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SUPREME COURT
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**IN THE
SUPREME COURT OF CALIFORNIA**

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PEOPLE OF THE STATE OF CALIFORNIA,



Deputy

Plaintiff and Appellant,

vs.

FIRME H. HAJJAJ,

Defendant and Respondent.

After A Decision By The Court Of Appeal
Fourth Appellate District, Division One
Case No. D054754 [(2009) 175 Cal.App.4th 415]

RESPONDENT'S OPENING BRIEF ON THE MERITS

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By Appointment Of The Court of Appeal
Under The Appellate Defenders, Inc.
Independent Case System

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**IN THE
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PEOPLE OF THE STATE OF CALIFORNIA,

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RESPONDENT'S OPENING BRIEF ON THE MERITS

INTRODUCTION

In *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 784 (“*Rhinehart*”), this Court held that “absent exceptional circumstances, a trial court’s congested calendar does not constitute good cause to avoid a dismissal under [Penal Code] section 1382.” (Accord, *Stroud v. Superior Court* (2000) 23 Cal.4th 952; *People v. Johnson* (1980) 26 Cal.3d 557, 570-572.) The lower courts have uniformly adhered to this Court’s directive, even under the pressure of chronic, burgeoning court congestion. (See, e.g., *People v. Flores*

(2009) 173 Cal.App.4th Supp. 9 (“*Flores*”); *People v. Cole* (2008) 165 Cal.App.4th Supp. 1 (“*Cole*”); *Arreola v. Municipal Court* (1983) 139 Cal.App.3d 108.) That is, until now.

In its published opinion, the Court of Appeal in *People v. Hajjaj* (2009) 175 Cal.App.4th 415 (“*Hajjaj*”) held that when a branch courtroom becomes available on the last day of the statutorily prescribed time period for commencement of trial – but cannot physically be reached by the parties or counsel on that day – this constitutes good cause as a matter of law to continue trial within the meaning of Penal Code section 1382, subdivision (a). (*Id.*, at pp. 428-429.) Yet it was chronic court congestion in the County as a whole which forced the trial court into a frenzied search for an available courtroom, where one perchance opened up in a remote branch court in the late afternoon on the last day for trial to commence. By crafting an opinion that addresses only the symptom (remoteness), rather than the underlying cause of delay (court congestion), the *Hajjaj* court has created conflict and confusion in the law.

Court congestion is destined to increase. (See, e.g., Govt. Code, § 68106 [mandatory court closures].) The problem cannot be addressed, much less resolved, by make-shift solutions which deprive a criminal defendant of the constitutional right to a speedy trial.

STATEMENT OF THE CASE

Defendant and respondent Firme H. Hajjaj (“respondent”) was charged in an Information with one count of sale/attempted sale of a controlled substance (methamphetamine) in violation of Health and Safety Code section 11379. The Information alleged a prior conviction enhancement pursuant to Health and Safety Code section 11370.2, subdivision (a), and a prior prison sentence enhancement pursuant to Penal Code section 667.5, subdivision (b). (Clerk’s Transcript (“C.T.”) 78-79.) Respondent pled not guilty and denied the allegations. (C.T. 82.)

Trial was continued once at the request of defense counsel. (C.T. 86.) Over defense objection, the trial court continued trial on its own motion due to courtroom unavailability. (C.T. 87.) The parties then stipulated to continue the trial to a date within the prior time waiver. (C.T. 88.) The trial court on its own motion again continued trial due to courtroom unavailability to Monday, July 28, 2008, the last day for trial to commence without an additional waiver from respondent. (C.T. 89.) On July 28, 2008, both parties announced ready for trial. However, the trial court found there were no available courtrooms. (C.T. 90.)

The next day, respondent brought a motion to dismiss for lack of speedy trial pursuant to Penal Code section 1382. (C.T. 91-98.) The trial court granted the motion. (C.T. 99.)

The People filed a timely notice of appeal from the order of dismissal pursuant to Penal Code section 1238, subdivision (a)(8). (C.T. 100.)

The Court of Appeal filed a published opinion reversing the order of dismissal. That Court held that:

“[W]hen, on the last day of the statutorily prescribed time period for commencement of trial in a criminal case, a courtroom becomes ready and available for trial in the late afternoon at a branch court that is physically remote from the criminal calendar court at the main courthouse and that remoteness prevents the parties and counsel from appearing for trial that day, the physical remoteness constitutes good cause within the meaning of [Penal Code] section 1382(a) to commence the trial the next day at the branch court.” (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.)

