The plain language of section 739 demonstrates a legislative intent to authorize an information supported by evidence that was presented to one magistrate at one preliminary examination that resulted in one commitment order. Everything else is a red herring.[3]

[2] For reasons discussed throughout this brief, CACJ contends the issue cannot properly be framed as whether or not complaints can be consolidated after multiple preliminary examinations and holding orders; consolidating defunct accusatory pleadings is not legally possible and obscures what is actually at issue.

[3] All section references are to the Penal Code.

The majority opinion of the Court of Appeal and the People conflate (in different ways) the issue of what is authorized and required by section 739 with the rules for joinder of offenses and consolidation of pleadings provided by section 954.

CACJ respectfully contends that the appellate court's majority's reasoning is flawed primarily because it reads too much into section 954, by negative implication. Section 954 describes the circumstances in which a court may order consolidation of pleadings. This does not mean that in all other circumstances the prosecution may consolidate pleadings (or accomplish "consolidation" of charges by filing a unitary information) on its own. (See *People v. Henson* (2019) 28 Cal.App.5th 490, 506-510.) Consolidation is the province of the courts. Furthermore, an information is an original pleading, distinct from a complaint, and could not result from two complaints being "consolidated."[4]

[4] Hereafter, citations to the majority and dissenting opinions of the Court of Appeal are referred to as "Maj. Opn." and "Dis. Opn.," with page number(s) that correspond to the official reported opinion. Consistent with the parties' prior briefing and this Court's docket designations, CACJ refers to the People (who originally appealed the superior court's grant of petitioner's section 995 motion) as appellant. Citations to appellant's Answer Brief on the Merits are designated "AB."

CACJ respectfully contends that appellant's reasoning is flawed primarily because it reads too much into the "joinder" provision of section 954. Section 954 describes when offenses may be included together in one accusatory pleading, but just because certain charges might properly be joined does not mean an information consisting of such charges satisfies section 739. Appellant's contention that section 739 needs to be harmonized with or read in light of the joinder provision of section 954 is unpersuasive. Section 739's rules regarding what charges may be alleged in an information are independent from section 954's rules regarding when charges may be joined in an accusatory pleading.

The decision of the Court of Appeal should be reversed because section 739 requires that all charges in an information be supported by the evidence that was presented to one magistrate at one preliminary examination that resulted in one order of commitment.

Argument

I.
A unitary information violates section 739's requirement that all charges in an information be supported by the evidence that was presented to one magistrate at one preliminary examination that resulted in one commitment order.

A. The plain language of section 739 does not permit a "unitary information."

The plain language of section 739 indicates that the Legislature expected an information to be supported by the evidence that was presented to one magistrate at one preliminary examination that resulted in one commitment order.

When a defendant has been committed according to section 872, it is the District Attorney's duty, within 15 days after "the commitment," to file an information, which may charge any offenses named in "the order of commitment" or any other offenses established by the evidence taken before "the magistrate." (§ 739.) Notably absent from section 739 are plural words such as "magistrates," "commitments," or "orders of commitment."

Section 739 describes what happens after the preliminary examination referred to in section 738. The singular "preliminary examination" is used twice in section 738.

Furthermore, section 739 uses the definite article "the" to qualify "commitment," "magistrate," "evidence" and "order of commitment." As the majority below point out (in a slightly different context, see section I(C), *infra*), the Legislature's use of the definite article "the" refers to a specific thing, whereas use of an indefinite article signals a general reference. (Maj. Opn., p. 511, fn. 13, citing *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1396-1397.) Had the Legislature envisioned the possibility of multiple magistrates, commitments, and orders of commitment, it would have used the indefinite "a" or "an." (See Dis. Opn., p. 525.)

The use of singular nouns and definite articles in section 739 contradicts the suggestion that it permits one information to derive from evidence that was presented to multiple magistrates at multiple preliminary examinations that resulted in multiple orders of commitment. Thus, the plain language of section 739 is inconsistent with a unitary information that arises from multiple holding orders and preliminary examinations.

B. Section 7 does not override the legislative intent reflected in the plain language of section 739.

To avoid the implications of the singular nouns and definite articles that pervade section 739, the Court of Appeal majority invoke section 7, which declares that "the singular number includes the plural, and the plural the singular." (Maj. Opn., p. 511, fn. 13.) However, section 7 is not an inflexible rule that invariably applies to all instances of singular or plural usage in the Penal Code. The overriding principle that does invariably apply is the supremacy of legislative intent. It is not plausible that the Legislature intended section 7 to modify the plain language of section 739.

