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 the State of California
First Appellate District

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Respondent Baldomero Gutierrez asks leave to file the accompanying brief in opposition and to proceed *in forma pauperis*. Respondent was represented by court appointed counsel in the California Court of Appeal, First Appellate District, pursuant to California Rules of Court, rule 8.300. A copy of the order appointing counsel is attached

to this motion.

Dated: October 17, 2013

Respectfully submitted,

STEPHANIE CLARKE
Counsel of Record
Staff Attorney
First District Appellate Project
730 Harrison Street, Suite 201
San Francisco, CA 94107
Telephone: (415) 495-3119
E-mail: sclarke@fdap.org
Attorney for Respondent

SE/S

COPY

Court of Appeal First Appellate District
FILED
MAR 28 2012
Diana Herbert, Clerk
by _____ Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 3

PEOPLE OF THE STATE OF CALIFORNIA	)	
	)	Case No. A134695
vs.	)	
	)	CONTRA COSTA County
BALDOMERO GUTIERREZ	)	Superior Court No. 51111954

ORDER APPOINTING COUNSEL ON APPEAL

By the Court:

The attorney named below is hereby appointed counsel for respondent on this appeal. This is designated a STAFF case.

Submitted by _____ on the date indicated below.
FIRST DISTRICT APPELLATE PROJECT

Respondent's Brief shall be filed as follows:

✓ Staff Case, Appellant's Opening Brief not yet filed: Thirty (30) days from the date of the filing of the Appellant's Opening Brief.

_____ Staff Case, Appellant's Opening Brief already filed: Thirty (30) days from the date of this order.

STEPHANIE CLARKE	submitted by FDAP on: March 23, 2012

Appointed Attorney's Address:

STEPHANIE CLARKE (State Bar #139090)
First District Appellate Project
730 Harrison Street, Suite 201
San Francisco, CA 94107

cc: Attorney General
~~First~~ District Appellate Project
Appellant
Appointed Attorney

RECEIVED
MAR 28 2012
FIRST DISTRICT APPELLATE PROJECT

Appellant's Address:

BALDOMERO GUTIERREZ

2061 Solano Way
Concord, CA 94519

Rev: COB3 11/98

No. 13-347

IN THE SUPREME COURT OF THE UNITED STATES

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On Petition for Writ of Certiorari to the Court of Appeal of the State of California First Appellate District

---

BRIEF IN OPPOSITION

JONATHAN SOGLIN
Executive Director

STEPHANIE CLARKE
(Counsel of Record)
Staff Attorney
First District Appellate Project
730 Harrison Street, Suite 201
San Francisco, CA 94107
Telephone: (415) 495-3119
E-mail: sclarke@fdap.org

Counsel for Respondent

QUESTION PRESENTED

May a state permit a defendant to move for pre-trial dismissal pursuant to *Brady v. Maryland,* 373 U.S. 83 (1963) upon learning that the prosecution failed to disclose material exculpatory information in its possession at the time of the preliminary hearing?

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STATEMENT OF THE CASE

Respondent adopts the procedural and factual background set forth in the opinion of the California Court of Appeal. *See* Pet. App. 2a-5a.

REASONS FOR DENYING THE PETITION

I. The Petition for Writ of Certiorari Should be Denied Where the Decision Below is Supported by Independent State Grounds

This case presents a poor vehicle by which to review petitioner's claim that a defendant has no federal constitutional right to disclosure of *Brady* material by the prosecution at the preliminary hearing stage of criminal proceedings. The primary issue addressed by the California Court of Appeal was whether state discovery statutes enacted via amendments made to the California Constitution (collectively referred to as "Proposition 115") overruled long-standing California case authority holding that the prosecution's duty to disclose exculpatory material under *Brady* applies to the preliminary hearing stage of proceedings. Pet. App. 7a. The court found that Proposition 115 did not alter the prosecution's obligation to disclose such evidence, and thus did not abrogate a defendant's right to move for dismissal based on a *Brady* violation discovered during pre-trial proceedings. Pet. App. 16a.