LEGAL DISCUSSION

I.

A CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

Penal Code section 1382 provides in relevant part:

“(a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: [¶] (2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant’s arraignment on an indictment or information. . . . However, an action shall not be dismissed under this paragraph if either of the following circumstances exist: [¶] (A) The defendant enters a general waiver of the 60-day trial requirement. . . . [¶] (B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.”

The Legislature enacted Penal Code section 1382 to implement the accused’s constitutional right to a speedy trial. (*Rhinehart, supra*, 35 Cal.3d at p. 776; *Owens v. Superior Court* (1980) 28 Cal.3d 238, 249.) “That section constitutes a legislative endorsement of dismissal as a proper judicial sanction for violation of the constitutional guarantee of a speedy trial and as a legislative determination that a trial delayed more than [the prescribed period]

is prima facie in violation of a defendant's constitutional right. [Citation.] Thus, an accused is entitled to a dismissal if he is brought to trial beyond the time fixed in section 1382. [Citation.]" (*Rhinehart, supra*, 35 Cal.3d at p. 776, internal quotes omitted; see also, *Sykes v. Superior Court* (1973) 9 Cal.3d 83, 88-89.)

To avoid a dismissal when a criminal case is not brought to trial within the statutory period, the prosecutor has the burden of establishing good cause for failing to do so. "What constitutes good cause is a matter within the court's discretion, and its determination will be reversed only if that discretion is abused." (*Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17; see also, *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.)¹ "A trial court will not be found to have abused its discretion unless it 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.' [Citation.]" (*People v. Lancaster* (2007) 41 Cal.4th 50, 71; see, *Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17 [Riverside superior court trial judge did not abuse discretion by denying continuance due to court congestion and dismissing the matter]; *People v. Flores, supra*, 173 Cal.App.4th Supp. at p. 17 [same].)

¹ The prosecution does not dispute the applicability of the good cause standard and, in fact, cites the standard and the broad discretion the trial court has in determining what constitutes good cause when it requested and received a continuance early in the proceedings. (C.T. 26-29.)

II.

**WHERE THE UNDERLYING CAUSE OF
DELAY IN BRINGING A CASE TO TRIAL
IS COURT CONGESTION, THE
PROSECUTION FAILS TO SHOW GOOD
CAUSE FOR A CONTINUANCE.**

**A. Court Congestion Is Not Good Cause For A
Continuance Under Penal Code Section 1382.**

Chronic court congestion and overcrowding do not constitute good cause for a continuance under Penal Code section 1382. (*Rhinehart, supra*, 35 Cal.3d at pp. 781-782; *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572; *Arreola v. Municipal Court, supra*, 139 Cal.App.3d at pp. 113-115.) “If it did, criminal defendants could be consistently denied the right to a speedy trial whenever the state failed to provide adequate court funding to allow criminal defendants to be brought to trial in a timely manner.” (*Cole, supra*, 165 Cal.App.4th at p. 17; *People v. Johnson, supra*, 26 Cal.3d at pp. 571-572.)

For example, in *Rhinehart, supra*, 35 Cal.3d 772, a trial court swore a jury to try a misdemeanor to effectively avert dismissal as the court itself and

all other departments were engaged in trial. After selecting the jury, the court then continued the start of evidence for a week to permit the court to conclude the trial for which it was already engaged. This Court held that (1) the latter action was improper and (2) the court's congestion did not constitute "good cause."

Relying upon its earlier decision in *People v. Johnson, supra*, 26 Cal.3d 557 – holding that a defendant may not be denied his or her right to a speedy trial "simply by the failure of the state to provide enough courtrooms or judges to enable [the accused] to come to trial within the statutory period" – this Court held in clear and unambiguous language that, "absent exceptional circumstances, a trial court's congested calendar does not constitute good cause to avoid a dismissal under section 1382." (*Rhinehart, supra*, 35 Cal.3d at 784; accord *Stroud v. Superior Court, supra*, 23 Cal.4th at p. 969.)