(1) The Legislature would not have adopted a drastic change to law and procedure through silent reliance on section 7.

In *People v. Navarro* (2007) 40 Cal.4th 668, this Court interpreted section 1181, which allows a court to modify an unsupported jury verdict to "a lesser crime," and section 1260, which allows an appellate court to reduce the degree of "the offense." In holding that a greater crime could only be reduced to one lesser crime, this Court declared, "It would be inappropriate to apply the general provision of section 7 . . ." (*Id.* at p. 680.)

Allowing courts to modify one greater offense to multiple lesser offenses would have been a "startling innovation" in criminal procedure. (*Ibid.*) This Court refused to conclude the Legislature would have overthrown long-established precedent via silent reliance on section 7, a statute of general application:

> It is doubtful that the Legislature would have authorized by silence or by implication through a statute of general application such a departure from established precedent. Under these circumstances, applying section 7 to the present statutory scheme would lead to an interpretation that runs counter to both the legislative purpose of the statutory scheme and subsequent historical practice.

(*Ibid.*)

Accordingly, this Court declared, "[Section 7] would appear to be a slim reed upon which to support the Court of Appeal's unprecedented action. General terms should be so limited in their application as not to lead to injustice or oppression or an absurd consequence." (*Ibid.*, quoting *In re Michele D.* (2002) 29 Cal.4th 600, 607, punctuation omitted.)

As pertinent here and as explained below, section 7 is a "slim reed" upon which to dismiss the Legislature's persistent use of singular nouns and definite articles in section 739, which are inconsistent with a unitary information.

(2) A unitary information is a marked departure from established practice today and from what was established practice when section 739 was enacted.

It can hardly be disputed that a unitary information including charges from two different complaints, two different preliminary examinations, and two different orders of commitment is a rare departure from common practice. Furthermore, a unitary information would also have been a departure from what was established practice when the Legislature enacted section 739.

Section 739 was enacted in 1951, in Senate Bill 543, and was intended to preserve the procedures established by its predecessor, former section 809. (See Dis. Opn., pp. 519-520, citing Stats. 1951, ch. 1674; Stats. 1880, ch. 47; and Stats. 1927, ch. 611.) Section 739 has not been changed since its enactment. (*Ibid.*) Neither party nor the Court of Appeal have identified a single case that even references a District Attorney's attempt to file a unitary information – let alone any case that contemplated such a filing before 1951.

On the other hand, countless cases decided under former section 809 track the language of that statute and refer to the magistrate, the preliminary hearing (or examination), and the

commitment order, all in the singular and using the definite article "the," indicating a presumption that one preliminary examination and one commitment order would lead to one information. (E.g., *People v. Bird* (1931) 212 Cal. 632, 636-639; *People v. Tallman* (1945) 27 Cal.2d 209, 213-214; *People v. Wyatt* (1932) 121 Cal.App.180, 185-186; *People v. Foster* (1926) 198 Cal.112, 120-121; *People v. Griffin* (1951) 106 Cal.App.2d 531, 534-535; *People v. Dal Porto* (1936) 17 Cal.App.2d 755, 757-758.) This case law strongly suggests that when section 739 was enacted in 1951, the standard practice and expectation was for a single information to be filed for each preliminary examination and holding order.

Thus, relying on section 7 to interpret section 739 as permitting a unitary information requires an improbable series of events and assumptions, summarized as follows: in 1951, the Legislature enacted section 739, intending to permit a single information to result from multiple complaints/preliminary examinations/commitment orders. The Legislature did not authorize this procedure expressly, but instead did so tacitly, using misleading singular nouns and definite articles while relying on section 7 to silently expand them to the indefinite

plural – even though the procedure being authorized was uncommon if not unheard of at the time.

Because this scenario is so totally implausible, section 7 is an inadequate basis for expanding the plain language of section 739, which pervasively uses singular nouns and definite articles. (*People v. Navarro*, *supra*, 40 Cal.4th at p. 680.) Section 7 does not apply when it would trump the Legislature's intent and/or lead to absurd results. (*Ibid.*, see also *People v. Kunitz* (2004) 122 Cal.App.4th 652, 655-656 [use of singular "a person" and "the defendant" in section 1202.4 indicated Legislature's intent to make restitution specific to one defendant; "While it is true, as a general rule, that 'the singular number includes the plural' (§ 7), the language and structure of section 1202.4(b) indicates that this general rule was not intended to apply."]; *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1132-1133 [rejecting an interpretation of gang statute based on rule that "the singular number includes the plural" because section 7 also cautions that words or phrases must be construed according to their context; entire statute made clear that Legislature deliberately used plural "members"].) Section 7 also does not apply when it would trigger an unintended and significant divergence from established

"historical practice." (*People v. Navarro, supra,* 40 Cal.4th at p. 680.) Historical practice has always been that two preliminary examinations and two holding orders result in two informations, not one unitary information.

