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S175307

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IN THE  
SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

*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 REPLY 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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*Defendant and Respondent.*

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**RESPONDENT'S REPLY BRIEF ON THE MERITS**

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**INTRODUCTION**

As demonstrated in Respondent's Opening Brief on the Merits, the trial court's denial of the People's request for a continuance was a proper exercise of discretion. The People concede the trial court's decision is subject to an abuse of discretion standard. Unable to escape the clear legal standard governing this case, the People promote an erroneous interpretation of the standard that bears no resemblance to the firm guidelines followed by appellate courts. The true standard presumes the trial court's decision is

correct. In order to reverse that decision, an appellate court must find the decision is not supported by the record. That simply is not the case here.

Respondent identified in his Opening Brief the numerous fundamental deficiencies in the record the People cannot overcome. The People never argued before the trial court that the remoteness of the Indio courtroom constituted good cause for a continuance. The People never demonstrated that they would have chosen to pursue Respondent's case rather than the four other cases on their last day for trial before the court. And the record clearly shows there were no courtrooms available that the parties and attorneys could reach before the close of business. The People never dispute - or even address - these deficiencies in their Answer Brief. Accordingly, these points are conceded. (*Summers v. City of Cathedral City* (1993) 225 Cal.App.3d 1047, 1076 [arguments not addressed tacitly were admitted].)

Trapped by the record, the People advocate an interpretation of the law that runs contrary to established precedent. They urge this Court to turn a blind eye to the fact that the reason the parties and attorneys could not get to the "physically remote" courthouse in Indio was that the courtroom did not open up until 4:15 on the last day for trial, a circumstance that directly resulted from the congested court calendar. The reasons for barring a "good cause" continuance in such circumstances remain sound: these conditions are not

within a defendant's control and any delay arising from these circumstances would not be for a defendant's benefit. The trial court's ruling was a sound reading of the law and did not constitute an abuse of discretion. Accordingly, the dismissal of Respondent's case should be affirmed.

## LEGAL DISCUSSION

### I.

#### **THE TRIAL COURT DOES NOT ABUSE ITS DISCRETION BY DISMISSING A CASE WHERE THE PEOPLE FAIL TO SHOW GOOD CAUSE FOR A CONTINUANCE.**

##### **A. The Abuse of Discretion Standard Presumes the Correctness of the Trial Court's Exercise of Discretion Unless There is No Support in the Record for the Decision.**

A trial court's denial of a request to continue a criminal case beyond its last day to begin trial will only be overturned if the court abused its discretion. (*People v. Cole* (2008) 165 Cal.App.4th Supp. 1, 16-17; *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.) The People cannot – and therefore do not – contradict that this is the appropriate standard of review. (Appellant's Answer Brief ["A.B."] at 7-10.)

Instead, the People argue this Court should recast the standard as much more permissive than it actually is. (Answer Brief at 7-10.) A closer look at



the authorities on which the People rely, however, shows nothing but support for Respondent's contention that abuse of discretion is found only in the limited circumstances where a trial court acts "in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice." (*People v. Lancaster* (2007) 41 Cal.4th 50, 71, citation omitted; accord *People v. Foss* (2007) 155 Cal.App.4th 113, 125.) Thus, the trial court's discretion must remain undisturbed unless the record shows the decision clearly is untenable. (*People v. Memro* (1995) 11 Cal.4th 786, 850 [abuse of discretion only occurs when ruling "falls outside the bounds of reason."]; *People v. Giminez* (1975) 14 Cal.3d 68, 70-71 [court did not act "arbitrarily or unreasonably."] *People v. Foss, supra*, 155 Cal.App.4th at p. 126 ["the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed to be correct..."]; *People v. Akins* (2005) 128 Cal.App.4th 1376, 1386-1387 [decision was not "unreasonable, arbitrary, or capricious."] The People's cases do not warrant a deviation from this principle.

For example, in *Baggett v. Gates* (1982) 32 Cal.3d 128, this Court overturned a trial court's denial of attorney fees only because "there was *no reasonable basis*" for the trial court's decision where the plaintiffs had secured basic rights for themselves and others through their litigation, thus meeting the

requirement under the statute for an award of attorney fees. (*Id.* at 143, emphasis added.)

In *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, the Court used similar language, finding an abuse of discretion where there was “no reasonable basis” for the trial court’s decision to grant plaintiff’s request for attorney fees. (*Id.* at 354-355.) The court arrived at this conclusion where there was no evidence that the plaintiff’s legal action was responsible for the release of regulations that it sought. (*Id.* at 355.)

Similarly, *People v. Russel* (1968) 69 Cal.2d 187 also emphasized the limited nature of an appellate court’s review under the abuse of discretion standard, noting “discretion is abused whenever in the exercise of its discretion the court exceeds the bounds of reason...” (*Id.* at 194.)<sup>1</sup>

Thus, the cases cited by the People only support the traditional stringent understanding of the abuse of discretion standard.

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<sup>1</sup> Notably, the *Russel* court’s finding that the trial court abused its discretion in ruling to exclude psychiatric testimony about an incest victim’s mental state later was recognized as a relic of “antiquated beliefs” about victims of sex crimes. (*People v. Foss, supra*, 155 Cal.App.4th at p. 129.)

