

No. 13-347
In The
SUPREME COURT OF THE UNITED STATES

STATE OF CALIFORNIA
Petitioner,
v.
BALDOMERO GUTIERREZ
Respondent.

On Petition For Writ Of Certiorari
To The Court of Appeal of California,
First Appellate District

AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONER, THE STATE OF CALIFORNIA BY
THE LOS ANGELES COUNTY
DISTRICT ATTORNEY
ON BEHALF OF LOS ANGELES COUNTY

Amicus curiae, Jackie Lacey, District Attorney for the County of Los Angeles, State of California, submits this brief for filing in support of the petition for a writ of certiorari to review the judgment of the California Court of Appeal, First Appellate District as the authorized law officer of the county, pursuant to Supreme Court Rule 37.2(a) and 37.4.¹

1. Los Angeles County Charter section 25 (1995) states:
Each County officer, Board or Commission shall have the powers and perform the duties now or hereafter prescribed by general law, and by this charter as to such officer, Board of Commission.

(continued...)

INTEREST OF AMICUS CURIAE

The Los Angeles County District Attorney's Office is the largest district attorney's office in the United States, employing over 1000 attorneys and prosecuting 63,000 felonies and 145,000 misdemeanors per year.²

SUMMARY OF ARGUMENT

The decision in *People v. Gutierrez* (2013) 214 Cal. App. 4th 343 by the Court of Appeal diverges from a majority of the appellate courts in erroneously mandating the gathering and disclosure of all possible exculpatory evidence in the possession of all prosecutorial agencies and law enforcement before the preliminary hearing. Superimposing our *Brady*³ trial obligations at this early stage of the proceedings on a preliminary hearing is a distortion of the underlying *Brady* protections of the right to a fair trial.

(...continued)

(Footnote omitted.) It is provided in the California general law that:

The district attorney is the general prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for the public offenses.

Cal. Gov't Code § 26500 (West).

² *Office Overview*, LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE, <http://da.co.la.ca.us/oview.htm> (last updated June 28, 2013).

³ *Brady v. Maryland* (1963) 373 U.S. 83, 87 [83 S. Ct. 1194; 10 L. Ed. 2d 215] (Hereafter "*Brady*").

ARGUMENT

EXPANDING “BRADY” DISCLOSURE REQUIREMENTS TO THE PRELIMINARY HEARING DISTORTS THE ORIGINAL GOAL OF ASSURING A FAIR TRIAL

The District Attorney of Los Angeles County respectfully submits this amicus curiae brief in support of the petition for certiorari filed by the State of California in the above-entitled case. The District Attorney, representing the most populous county in the state and the largest prosecution office in California, is aware that this erroneous decision has already spurred defense attorneys to sift through their pending felony cases looking for items of evidence which may have been disclosed by the People after the Preliminary Hearing to support Motions to Dismiss pursuant to *Stanton v. Superior Court* (1987) 193 Cal. App. 3d 265 (hereafter “*Stanton*”). *Stanton* basically held that when a “substantial right” has been violated at the preliminary hearing, the trial court should entertain a non-statutory motion to correct that deficit and insert information omitted from the preliminary hearing and reconsider whether probable cause would have been established with the missing information. *Stanton* at 270. The Court of Appeal decision in this matter, which conflicts with analyses in Federal and other state courts and completely misinterprets a prosecutor’s obligation to disclose exculpatory evidence; merits immediate review by

this Court. In Los Angeles County, the District Attorney's office generally provides discovery at the earliest reasonable time. We work closely with opposing counsel to expedite dispositions and proceed to trials on those cases which cannot be resolved. With diminishing resources for local governments and courts, our prosecutors often receive a preliminary hearing file on the morning it must be presented, along with 10 other cases. Los Angeles County had 57,697 felony filings in the fiscal year of 2009 to 2010.⁴ In the two year period between August 2011 and September 2013, 30,636 preliminary hearings were conducted where the defendant was held to answer, averaging about 269 per week. Of those, 9,760 (or 32%) were held within 14 calendar days of arraignment.⁵ Defendants are entitled to a preliminary hearing within 10 court days in California. (Cal. Pen. Code §859, subd. (b).)⁶