The Legislature did not intended for section 7 to expand the plain language of section 739, which envisions an information that arises from one preliminary examination and one order of commitment.

C. The words "an information" are consistent with section 739's requirement of a one-to-one correlation between the information and a particular preliminary examination and holding order.

In addition to relying on section 7, the majority note section 739's use of "an information," rather than "the information." (Maj. Opn., p. 511, fn. 13.) Based on the aforementioned principal that an indefinite article signals a general reference while a definite article refers to a specific thing (see section I(A), *supra*), the majority conclude the Legislature did not intend "an information" in section 739 to refer to a single specific information. Whether or not the majority's reasoning is sound to this point, the subsequent conclusion is not.[5]

[5] While CACJ contends the point is not important, there is a grammatical explanation for the use of "an information" in the

The majority conclude that because section 739 refers to "informations in a broad sense," the statute, therefore, does not require "a one-to-one correlation between the information and a particular preliminary examination and related holding order..." (Maj. Opn., p. 511, fn. 13.)

Because the majority focus on whether or not consolidating two complaints (or charges from two complaints) into one information was proper, their reasoning looks "forward," asking if multiple complaints/preliminary examinations/holding orders can spawn a single information. (Maj. Opn., p. 511, fn. 13.) But consolidating two complaints, per se, could never produce an information, which is an original "first" accusatory pleading, and distinct from a complaint (§ 949.) In addition, section 954 only

first sentence of section 739. Prior to an information being filed, no information actually exists. Using "the" to refer to something that has not yet been brought into existence is confusing if not outright incorrect. In section 739, the first reference to "information" is in the context of the district attorney's obligation to file one (i.e., bring one into existence), and uses the indefinite article: "an information." The second sentence of the statute, which comes after the discussion of the charging options that guide the information's filing (i.e., its being brought into existence) uses the definite article: "The information shall..." Sound grammar compelled this use of "an" and then "the," regardless of whether the Legislature envisioned one or multiple informations.

authorizes the consolidation of pleadings, not charges. Consolidation, therefore, is not really the issue; the real issue is whether or not the single information that actually *was* filed was lawful under section 739. Therefore, because the correct analysis must look "backwards" (from the single information that actually was filed to the preliminary examination(s) and holding order(s) that preceded it), the articles attached to "information" are not relevant.[6]

Finally, the statute uses both "an information" and "the information," which suggests that grammar was the primary basis for the articles selected and would undermine the force of the majority's conclusion even if the article(s) attached to "information" were relevant. (§ 739; See Maj. Opn., p. 511, fn. 13; see also fn. 5, *supra*.)

D. Conclusion

In sum, the singular nouns and definite articles in sections 738 and 739 reflect the Legislature's intent that each information be supported by the evidence that was presented to one

[6] The People concur that there was no consolidation and could not have been one, because after the preliminary examinations the complaints were defunct, there was nothing to consolidate, and an information is an original pleading. (AB, pp. 12 [fn. 12], 25, 47-48, 54, 61.)

magistrate at one preliminary examination that resulted in one order of commitment. This intent is not trumped by section 7; the Legislature would not have upended historical practice by silent reliance on a statute of general applicability.

II.
Section 954's consolidation provision does not authorize a unitary information.

The majority rely primarily on the consolidation provision of section 954 to conclude that the unitary information was proper. CACJ respectfully contends this reasoning is flawed.

A. Informations are original pleadings and are distinct from complaints; complaints can never be transformed into an information via "consolidation."

As appellant points out, a complaint generally has no remaining force or effect after a holding order issues. After a preliminary examination, the criminal complaint is no longer "active" and a criminal case can proceed only if an information is timely filed. (AB 47, citing *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1132; *People v. Smith* (1986) 187 Cal.App.3d 1222, 1224-1225.) Indeed, following a preliminary examination and issuance of a holding order, a magistrate generally loses jurisdiction and power over the case. (*People v. Silva* (1995) 36 Cal.App.4th 231, 234.)