The Court of Appeal grounded its decision in California authority, including dictum from the California Supreme Court suggesting that *Brady*

applies to preliminary hearings. *People v. Jenkins,* 22 Cal.4th 900, 951 (2000) (disclosure of inculpatory evidence two months after preliminary hearing "did not implicate defendant's due process right to be informed of material evidence favorable to the accused . . . ."). Several long-standing California Court of Appeal decisions have permitted defendants to move for dismissal following the discovery of exculpatory evidence in the possession of the prosecution at the time of the preliminary hearing. *Stanton v. Superior Court,* 193 Cal.App.3d 265 (1987); *Currie v. Superior Court,* 230 Cal.App.3d 83 (1991); *Merrill v. Superior Court,* 27 Cal.App.4th 1586 (1994). Those cases in turn relied upon an earlier California Supreme Court decision holding that under *Brady* and its progeny, "suppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process within the meaning of the Fourteenth Amendment." *People v. Ruthford,* 14 Cal.3d 399, 408 (1975); *see Stanton*, 193 Cal.App.3d at 269, *Currie*, 230 Cal.App.3d at 96.

While it is true that the court's ruling was based on California cases construing the scope of the federal right under *Brady*, the focus of the court's decision was on whether the amendments to the California Constitution occasioned by Proposition 115 abrogated that prior authority. Pet. App. 1a-2a. The decision of the Court of Appeal in this case stated that

because it chose to follow existing California authority regarding the scope of the federal right under *Brady*, "we need not address whether defendants also have that due process right under the California Constitution. (Cal. Const., art. I, § 15.)" Pet. App. 17a.

The decision in this case was quickly endorsed by the decision of another California Court of Appeal in *Bridgeforth v. Superior Court,* 214 Cal.App.4th 1074 (2013), a case which explicitly based its ruling on the California Constitution. *Bridgeforth* held that Proposition 115 did not bar the defendant's pre-trial motion to dismiss based on alleged *Brady* error, and that "due process requires the prosecution to disclose, prior to the preliminary hearing, evidence in its possession that is both favorable to the defense and material to the probable cause determination to be made at the preliminary hearing." *Id.* at 1077. *Bridgeforth* made clear that it was basing its ruling on the due process protections afforded by both the United States and California Constitutions: "we conclude that the established California authorities, such as [*Stanton* and *Merrill*] are fully consistent with due process under the federal Constitution, as well as California Constitution, article I, section 7, subdivision (a) and section 15." (*Id*. at 1081.)

While the court in this case declined to address the state constitutional underpinnings of its ruling, *Bridgeforth* made clear that

independent state constitutional grounds supported its finding of a due process right to disclosure of *Brady* material at preliminary hearings. "[I]t is well established that the California Constitution is, and always has been, a document of independent force, and that the rights embodied in and protected by the state constitution are not invariably identical to the rights contained in the federal constitution." *American Academy of Pediatrics v. Lungren,* 16 Cal.4th 307, 326 (1997). The California Constitution expressly states that the rights "guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." Cal. Const. art. I, § 24.

California has a long history of interpreting its own state Constitution as affording greater protection to its citizens than that granted under the federal Constitution. *See Raven v. Deukmejian,* 52 Cal.3d 336, 354 (1990) and cases cited therein. California decisions resting on state constitutional grounds have often preceded later decisions of this Court finding similar protections under federal constitutional provisions. *See, e.g.*, *People v Wheeler,* 22 Cal.3d 258, 272 (1978) (recognizing state constitutional prohibition on discriminatory peremptory challenges eight years before *Batson v. Kentucky,* 476 U.S. 79 (1986)); *In re Johnson,* 62 Cal.3d 325 (1965) (recognizing state constitutional right to counsel in misdemeanor cases, prior to similar United States Supreme Court holdings);

Serrano v. Priest, 18 Cal.3d 729 (1976) (finding disparities among districts in public school funding unconstitutional under state equal protection clause); *In re Ferguson,* 5 Cal.3d 532 (1971) (requiring disclosure of *Brady* material without request prior to similar ruling in *United States v. Agurs,* 427 U.S. 97 (1976)). California courts continue to look to the state Constitution in deciding the scope of protection afforded its citizens. See *People v. Barrett,* 54 Cal.4th 1081, 1112-13 (2012) (Werdegar, J., concurring & dissenting); *People v. Aranda*, 219 Cal.App.4th 764 (2013) (legal necessity rule stemming from independent California Constitutional grounds not abrogated by *Blueford v. Arkansas,* __ U.S. __, 132 S.Ct. 2044 (2012)).