Los Angeles County has 88 cities within its borders, many with their own police departments. The District Attorney is responsible for prosecuting all felonies and misdemeanors in 78 of the cities in Los Angeles County.⁷ The District Attorney works with 46 separate police departments, with more than

⁴ Judge Lee Smalley Edmon et al., *Los Angeles Superior Court Annual Report 2011*(2011), available at,

http://www.lasuperiorcourt.org/courtnews/Uploads/142011311939312011AnnualReport_2007AnnualReport.qxd.pdf.

⁵ This data was provided on October 9, 2013 by the Los Angeles County District Attorney Systems Division pursuant to an inquiry.

⁶ Unless otherwise indicated, all statutory references are to the Penal Code.

⁷ *Cities Within Los Angeles County*, LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE, <http://da.lacounty.gov/lacountycities.htm> (last visited October 10, 2013).

one agency often involved on the same case.⁸ Los Angeles County Sheriff has 27 stations responsible for different areas.⁹ The Los Angeles Police Department has over 10,000 officers manning 21 separate stations.¹⁰ The Los Angeles County Probation Department, California Highway Patrol, Los Angeles Port Police, Los Angeles Airport Police, are just a few of the other agencies submitting arrest reports and investigations to the District Attorney.

The impact of the *Gutierrez* opinion is being felt throughout Los Angeles as motions to continue preliminary hearings for additional discovery are being filed along with repeated *Stanton* motions as new evidence is disclosed to the defense prior to trial. The importance of honoring *Brady* as a due process protection *at trial* is made clear below.

The United States Supreme Court has held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt

⁸ *Municipal Police Departments in Los Angeles County*, LOS ANGELES ALMANAC, <http://www.laalmanac.com/crime/cr69.htm> (last visited October 10, 2013).

⁹ *Organization*, LOS ANGELES COUNTY SHERIFF’S DEPARTMENT, [http://sheriff.lacounty.gov/wps/portal/lasd!/ut/p/c5/04_SB8K8xLLM9MSzPy8xBz9CP0os3gLAwgwsagg0NTHw9A_18PVw8TE2MDAFykciybu beboB5d093QKMzY0MnMwJ6A4H2Ydbf5AJfmQ-SB5AxxA0UDfzyM_N1W_IDfCIDMgXREAxSnevA!!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfRTAwMEdPRIMyR0pEMzBJU09NMFZVRTAwRDc!/?](http://sheriff.lacounty.gov/wps/portal/lasd!/ut/p/c5/04_SB8K8xLLM9MSzPy8xBz9CP0os3gLAwgwsagg0NTHw9A_18PVw8TE2MDAFykciybu beboB5d093QKMzY0MnMwJ6A4H2Ydbf5AJfmQ-SB5AxxA0UDfzyM_N1W_IDfCIDMgXREAxSnevA!!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfRTAwMEdPRIMyR0pEMzBJU09NMFZVRTAwRDc!/) (last visited October 15, 2013).

¹⁰ *Community Police Station Address Directory*, THE LOS ANGELES POLICE DEPARTMENT, http://www.lapdonline.org/inside_the_lapd/content_basic_view/6279 (last visited October 15, 2013); David Zahniser, *LAPD Force Exceeds 10,000 for the First Time, Officials say*, L.A. Times (Jan. 8, 2013), <http://articles.latimes.com/2013/jan/08/local/la-me-lapd-size-20130108>.

or to punishment”(*Brady, supra*, 373 U.S. at p. 87.)

A magistrate, however, “lacks authority to determine the guilt or innocence of the defendant.” (*People v. Wallace* (2004) 33 Cal.4th 738, 749.) Nor are magistrates authorized to punish defendants. (Section 872, *People v. Uhlemann* (1973) 9 Cal. 3d 662, 667.)