Thus, once Mr. Henson was held to answer following a preliminary examination on each case, each complaint was no longer active and in force. It seems self-evident that an accusatory pleading that has been rendered inactive or no longer in force cannot be consolidated with another.

Furthermore, the consolidation of two complaints must result in one complaint. A "consolidation" of two complaints that results in an information is not a consolidation at all, but a transformation into something different. Such a transformation is made impossible by the law's recognition that an information is an original "first pleading." (§ 949.)

B. Pleadings, not charges, are subject to consolidation.

The suggestion that two complaints can be "consolidated" into a unitary information (Maj. Opn., p. 510) is conceptually flawed because it conflates consolidating accusatory pleadings with "consolidating" criminal charges. The majority inquire if court permission was required "to do what the People did in the present case: file a single information as their first pleading in the superior court (§ 949), *covering charges* as to which separate complaints were filed..." (Maj. Opn., p. 505, emphasis added; see also pp. 510-511 [concluding court permission not required to

"incorporate" charges from two complaints into a single information].) This inquiry goes astray from the outset because section 954 does not authorize "consolidation" of criminal charges. It only authorizes consolidation of pleadings. (§ 954.)

The majority presume that the prosecution may "consolidate" in all situations in which a court is not authorized to consolidate accusatory pleadings under section 954. (Maj. Opn., pp. 506-510.) CACJ respectfully disagrees (see section II(C), *infra*), but even if section 954 gave the People any consolidation power by negative implication, such power would only reach to "accusatory pleadings." What charges the People may file in an information is controlled by section 739.

C. The "same court" issue is irrelevant.

The majority and the dissent agree that the phrase "cases in the same court" in section 954 retains the meaning it had prior to court unification in 1998. (Maj. Opn., pp. 506-510; Dis. Opn, pp. 527-528.) CACJ concurs.

But the "same court" issue is a red herring. It is important to the majority's conclusion only because the majority assume that in every situation in which section 954 does not authorize a court to order consolidation (namely, when cases are not in the

"same court"), then the prosecution necessarily is allowed to consolidate on its own. (Maj. Opn., p. 506.) There is no support for this assumption.

The majority state that section 954 defines when "the People [are] required to obtain a court order allowing consolidation of cases..." (Maj. Opn., p. 506.) This language indeed suggests that, in all other cases, the People can consolidate without a court order - but this language is not found in the statute. Section 954 simply defines when a court "may order [accusatory pleadings] to be consolidated." There is no suggestion in section 954, by negative implication or otherwise, that it gives the prosecution *any* power to consolidate. To the contrary, the statute suggests that consolidation is always the province of the court.

Furthermore, even if section 954 did extend some consolidation power to the prosecution, it only authorizes the consolidation of accusatory pleadings, not charges. As the People correctly assert (AB, pp. 12 [fn. 12], 25, 47-48, 54, 61), there were no pleadings to consolidate here, and no consolidation occurred.

D. Conclusion

In sum, the consolidation provision of section 954 does not authorize a unitary information because (1) an information could never be the product of consolidating two complaints, and (2) section 954 does not authorize the "consolidation" of the charges from complaints; what charges may be filed in an information is governed by section 739.

III.
Section 954's joinder provision does not authorize a unitary information.

Appellant's contention is that the unitary information was authorized by section 954's "joinder" provision. This reasoning fails because section 739 and 954 operate independently. There is no need disregard the plain language of section 739 so as to wedge it into an "interwoven statutory tapestry." (AB, p. 40, see also pp. 32, 59-60, 69.) Charges in an information must be properly joined as required by section 954, and they must also be supported by the evidence that was presented to one magistrate at one preliminary examination that resulted in one holding order, as required by section 739.

A. Section 954 rules governing joinder of charges and section 739's rules governing evidentiary support for charges in an information operate independently.

CACJ agrees with appellant that section 739 does not address joinder or consolidation and therefore does nothing to limit or change 954's rules regarding joined offenses. (AB 57-58.) What appellant overlooks, however, is that the converse is also true: just as section 739 does not impact the rules for joinder as described in section 954, nor does section 954 impact the requirements regarding the evidence that must support charges in an information under section 739.

Appellant contends that because joinder is authorized by section 954, it would be absurd to read section 739 as prohibiting joinder, and that "if one reads section 739 as imposing a prohibition, then one is granting section 739 preeminence over section 954, rather than harmonizing the statutory scheme." (AB 34-35.) Not so. There is no support for appellant's claims that section 739 is "subject to section 954" (AB 59) and that section 954 "acts as an overlay" (AB 58) that somehow narrows the requirements of section 739.