Among the protections afforded by the California Constitution is the right to due process of law. Cal. Const. art I, §§ 7(a), 15; *People v. Ramos,* 37 Cal.3d 136, 152 (1984). California has long granted its trial courts authority to entertain motions to dismiss based on violations of both federal and state constitutional provisions. *See Murgia v. Municipal Court,* 15 Cal.3d 286, 293, n. 4 (1975). *Bridgeforth* explicitly found that the established California authority relied upon by the court in this case (*Stanton, Merrill, et. al.*) was "fully consistent with due process under the federal Constitution, as well as California Constitution, article I, section 7,

subdivision (a) and section 15." *Bridgeforth,* 214 Cal.App.4th at 1087. The California Supreme Court declined to review either of these holdings. Pet. App. 24a; *Bridgeforth*, 214 Cal.App.4th 1074, review denied June 19, 2013, S210446.

In light of the California Supreme Court's decision not to accept review in these cases, both this case and *Bridgeforth* constitute valid California authority on the meaning and scope of the due process protections afforded by the state Constitution, protections that include the right to disclosure of material exculpatory evidence at the time of the preliminary hearing. Because the decision in this case is supported by independent state constitutional grounds, the petition for certiorari should be denied. *Cardinale v. Louisiana,* 394 U.S. 437, 439 (1969); *Bankers Life & Casualty Co. v. Crenshaw,* 486 U.S. 71, 80 (1988).

II. Certiorari Should be Denied Where There is No Conflict Between the Decision in this Case and the Decisions of Other Federal and State Courts Regarding the Prosecution's Disclosure Obligations Under *Brady*

Petitioner recognizes that this Court "has never pinpointed the time at which the disclosure [under *Brady*] must be made." Pet. at 6, citing *United States v. Anderson*, 481 F.2d 685, 690, n. 2 (4th Cir. 1973), *aff'd sub nom, Anderson v. United States*, 417 U.S. 211 (1974). None of the federal circuit cases cited by Petitioner in support of its position that *Brady* is

limited to trials had occasion to rule, however, on whether the failure to disclose material exculpatory evidence in the possession of the prosecution at the time of the initial probable cause determination violated *Brady. See* Pet. at 6-7. The issue is unlikely to become a matter of dispute between the circuit courts as federal felony cases are generally generated via grand jury indictment rather than by information. U.S. Const. Am. V; Fed. R. Crim. P. 7(a); *Rehberg v. Paulk*, __ U.S. _, 132 S.Ct. 1497, 1508, n. 3 (2012). The prosecution has no disclosure obligation during grand jury proceedings. *United States v. Williams,* 504 U.S. 36, 49-53 (1992). Accordingly, federal defendants have no right to move to dismiss for alleged *Brady* error during grand jury proceedings. *Id.* at 54-55; *see also Costello v. United States*, 350 U.S. 359, 363-64 (1956). There is no conflict between the holding in this case and federal circuit court authority, and thus Petitioner has not met the standards for review set forth in Rule 10.

Nor does the decision in this case conflict with, much less "eviscerate," this Court's ruling in *United States v. Ruiz*, 536 U.S. 622, 629 (2002), which held that due process does not require "preguilty plea disclosure of impeachment information." *See* Pet. 10. While noting that *Brady* stems from the fair trial guarantee of the Fifth and Sixth Amendments, nowhere in *Ruiz* did this Court limit federal due process

Brady protections to trials. *Ruiz*, 536 U.S. at 628.[1] To the contrary, this Court noted the differences between defendants who seek to enforce their rights to trial from those that enter guilty pleas. *Id.* at 628-29.

The primary concern in a case in which a defendant enters a guilty plea is that the plea be knowing, voluntary and intelligent, "with sufficient awareness of the relevant circumstances and likely consequences." *Id.* at 629, quoting *Brady*, 373 U.S. at 748; *see also Boykin v. Alabama*, 395 U.S. 238, 242 (1969). This Court declined to deem impeachment evidence "critical information of which the defendant must always be aware prior to pleading guilty." *Ruiz*, 536 U.S. at 630. The Constitution "does not require complete knowledge of the relevant circumstances," and courts are permitted to accept guilty pleas "despite various forms of misapprehension under which a defendant might labor." *Id.*

Contrasting guilty pleas from the "trial-related" rights established in *Brady* and *Giglio v. United States*, 405 U.S. 150 (1972), the Court noted that under a traditional due process analysis there was only limited value to disclosing impeachment information during plea bargaining, where the