These limitations lead to the inference that *Brady* is inapplicable at a preliminary hearing. This Court confirmed this conclusion when it described *Brady* as “find[ing] *trial-related rights* to exculpatory and impeachment information. . .” (*United States v. Ruiz* (2002) 536 U.S. 622, 631 [122 S. Ct. 245, 153 L. Ed. 2d 586], emphasis added; see also *Kyles v. Whitley* (1995) 514 U.S. 419, 435 [115 S. Ct. 1555, 131 L. Ed. 2d 490] [*Brady* claims depend on “showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the *verdict*,” emphasis added.]

In California, the defendant is entitled to have the preliminary hearing held within 10 court days of the arraignment. (§859, subd. (b)) Applying *Brady* at the preliminary hearing would not limit disclosure of the contents to just the District Attorney file. The prosecution “team” includes police agencies (including those not directly involved in the initial arrest), forensic laboratories, child protection agencies, and other prosecutors (including those in other agencies, e.g. the City Attorney). In *Gutierrez*, the alleged discovery violation relates to prior child molestation reports of a victim. Constructive knowledge that is imputed to the prosecutor is

simply not grounded in reality given the statutory time constraints and privacy protections incorporated into the judicial system. Reports of a child's molestation are the subject of a number of privacy hurdles which are faced by both the People and the Defense. Welfare and Institutions Code section 827 provides the procedures available to both sides to obtain the reports within a bulwark of protections for the privacy and rights of all concerned. E-SCARS (Electronic Suspected Child Abuse Report System), in Los Angeles County has begun to prospectively generate a database of complaints submitted by county social workers and the Los Angeles County Sheriffs Department but it is not complete and does not include non-familial complaints made to other law enforcement agencies or from our neighboring counties.

(<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0918Escars.doc> as of October 10, 2013..) The opinion in *Gutierrez* assumes a fictional construct that the prosecutor has the omniscient ability to rapidly know what every other agency, police department, and police laboratory knows despite the privacy hurdles and sheer size of the conflicting databases. Knowledge of all members of the *team* must be disclosed *prior to trial* pursuant to *Brady*. (*Kyles v. Whitley*(1994) 514 U.S. 419, 438.) This disclosure is mandated to guarantee a fair trial. By the time the parties go to trial, there is enough time to gather all the evidence and prepare for a full airing of all the issues.

As an example, if Azusa Police make an arrest for a gang shooting and present the case for filing to a deputy district attorney in the West Covina office, there may be statements from nine witnesses that

are included in reports in the file presented. The case is filed promptly and the investigation continues. The defendant is entitled to a rapid preliminary hearing within 10 court days. The prosecutor shares everything with the defense in his file. Two witnesses are called to testify. The defendant is held to answer, arraigned on the information and 5 days later, the Irwindale police, who assisted in the arrest, discover field identification cards that cast doubt upon the statement of one of the witnesses who testified. Based on the *Gutierrez* opinion, the prosecution is imputed to know the evidence held by Irwindale Police as well as Azusa Police. A *Stanton* motion is filed and the trial court now has to insert the additional information into its review of the preliminary hearing transcript to decide if probable cause would have existed with the additional facts. However, at this point, if the People had the benefit of hindsight and had in fact known about the issues with the witnesses who testified, they might have called other witnesses in lieu of the ones that actually testified. The trial court cannot insert new information proffered by the People at this point into the preliminary hearing transcript. This intellectual exercise is absolutely unnecessary. A *Stanton* motion does nothing to advance the guarantee that the defendant will receive a fair trial.

Postponing compelled discovery until after the filing of an information would be consistent with the policies of other states where preliminary examinations serve as mere probable cause hearings. In these states, courts have precluded pre-preliminary hearing discovery motions, requiring instead that such motions be heard after the filing of an information. (See, e.g., *State v. Benson* (Okla.