**B. The Record Supports the Trial Court's Exercise of Its Discretion to Deny the People's Request for a Continuance.**

In the present case, the trial court's denial of the request for a continuance was amply supported by the record. The trial court meticulously addressed every alternative the People suggested for bringing the case to trial. (Reporter's Transcript ["R.T."] 9-15.) No courtrooms were available that the parties could reach before the close of business on the last day on which Respondent needed to go to trial to comply with the Speedy Trial Act. (R.T. 1, 7-15.)

Where the evidence in the record supports the trial court's decision on matters entrusted to its discretion, there is no abuse of that discretion and the decision must stand. (*People v. Superior Court (Baez)* (2002) 79 Cal.App.4th 1177, 1193-1194, 1196.)

**C. The Trial Court Did Not Abuse Its Discretion Where  
The People Never Made The Arguments For A  
Continuance That They Now Advance On Appeal.**

As explained in the Opening Brief, the People never established they would have chosen to pursue Respondent's case in the courtroom in Indio, rather than the other four cases in need of an immediate trial. (Respondent's Opening Brief ["R.O.B."] at 16-17, citing R.T. at 20-21 [prosecution never distinguished between the five cases in arguments before trial court].) Likewise, the People never argued that the remoteness of the Indio courtroom was a basis for continuing the case. Instead, that issue was raised for the first time *sua sponte* by the Court of Appeal. (R.O.B. at 18-19.) Tellingly, the People do not address either of these deficiencies in their Answer Brief. By leaving these deficiencies undisputed, the People fail to meet their burden of showing good cause for a continuance. (*People v. Cole, supra*, 165 Cal.App.4th Supp. at pp. 16-17; *Arreola v. Municipal Court* (1983) 139 Cal.App.3d 108, 113.)

The failure of a party to present arguments and create a record before the trial court can hardly be said to constitute an abuse of discretion. (*People v. Foss, supra*, 155 Cal.App.4th at p. 113; *Burns v. 20<sup>th</sup> Century Ins. Co.*

(1992) 9 Cal.App.4th 1666, 1672, 1675; *In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 54-55.) Instead, the legal system squarely places the blame and consequences where they belong – on the party who failed to make the record and arguments. (*Ibid.*) The People’s failure simply does not equate to trial court error. The dismissal must be affirmed.

## II.

### **THE INABILITY OF THE PARTIES TO REACH THE ONLY OPEN COURTROOM WAS DUE TO CHRONIC COURT CONGESTION WHICH IS NOT GOOD CAUSE FOR A CONTINUANCE.**

The People, attempting to escape clear precedent that court congestion cannot constitute good cause for granting a continuance, seek instead to characterize this case as turning on the “physical remoteness” of the courtroom. This attempted distinction is not viable.

The issue is not the location of the courtroom. That is a constant. The issue is that the court suffers from a chronic overload of cases that exceeds its courtroom capacity. The Indio courtroom was not available any earlier in the day – or any day prior to that – because of court congestion. Similarly, no courtroom was available in Riverside because of court congestion. If a courtroom had been available at 9:00 a.m. on the last day available to go to trial, the “physical remoteness” of the courtroom would have been a non-issue. Creating a fiction where the effect (the only available courtroom is physically remote) is divorced from the cause (chronic court congestion) serves neither

the letter nor spirit of the Speedy Trial Act which is focused first and foremost on ensuring a quick and fair proceeding for the defendant. (*People v. Williams* (1999) 77 Cal.App.4th 436, 459 [right protects accused from having charges pending for an undue length of time, prevents oppressive pretrial incarceration, minimizes accused's anxiety and concern, and limits the potential impairment of defenses].)

Recognizing the "physical remoteness" of an available courtroom as good cause for granting a continuance would conflict with the established guidelines for finding good cause. Repeatedly, courts have explained that "good cause" for a continuance exists only where the delay was caused by the defendant's conduct, or the delay would redound to his or her benefit. (See, *People v. Johnson* (1980) 26 Cal.3d 557, 570.) Thus, for example, in the very cases cited by the People, good cause for a continuance was found where the defense counsel was absent. (*Ali v. Heinze* (1964) 230 Cal.App.2d 585, 590-591; *People v. Manchetti* (1946) 29 Cal.2d 452, 458.)

In contrast, where the circumstances for the delay fall outside of the defendant's control and delay would not benefit him, courts have refused to find good cause for a delay. (See, *People v. Johnson, supra*, 26 Cal.3d at p. 570.) In particular, circumstances relating to the court's administration or

resources fall within this category. (*Id.*; *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 25.)

Thus, even if cast as an issue of “physical remoteness” of the courtroom, this would not merit a finding of good cause for granting a continuance. The location and timing of available courtrooms is not within Respondent’s control. A delay on this basis over his objection would not benefit him. The responsibility for the location and availability of courtrooms falls squarely under the court’s administration. There simply is no reason in these circumstances for a defendant to bear the burden of delaying his case beyond the statutorily required time for bringing it to trial.

The trial court properly denied a continuance in this case and its dismissal must be affirmed.



## CONCLUSION

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

Dated: March 31, 2010

Respectfully submitted,



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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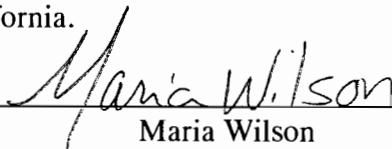
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Maria Wilson