What appellant gets wrong is that section 739 does not "impose a prohibition" by limiting the scope of joinder. Rather,

section 739 "imposes a prohibition" totally unrelated to joinder, by requiring that the charges in an information be supported by the evidence that was presented to one magistrate at one preliminary examination that resulted in one order of commitment. Sections 739 and 954 operate independently from one other, and do so very cleanly. Appellant's effort to "harmonize" these statutes into one "interwoven statutory tapestry" (AB, p. 40) is what creates tension and confusion.

Appellant seems to assume that if the charges in a given information could properly be joined under section 954, then *any* statute that renders that information unlawful must somehow be narrowing or abridging section 954's joinder provision. (AB, pp. 34-35.) This is illogical; section 739 can (and does) render a unitary information unlawful for reasons unrelated to joinder.

Furthermore, appellant's logic proves far too much. What if charges properly joined under section 954 were alleged in an information, but that information was filed 16 days after the order of commitment? Following appellant's logic, the 15-day filing requirement in section 739 must not mean what it says, because enforcing it would somehow be granting section 739

preeminence over section 954, under which the charges were properly joined.

Or, what if the charges in a given information could properly be joined under section 954, but some of those charges were not supported by any evidence presented at the preliminary examination? Following appellant's logic, enforcing section 739's requirement of evidence to support each charge would somehow be granting section 739 preeminence over the joinder provision of section 954. This seems absurd, and the claim that section 739 cannot prohibit a unitary information just because that unitary information may contain properly joined charges is also unreasonable.

In sum, appellant appears to presume that if section 954 and 739 are "harmonized" then no information with charges properly joined under section 954 could ever be in violation of section 739. Appellant's argument fails because these sections address totally different subjects. Giving full effect to the plain language of section 739 does not create any disharmony with section 954.[7]

[7] That sections 739 and 954 operate independently answers appellant's arguments based on section 1004, paragraph 3. (AB,

IV.
Allowing unitary informations would disrupt the efficient administration of the courts and impact defendants' fundamental rights.

Policy considerations point to the same result as the plain terms of the applicable statutes. Permitting unitary informations would severely disrupt the effective and efficient administration of the courts and would infringe on defendants' fundamental rights.

Appellant claims the Fresno County District Attorney has filed unitary informations "as long as institutional memory can determine," and claims the practice is "not new or novel." (AB 12, fn. 2; see also pp. 14, 64.) CACJ disagrees; the practice is novel.

Neither the parties not the lower court have identified a single prior case that even contemplates the possibility of a unitary information. As the administrative and record-keeping

pp. 57-58.) Paragraph 3 of section 1004 permits demur when multiple offenses are charged "except as provided in Section 954." Appellant muses that if section 739 requires the People to file a separate information for each preliminary examination and holding order, then "one cannot help but wonder what is the purpose of paragraph 3 to section 1004?" (AB, p. 58.) The purpose of section 1004, paragraph 3 seems to be obvious: if charges in any accusatory pleadings are not properly joined under section 954, they may be subject to demurrer. This demurrer rule has nothing to do with whether or not the charges in an information comply with section 739.

confusion that arose in this matter suggests and as appellant concedes, unitary informations are uncommon even in Fresno County. (AB, p. 64.) Moreover, however often unitary informations may be filed in Fresno County, they remain disruptive even there. The trial court in this matter declared, "this has been a problem off and on throughout the ages," and characterized the District Attorney's filing as "running rough shot over the Court's procedures." (RT 119.)

The trial court's concerns were well-taken. There are good reasons unitary informations are virtually unheard of throughout California, and that the Penal Code, written local rules, and uncodified but well-established practice all presume that each preliminary examination and holding order will result in a separate information. Permitting unitary informations would be highly disruptive to superior court procedures.

Continuity of counsel from a preliminary examination to arraignment on an information is critical for both the efficient operation of the courts and for protecting defendants' rights. "Counsel at the preliminary examination shall continue to represent a defendant who has been ordered to stand trial for a felony until the date set for arraignment on the information

unless relieved by the court upon the substitution of other counsel or for cause." (§ 987.1; see also, e.g., Santa Clara County Local Criminal Rule 4, subd. (B)(1) [requiring counsel at preliminary examination to appear at arraignment on information, and, if seeking to be relieved, to deliver all discovery to new counsel].) The very concept of a "date set for arraignment on the information" is antithetical to the filing of a unitary information, which would permit the People to turn multiple cases into one case and thereby render one or more arraignment dates unnecessary.