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[1] *But see Ruiz*, 536 U.S. at 633-34 (Thomas, J., concurring) (finding that *Brady*'s fundamental principle of avoidance of an unfair trial not implicated at the plea stage, regardless of the usefulness of impeachment information).

value of the disclosure depends on the defendant's independent knowledge of the prosecution's case. *Ruiz*, 536 U.S. at 630-31. Balanced against that limited benefit was the Government's interest in securing pleas that were both factually justified and desired by the defense, and the impact that disclosure of impeachment evidence might have on on-going criminal investigations and the efficient administration of justice. *Id.* at 631-32. It was in light of all of those factors that this Court stated it could not find that "the Constitution's due process requirement demands so radical a change in the criminal justice process in order to achieve so comparatively small a constitutional benefit." *Id.* at 632.

A defendant who declines to enter a guilty plea and insists on his or her right to a preliminary hearing, however, "occupies a vastly different position than one who is considering waiving his or her constitutional rights and admitting guilt pursuant to a pre-indictment plea offer." *Bridgeforth*, 214 Cal.App.4th at 1086. Preliminary hearings in California serve several important functions, including protecting an accused's liberty interest and avoiding the waste of judicial resources on groundless or unsupported charges. *Id.* at 1086-87; *see also People v. Plengsangtip,* 148 Cal.App.4th 825, 835 (2007). The due process protections afforded by *Brady* serve these important interests and place preliminary hearings on a much closer

par to trials than to guilty plea proceedings. The decision in this case requiring disclosure of exculpatory information at the time of the preliminary hearing does not conflict with *Ruiz* or with federal circuit court authority.

Similarly, there is no conflict between the decision in this case and those issued by other state courts. Petitioner points to decisions from only two other states discussing a defendant's right to *Brady* disclosure at the time of the preliminary hearing. Pet. 8. But both of those cases addressed the scope of the prosecution's *discovery* obligations, not a defendant's right to move for dismissal for alleged *Brady* error at the time of the preliminary hearing. See *State ex rel Lynch v. County Court, Branch III*, 82 Wis.2d 454, 462 (1978) (writ of prohibition sought "to prevent whatever harm may be implicit in ordering that the state make its file available to counsel for the defendant for examination and the taking of such notes as he wishes prior to a preliminary examination"); *Stafford v. District Court,* 595 P.2d 797, 798 (Okla. Crim. App. 1979) (writ of mandamus sought "to require trial court to grant petitioner's full request for discovery filed prior to the preliminary examination").

It was in the context of discovery that the *Lynch* court found that the source of a defendant's right to exculpatory material was grounded in the

Fifth and Fourteenth Amendment's fair trial rights, and thus open-file discovery at the time of the preliminary hearing "where there has been no showing of particularized need for inspection, can serve only as an opportunity for generalized, unrestricted discovery, rather than as a device for the constitutionally mandated disclosure of specific exculpatory material." *Lynch*, 82 Wisc.2d at 466; *see also United States v. Agurs*, 427 U.S. 97, 106 (1976) (prosecution under no duty to provide unlimited discovery to the defense). Similarly, the Oklahoma Court of Criminal Appeals, relying on *Brady*, refused to compel discovery of any potential exculpatory information in the possession of the prosecution at the time of the preliminary hearing. *Stafford*, 595 P.2d at 798. Both *Lynch* and *Stafford* addressed the scope of discovery, not whether a criminal defendant is entitled to move for dismissal upon learning that the prosecution in-fact possessed material exculpatory evidence at the time of the preliminary hearing. That issue was not before the Wisconsin and Oklahoma courts, and their limited discussion of *Brady* does not put them at odds with the Court of Appeal's decision in this case.

Contrary to Petitioner's position, however, at least one other state (Connecticut) has considered the precise issue of *Brady*'s application to preliminary or probable cause hearings, and has agreed that due process

mandates disclosure. *State v. McPhail,* 213 Conn. 161, 166-67 (1989) (federal and state constitutional obligation to disclose exculpatory material attaches at probable cause hearing); *State v. Mitchell*, 200 Conn. 323, 338 (1986). Several other states' discovery statutes require disclosure of exculpatory material shortly after the initiation of criminal proceedings. *See* Ariz. R. Crim. P. 15.1(c) (no later than 30 days after arraignment); N.J. Ct. R. 3:13-3(b)(1) (disclosure within 7 days of return of indictment); Fla. R. Crim. P. 3.220(b)(4) (disclosure "as soon as practicable after the filing of the charging document"). Others still require disclosure shortly after receiving a written request from the defense. *See* Mich. Ct. R. 6.201(F) (compliance with discovery request within 21 days); Ill. S. Ct. R. 412(c), (d) (disclosure of exculpatory material "as soon as practicable" following filing of defense motion).