**B. The Prosecution Cannot Meet Its Burden Of Showing
Good Cause For A Continuance When The
Underlying Cause Of Delay Is Court Congestion.**

1. The Record Before The Trial Court.

At 4:15 p.m. on July 28, 2008, the last day for bringing this case to trial within the time limits specified in Penal Code section 1382, the trial court (Judge Thomas H. Cahraman) at the Riverside Hall of Justice on Main Street in the city of Riverside, informed counsel that a courtroom had just become available at the Indio Court, approximately 1 hour 20 minutes away.² (Reporter's Transcript ("R.T.") 8.) Defendant's case was one of five cases before the trial judge for the last day to bring the case to trial. (R.T. 5, 15, 20.) The Prosecutor represented that the People could have a DA in the Indio

² The Court of Appeal granted respondent's request to take judicial notice of the fact the distance from the Riverside Hall of Justice located at 4100 Main Street in the City of Riverside, to the Indio Superior Court, located at 46-200 Oasis Street in the City of Indio, is 76.82 miles with an estimated travel time of 1 hour, 16 minutes driving at an average speed of 65 miles per hour. (Evid. Code, §§ 452, subd. (g), 459, subd. (a); *Hajjaj, supra*, 175 Cal.App.4th at p. 427, fn. 10.)

courtroom within the next five minutes and could be ready for trial, “provided there is a jury available.”³ (R.T. 8.)

The trial judge found on these facts and representations that the Indio courtroom was not available to commence trial before expiration of the statutory period, and this did not constitute good cause for a continuance of respondent’s trial:

“I don’t see how it starts a trial to have a DA not prepared on it to show up and say, ‘I’m a DA and I’m in a courtroom,’ when to start a trial as I understand it, a jury needs to be empaneled, and at least a few questions of voir dire have to be commenced. [¶] With the defendant not there, the defense lawyer not there, and the DA there who’s not prepared, I don’t see that that’s the start of the trial under the law. And as to whether all this then ties up to good cause . . . for [a] continuance . . . to go beyond the statutory periods, my understanding is that it does not.” (R.T. 15.)

Denying a continuance on this record was a proper exercise of the trial court’s discretion.

³ The record does not establish a jury in fact would have been available at 4:15 p.m..

**2. Physical Remoteness Of An Available
Courtroom Due To Court Congestion Does
Not Constitute Good Cause For A
Continuance.**

“[A]n accused is ‘brought to trial’ within the meaning of section 1382 when a case has been called for trial by a judge who is normally available and ready to try the case to conclusion. The court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned and sworn.” (*Rhinehart, supra*, 35 Cal.3d at p. 780; *Sanchez v. Municipal Court* (1979) 97 Cal.App.3d 806, 808, 813; *People v. Amati* (1976) 63 Cal.App.3d Supp. 10, 12.)

The *Hajjaj* opinion properly rejected the People’s contention that the appearance in the Indio courtroom – late in the day on July 28 – of a deputy district attorney without the presence of the defendant or his counsel of record, would have satisfied the *Rhinehart* requirements for bringing a case to trial within the meaning of Penal Code section 1382. (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.) Where the opinion errs is in finding the remoteness of the Indio court constituted good cause for a continuance as a matter of law. (*Ibid.*)

The lack of available courtrooms within the statutory period was due to the ongoing condition plaguing the Riverside superior court of too many cases and not enough courtrooms, not the remoteness of the Indio court. (See, *People v. Flores, supra*, 173 Cal.App.4th Supp. at pp. 24-25.)

The fact the only courtroom to open up was in Indio was a result of this chronic condition, not an isolated incident. On three prior occasions, the parties in this matter had appeared in court and announced that they were ready to proceed. (C.T. 85, 88, 89.) The court explicitly trailed the trial because of the lack of a courtroom. (C.T. 87, 89.) Thus, the *effect* of the congestion, i.e., the remoteness of the only available courtroom, was merely the result of the chronic and increasing court congestion in the County as a whole. “The situation in the Riverside Superior Court of insufficient courtrooms and judges to try all criminal matters before the statutory deadlines is in no way novel or limited to this case – it has been the norm for some time now. [Citation.]” (*People v. Flores, supra*, 173 Cal.App.4th Supp. at pp. 24-25, citing *Cole, supra*, 165 Cal.App.4th Supp. at p. 6-7, 17.) The fact this case came to the “last day” at all was due to pervasive court congestion of the type condemned in *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572.