If unitary informations were permissible, attorneys and defendants (many of whom would be in custody and transported to a courthouse at significant county expense) would appear for arraignments at the appointed time and place, only to discover that nothing has been filed in their "case." As occurred in this matter, judges, attorneys and court staff would waste substantial time sorting out who is supposed to be where, and when, as the parties and staff chase down one case that has been reborn inside another with no notice to the defendant or the court.

It is common for defendants with multiple cases to have multiple attorneys (as occurred here). Eliminating the one-to-one

relationship between a holding order and the resultant information would routinely create uncertainty as to which attorney is representing a defendant at arraignment on the information, jeopardizing that defendant's right to effective representation.

Litigants and third parties would likely struggle to understand court records. The records from a "case" that seems to have mysteriously and abruptly terminated may fail to clarify that it was actually subsumed into another. Even if the transition of charges into a unitary information was recognized, merged cases with no court order would complicate the process of tracking charges through the already-complicated life cycle of a criminal case. (See Dis. Opn., p. 533 [unitary informations could nullify the concept of the "record of the case"].)

Clerks and court reporters would waste time and resources making sure documents that were expected to relate to one case find their way into a new on, undermining rules intended to streamline these processes. (See, e.g., Los Angeles County Superior Court, Local Rule 8.4, subds. (a) [requiring court reporters to file preliminary examination transcripts within 10 days of holding order] and (b) [requiring clerks to deliver

preliminary examination transcript to department where arraignment is set].)

The superior courts face a difficult enough challenge in managing their criminal case loads. Making filings and hearing dates even more unpredictable will exacerbate that challenge. Order and predictability are essential, which is why magistrates set the time and place for arraignment on an information whenever they issue a holding order despite the fact that no law specifically requires this. (See, e.g., Los Angeles County Superior Court, Local Rule 8.5 [information must be filed in courtroom where case is set for arraignment].)

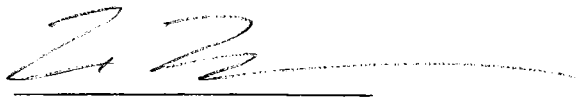
Finally, permitting unitary informations would permit prosecutors to forum shop. If two different arraignment dates are set in two different departments, a prosecutor would be free to decide whether or not to file a unitary information, and if so under which case number, according to his or her own judge and timing preferences, and, in some cases, preference for who will continue to represent the defendant. (See Dis. Opn., p. 533.)

In sum, permitting unitary informations would disrupt the efficient operation of the courts, confuse and delay attorneys, and infringe upon the rights of defendants. There are no valid

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this petition has been prepared using 13 point Century Schoolbook New typeface. In its entirety, the brief consists of 6,469 words as counted by the Microsoft Word word processing program, up to and including the signature lines that follow the Brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on December 18, 2019



Matthew Missakian

DECLARATION OF SERVICE

People v. Cody Wade Henson; case No. S252702

I, Matthew Missakian, declare that I am a citizen of the United States, over the age of 18 years, not a party to the above-entitled action, and have a business address at 5150 East Pacific Coast Highway, Suite 200, Long Beach, CA, 90804, and an email address at matthew@missakian-law.com; and that on December 18, 2019 I served copies of:

APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE FOR PERMISSION TO APPEAR AS AMICUS CURIAE ON BEHALF OF PETITIONER; AMICUS BRIEF IN SUPPORT OF PETITIONER.

in the above-entitled action by depositing copies thereof in sealed envelopes, postage fully prepaid, in the United States Mail at Long Beach, California, addressed as follows, or via email as follows:

Office of the Attorney General: SacAWTTrueFiling@doj.ca.gov

CCAP: eservice@capcentral.org

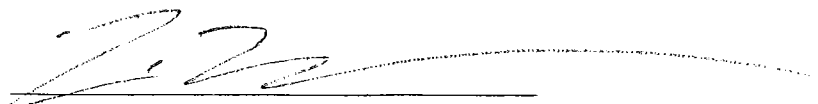
Fresno County District Attorney
Attn: Douglas O. Treisman
dtreisman@co.fresno.ca.us and DAMotionService@FresnoCountyCA.gov

Barbara Smith, counsel for Petitioner: smith78223@gmail.com

Fresno County Superior Court
Hon. W. Kent Hamlin
1100 Van Ness Avenue
Fresno, CA 93724-002

Court of Appeal, Fifth Appellate District: Via Truefiling

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th of December, 2019 at Long Beach, California.



Matthew Missakian