These statutes demonstrate a preference by the states that exculpatory material be turned over in a timely fashion prior to trial. That so few cases have addressed the application of *Brady* to preliminary hearings demonstrates the effectiveness with which states have protected defendants' due process rights to exculpatory material via statutorily mandated discovery provisions. Where such timely disclosure is not made, however, existing authority on whether a defendant's constitutional right to

due process under *Brady* extends to preliminary hearings does not reveal a conflict between the decision in this case and those of other state courts. Accordingly, petitioner again has not met the criteria for review set forth under Rule 10.

III. Certiorari Should be Denied Where There is No Indication that the *Brady* Disclosure Obligation Will Work a Substantial Hardship on the Prosecution Function

Brady has been consistently described as governing prosecutorial disclosure obligations under the Fifth and Fourteenth Amendments, not discovery. *See, e.g.*, *United States v. Higgins*, 75 F.3d 332, 335 (7th Cir. 1976). When a prosecutor "tacks too close to the wind" and fails to disclose information which would "put the whole case in such a different light as to undermine confidence" in the outcome, a defendant is entitled to a reversal of the conviction and a new trial. *Kyles v. Whitley*, 514 U.S. 419, 435, 439 (1995).

There is no constitutional right to discovery, however, and *Brady* properly understood does not concern discovery, but instead provides a remedy where the prosecution fails to disclose exculpatory information that undermines confidence in the verdict. *Wardius v. Oregon*, 412 U.S. 470, 474 (1973); *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977); *Agurs*, 427 U.S. at 109; *United States v. Bagley*, 473 U.S. 667, 675 (1985). But the

refusal to allow *Brady* to be the vehicle for pre-trial discovery does not bar its application to pre-trial probable cause determinations where a defendant can show that the prosecution's failure to disclose exculpatory material affected the determination as to whether there was probable cause to believe he or she had committed the crime. The description of *Brady* as concerning "trial-related rights," Pet. 6, most likely stems from its materiality requirement. There can only be *Brady* error where the defense can show that the non-disclosed information was of such significance that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682.

Where a defendant can meet *Brady*'s materiality requirement in a pre-trial setting, such that the non-disclosure of information undermines confidence that the prosecution would have been able to establish probable cause that the defendant even committed the crime, there is no sound policy reason not to permit states to allow a defendant to move for dismissal of the charges. In such situations, if the exculpatory evidence had been disclosed, "the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. Permitting pre-trial dismissal in such situations furthers the state's

interests in the expeditious resolution of criminal cases and the conservation of limited judicial resources. It also avoids the infliction of unnecessary physical and emotional hardship and unwarranted incarceration on the unjustly accused who may not have the means to secure release on bond pending the start of trial.

Petitioner's concerns regarding the prosecution team's inability to complete its investigation and marshal its resources prior to the preliminary hearing are best addressed by noting the high burden imposed on defendants by *Brady*'s materiality requirement. *See Kyles*, 514 U.S. at 439 ("it is hard to find merit in the State's complaint over the responsibility for judgment under the existing system, which does not tax the prosecutor with error for any failure to disclose, absent a further showing of materiality"). The dearth of case authority regarding the application of *Brady* to preliminary hearings, and pre-trial proceedings in general, demonstrates both the difficulty of satisfying *Brady'*s materiality standard, and, more hopefully, that law enforcement and prosecutors are routinely able to effectively investigate allegations of criminal conduct before instituting criminal proceedings. Where a defendant can, however, meet the *Brady* materiality requirement at the preliminary hearing stage of the case, such as in this case where the trial court found that "the complete character of the preliminary

hearing would have been different," and that there was "a reasonable probability that the outcome of the preliminary hearing would have been affected by the inclusion of the exculpatory evidence," due process dictates that he or she not be forced to undergo the burden of a trial. *See* Pet. App. 56a.