Furthermore, even if one were to accept at face value that the remoteness of the Indio courtroom was the reason for the delay rather than the

court's congested calendar, that reason would not mandate, as a matter of law, good cause for granting a continuance. The prosecution never identified a single case where a court concluded that the remote location of a court constitutes good cause for a continuance. The dearth of authority is understandable.

While the good cause determination must turn upon the facts of the case and lies within the trial court's discretion, appellate courts have recognized a few guiding principles, none of which apply to this case. (*People v. Johnson, supra*, 26 Cal.3d at p. 570.) Good cause exists where the delay is caused by the defendant's conduct, where delay benefits the defendant or where the delay arises from such unforeseen circumstances as the unexpected illness or unavailability of counsel or witnesses. (*Ibid.*) In contrast, good cause is lacking where the delay is attributable to the fault of the prosecution or by improper court administration. (*Ibid.*) The physical location of the Indio courthouse simply is not akin to those circumstances where good cause has been found. It is not a situation of the defendant's making, for his benefit or one that arose unexpectedly. Instead, the fact that a courtroom only opened up over 70 miles from where respondent was located shortly before the courts closed for the day was a matter under the administrative control of the court

system. Such a situation simply does not constitute good cause for a continuance.

3. This Court's Decision in *Rhinehart* Is Not Distinguishable And Controls The Outcome Here.

The *Hajjaj* opinion found this Court's decision in *Rhinehart* "unavailing . . . as the issue here is whether good cause existed in this case for the court to assign this case to the Indio court for trial beyond the July 28 statutory limit." (*Hajjaj, supra*, 175 Cal.App.4th at p. 428.) This reasoning is flawed.

The *Hajjaj* opinion improperly assumes the failure to bring this case to trial within the statutory time limit *resulted from* the physical remoteness of an open courtroom. That, however, was not the *cause* of the People's failure to bring this case to trial within the statutory limits. To the contrary, as discussed in the preceding section, the fact the only open courtroom was in Indio at 4:15 in the afternoon on the last day for trial was the result of the chronic congestion of the Riverside County Superior Court. The result (remote courtroom) cannot be divorced from its cause (chronic court

congestion). It was this chronic congestion which caused this case to come up to the “last day” when getting to the only potential courtroom was a physical impossibility. This is precisely the type of court congestion this Court has consistently held does *not* constitute good cause for a continuance. (*Rhinehart, supra*, 35 Cal.3d at p. 784; *People v. Johnson, supra*, 26 Cal.3d at pp. 570-572; *Stroud v. Superior Court, supra*, 23 Cal.4th at p. 969.)

III.

EVEN IF THE REMOTENESS OF THE AVAILABLE COURTROOM COULD CONSTITUTE GOOD CAUSE FOR GRANTING A CONTINUANCE, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO DO SO.

A. The Trial Court's Refusal To Continue Respondent's Case – One Of Five Cases Before It In Need Of An Immediate Trial – Was Not An Abuse Of Discretion.

Respondent was not the only defendant before the Riverside court on July 28 who was required under the law to go to trial that day. (R.T. 1, 5, 15, 20.) Four other defendants were in the exact same situation. (*Ibid.*) There is no dispute that only one courtroom in Indio opened up at 4:15. (R.T. 8.) Accordingly, even if the remoteness of that courtroom were good cause for a continuance, four cases still had to be dismissed. (Pen. Code, § 1382.) The prosecution never argued or made a showing that it was an abuse of discretion to dismiss respondent's case rather than any of the others. Indeed, the

prosecution never made any distinction between the cases when it made its arguments against dismissal of the cases to the trial court. (R.T. 20-21.)

Overturing the trial court's decision where there was no showing as to why this case rather than any other should have gone forward effectively nullifies the speedy trial statute. The same arguments the prosecution made in respondent's case could apply to any – or all – of the defendants whose cases were dismissed that day. Presumably, the prosecution could pursue appeals in each of the cases and, if it prevailed, resume its cases against all five defendants where logistically only one trial could have been conducted. Such a result would create a significant unacceptable loophole in the speedy trial statute. Requiring a record of which case the prosecution would have pursued in that one open courtroom before overruling the trial court's exercise of discretion is necessary to guard against this unjust outcome.