1983) 661 P.2d 908, 909 [disclosure of *Brady* evidence not required until after defendant is bound over for trial]; *State v. Justice Court of the Las Vegas Township* (Nev. 1996) 919 P.2d 401 [authority to issue pre-preliminary hearing discovery orders is not inherent in justice court's authority to determine probable cause]; *Harris v. District Court of City and County of Denver* (Colo. 1993) 843 P.2d 1316, 1319 ["because of the limited nature of a preliminary hearing, a defendant may not conduct discovery prior to a preliminary hearing"]; *Janklow v. Talbott* (S.D. 1975) 231 N.W.2d 837, 839 ["discovery procedures should remain separate and distinct from the preliminary hearing and should be exercised after a defendant has been bound over for trial"]; *Addkison v. State* (Miss. 1992) 608 So.2d 304, 312 ["no right to discovery inheres with the grant of a preliminary hearing"].) Due process is a Constitutional right found in all fifty states and does not mandate discovery before preliminary hearings.

CONCLUSION

For the foregoing reasons, this Court should grant Certiorari to review the Court of Appeals\ decision in this matter.

Respectfully submitted,

JACKIE LACEY
District Attorney of
Los Angeles County

By

STEVEN KATZ
Head Deputy District Attorney
Appellate Division

PHYLLIS ASAYAMA
Deputy District Attorney

ROBERTA SCHWARTZ
Deputy District Attorney
(Counsel of Record)
Attorneys for Amicus Curiae in
Support of Petitioner for Writ of
Certiorari

TABLE OF CONTENTS

	<u>Pages</u>
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER, THE STATE OF CALIFORNIA BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY	1
INTEREST OF AMICUS CURIAE	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. EXPANDING "BRADY" DISCLOSURE REQUIREMENTS TO THE PRELIMINARY HEARING DISTORTS THE ORIGINAL GOAL OF ASSURING A FAIR TRIAL	3
CONCLUSION	10

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Addkison v. State</i>	
(Miss. 1992) 608 So.2d 304	9
<i>Brady v. Maryland</i> (1963) 373 U.S. 83	2
Cal. Gov't Code § 26500	2
<i>Harris v. District Court of City and County of Denver</i>	
(Colo. 1993) 843 P.2d 1316	9
<i>Janklow v. Talbott</i>	
(S.D. 1975) 231 N.W.2d 837	9
<i>Kyles v. Whitley</i>	
(1995) 514 U.S. 419	6
<i>Kyles v. Whitley</i> (1994) 514 U.S. 419	7
<i>People v. Gutierrez</i>	
(2013) 214 Cal. App. 4th 343	2
<i>People v. Uhlemann</i>	
(1973) 9 Cal. 3d 662	6
<i>People v. Wallace</i>	
(2004) 33 Cal.4th 738	6
<i>Stanton v. Superior Court</i> (1987) 193 Cal. App. 3d 265	3
<i>State v. Benson</i>	
(Okla. 1983) 661 P.2d 908	9
<i>State v. Justice Court of the Las Vegas Township</i>	
(Nev. 1996) 919 P.2d 401	9
<i>United States v. Ruiz</i>	
(2002) 536 U.S. 622	6

Supreme Court Rules

Rule 37.2(a) and 37.	1
----------------------	---

California Government Code

(Section 859, subdivision. (b))	6
---------------------------------	---

Section 26500 (West)	2
----------------------	---

Penal Code

Section 859, subdivision (b)	4
------------------------------	---

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF CALIFORNIA
Petitioner,

v.

BALDOMERO GUTIERREZ
Respondent.

On Petition For Writ Of Certiorari
To The Court of Appeal of California,
First Appellate District

AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONER, THE STATE OF CALIFORNIA BY
THE LOS ANGELES COUNTY
DISTRICT ATTORNEY
ON BEHALF OF LOS ANGELES COUNTY

JACKIE LACEY
District Attorney of
Los Angeles County
STEVEN KATZ
Head Deputy, Appellate Division
PHYLLIS ASAYAMA
Deputy District Attorney
ROBERTA SCHWARTZ
Deputy District Attorney
Counsel of Record
Appellate Division
320 West Temple Street, Suite 540
Los Angeles, California 90012
Telephone: (213) 974-1616
Attorneys for Amicus Curiae