Concerns regarding the prosecution's difficulty in complying with its *Brady* obligations must yield before the overriding principle that the prosecution has no interest in proceeding against the unjustly accused. *Berger v. United States*, 295 U.S. 78, 88 (1935); ABA Standards for Criminal Justice, The Prosecution Function, 3-1.1(c) (3d ed. 1993) ("The duty of the prosecutor is to seek justice, not merely to convict"), *see also id.* at 3-3.11 (duty of prosecutor to disclose at earliest feasible opportunity existence of evidence tending to negate guilt or reduce punishment of the accused). Failing to disclose evidence tending to exculpate a defendant creates a "proceeding that does not comport with standards of justice." *Brady*, 373 U.S. at 87-88. Where a defendant can meet *Brady*'s materiality requirement by demonstrating that the withheld evidence created a reasonable probability that the result of the proceedings would have been different, due process demands that he or she be permitted to move for dismissal of the charges. *Bagley*, 473 U.S. at 682.

Finally, under California criminal procedure, the prosecution is not left without a remedy following a pre-trial dismissal based on *Brady* error. California permits the prosecution, subject to limited exceptions, to re-file criminal charges in a new criminal action following a pre-trial dismissal. *See* Cal. Penal Code § 1387; *People v. MacKey*, 176 Cal.App.3d 177, 186-187 (1985). Where a case is dismissed for *Brady* error at the time of the preliminary hearing, and the prosecution in good faith believes that the undisclosed information does not preclude a finding of probable cause to believe the defendant committed the crimes, it can re-file charges in a new criminal proceeding and attempt to establish probable cause at the preliminary hearing held in the new case. *Cf. United States v. Lewis*, 368 F.3d 1102, 1107 (9th Cir. 2004).

Accordingly, permitting pre-trial dismissal for *Brady* violations at the time of the preliminary hearing does not impact the prosecution's ability to proceed in meritorious cases, even if the prior materiality finding makes it unlikely that the prosecution will be able to establish probable cause in light of the new information. In California, the prosecution retains the option of having a magistrate determine whether the new information precludes a finding of probable cause in the new case. Cal. Penal Code § 1387. Permitting pre-trial dismissal for *Brady* error at the time of the

preliminary hearing therefore does not impair the truth-finding function of the criminal process and the prosecution's duty to seek justice. There is no need for a grant of certiorari in this case.

IV. Certiorari is Not Warranted Where a Decision by This Court is Unlikely to Affect the Ultimate Outcome of This Case

Petitioner fails to establish good cause for a grant of certiorari where any decision by this Court as to whether the due process protections of *Brady* extend to preliminary hearings is unlikely to change the outcome of this case. As discussed above, *supra* Part I, upon an unfavorable ruling from this Court, defendant may seek dismissal under the protections afforded by the due process provisions of the California Constitution. Cal. Const. art. I, §§ 7(a), 15; *Bridgeforth*, 214 Cal.App.4th at 1087.

Even if, however, the prosecution is able to overcome a pre-trial motion to dismiss based on state constitutional grounds, it is unlikely that the prosecution could survive a motion to dismiss made at the start of trial. It was only due to the unique procedural rules applicable to California preliminary hearings that the defendant was held to answer on the charges alleged in the complaint. Proposition 115 amended the California Constitution to permit the use of hearsay testimony by qualified police officers at preliminary hearings. Cal. Const. art. I, § 30; Cal. Penal Code § 872; *Whitman v. Superior Court,* 54 Cal.3d 1063, 1070 (1991). A sitting

magistrate may find probable cause to hold a defendant to answer the charges alleged in a complaint based solely on the officer's hearsay testimony. Cal. Penal Code § 872.

That procedure was utilized in this case. The only witnesses at the preliminary hearing held in July, 2011, were the investigating officer who had interviewed the minors at the time the allegations had been made ten years earlier, and an inspector from the district attorney's office who had taken a statement from respondent's stepdaughter that the minors had resided with respondent in 2001. Pet. App. 2a-3a. Investigators for the defense and prosecution could not locate the alleged victims following the ten-year lapse between the initial report and the preliminary hearing. Pet. App. 3a.[2] There was no indication that the prosecution might be successful in locating the minors if given additional time.