B. The Prosecution Failed To Meet Its Burden Because It Never Argued The Remoteness Of The Indio Courthouse Constituted Good Cause For Obtaining A Continuance.

The burden of showing good cause for a continuance when a defendant objects must be borne by the prosecution. (*Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17; *Arreola v. Municipal Court, supra*, 139 Cal.App.3d at p. 113.) In the present case, the prosecution *never* argued that the remoteness of the Indio courthouse constituted good cause for a continuance. (R.T. 8, 9, 14, 15, 20-22.) Instead, the discussion about the availability of a courtroom in Indio revolved around whether the prosecution's offer to have a district attorney in the courtroom that afternoon would be sufficient to start the trial. (*Ibid.*)

The argument that the remoteness of the Indio courtroom was good cause for a continuance was a theory raised by the Court of Appeal *sua sponte* and on which it then asked for additional briefing. (Court of Appeal Order of May 21, 2009.) An argument that the trial court never had the opportunity to consider simply cannot be the basis for overturning the trial court's exercise of discretion. (*People v. Champion* (1995) 9 Cal.4th 879,

918, overruled on other grounds in *People v. Combs* (2004) 34 Cal.4th 821, 860; *People v. Scott* (1994) 9 Cal.4th 331, 353.) To hold otherwise absolves counsel from the responsibility of fully airing the issues at a time when the trial court can properly resolve the matter. (*People v. Scott, supra*, 9 Cal.4th at p. 353.)

IV.

**COURT CONGESTION DOES NOT
PROVIDE GOOD CAUSE TO VIOLATE A
DEFENDANT’S RIGHT TO A SPEEDY
TRIAL UNDER THE U.S. CONSTITUTION.**

The trial court’s decision was correct, not only under California law and under the California Constitution, but also under the United States Constitution.⁴ As with the California constitution, the United States Constitution guarantees the accused’s “right to a speedy and public trial...” (U.S. Const., 6th Amend.) Penal Code section 1382 implements both the federal and the state right to a speedy trial. (*Rhinehart, supra*, 35 Cal.3d at p. 776; *Jones v. Superior Court* (1970) 3 Cal.3d 734, 738.)

As described above (*supra* Sec. II), the trial court’s inability to bring respondent to trial in a timely manner was directly attributable to the chronic congestion of the court’s calendar, a circumstance that cannot be the basis for

⁴ While not explicitly stated in Respondent’s Petition for Review, respondent’s federal constitutional right to a speedy trial is fairly included in those issues on which review was granted. (Cal. Rules of Court, rule 8.516(a)(1).)

a continuance.⁵ Accordingly, consistent with respondent's Sixth Amendment right to a speedy trial, the court properly denied further continuances and dismissed his case. The Court of Appeal's reversal of this decision would undermine respondent's federal, as well as state, right to a speedy trial.

⁵ Notably, the federal Speedy Trial Act (like the California statute) also bars the granting of continuances "because of general congestion of the court's calendar" (18 U.S.C., § 3161, subd. (h)(7)(c); *see also U.S. v. Engstrom* (9th Cir. 1993) 7 F.3d 1423, 1427; *U.S. v. Gallardo* (9th Cir. 1985) 773 F.2d 1496, 1505.)

CONCLUSION

For the reasons set forth above, the decision of the Court of Appeal should be reversed, and the judgment of dismissal affirmed.

Dated: December 10, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas G. Benedon", written over a horizontal line.

Douglas G. Benedon

Attorney for Defendant and Respondent
FIRME H. HAJJAJ

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.520(c)(1), I certify that the total word count of the Opening Brief On The Merits, excluding covers, table of contents, table of authorities, and certificate of compliance is 3,736.

Dated: December 10, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas G. Benedon", written over a horizontal line.

Douglas G. Benedon

Attorney for Defendant and Respondent
FIRME H. HAJJAJ

PROOF OF SERVICE BY MAIL

1. I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. My business address is 21700 Oxnard Street, Suite 1290, Woodland Hills, California 91367.

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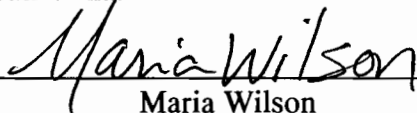
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Maria Wilson