In the absence of the alleged victims, the prosecution will not be able to proceed to trial in light of respondent's right to confrontation and cross-

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[2]A two-count felony complaint was filed against respondent on May 30, 2002, and a bench warrant issued for his arrest shortly thereafter. Resp. App. 1a, 2a. For reasons that were never disclosed, respondent was not arrested and arraigned on the complaint until May 27, 2011. Resp. App. 3a. A defense motion to dismiss based on the denial of respondent's right to a speedy trial was denied without prejudice at the conclusion of the preliminary hearing, and not renewed in light of the subsequent dismissal of all charges. Resp. App. 4a, 5a.

examination. *Crawford v. Washington*, 541 U.S. 36 (2004). The case will be subject to dismissal on Sixth Amendment grounds even if respondent is not entitled to federal due process protection under *Brady* at a preliminary hearing. Accordingly, where this Court's ruling in unlikely to have an affect on its ultimate resolution, the case does not provide the best vehicle by which to decide Petitioner's claim of error. The petition for writ of certiorari should be denied.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Respondent therefore respectfully requests that the Petition be denied.

DATED: October 17, 2013

Respectfully submitted,

JONATHAN SOGLIN
Executive Director

STEPHANIE CLARKE
(Counsel of Record)
Staff Attorney
First District Appellate Project
730 Harrison Street, Suite 201
San Francisco, CA 94107
Telephone: (415) 495-3119
E-mail: sclarke@fdap.org

Counsel for Respondent

APPENDIX

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FILED

2002 MAY 30 P 3:43

K TORRE, CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR CONTRA COSTA COUNTY
BY: _____ Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
MARTINEZ

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

GUTIERREZ (Last) GONZALEZ BALDOMERO (First), DEFENDANT./

T.N.

NO. 205224-9
DA NO. X 02 000174-3
COMPLAINT - FELONY

01) PC 288(a)
02) PC 288(a)

The undersigned states, on information and belief, that GUTIERREZ GONZALEZ BALDOMERO, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about November 14, 2001, at Concord, in Contra Costa County, the Defendant, GUTIERREZ GONZALEZ BALDOMERO, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane Doe I, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COUNT TWO:

The undersigned further states, on information and belief, that GUTIERREZ GONZALEZ BALDOMERO, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about October 2000 through December 2000, at Concord, in Contra Costa County, the Defendant, GUTIERREZ GONZALEZ BALDOMERO, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane Doe II, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COMPLAINANT REQUESTS THAT DEFENDANT(S) BE DEALT WITH ACCORDING TO LAW. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
DATED: May 30, 2002 AT MARTINEZ, CALIFORNIA

DETECTIVE RIVERA
COMPLAINANT

DARA CASHMAN/dh
DEPUTY DISTRICT ATTORNEY

CONCORD POLICE DEPARTMENT

000117

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
MARTINEZ

FILED
2002 MAY 30 P 3:42
K. TORRE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,

V.

GUTIERREZ GONZALEZ BALDOMERO

DEFENDANT(S)./

NO. 205224-9
DA NO. X 02 000174-3
DECLARATION

THE UNDERSIGNED DECLARES:

DECLARANT IS AN OFFICER OF THE AGENCY SHOWN BELOW, WHICH AGENCY HAS CONDUCTED AN OFFICIAL INVESTIGATION INTO THE ABOVE-ENTITLED CAUSE. ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS IF SET FORTH IN FULL ARE COPIES OF THE DOCUMENTS, LISTED BELOW, AND ATTENDANT DOCUMENTS THERETO.

CONCORD POLICE DEPARTMENT CASE NO. 01-28889

SAID INCORPORATED DOCUMENTS WERE PREPARED IN THE ORDINARY COURSE OF BUSINESS AND PURSUANT TO THE SWORN DUTY OF THE OFFICER SUBSCRIBING SAME.

DECLARANT IS INFORMED AND THEREFORE BELIEVES THAT SAID DEFENDANT COMMITTED THE OFFENSE(S) CHARGED IN THE ACCOMPANYING COMPLAINT IN THE MANNER AND BY THE MEANS AS SET FORTH IN SAID INCORPORATED DOCUMENTS AND THEREFORE PRAYS

(XX) THAT A WARRANT BE ISSUED FOR THE ARREST OF SAID DEFENDANT.

(XX) DEFENDANT BE HELD IN CUSTODY UNTIL BAIL IS POSTED.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: May 30, 2002

DETECTIVE RIVERA
DECLARANT

CONCORD POLICE DEPARTMENT
AGENCY

ORDER

THE COURT FINDS, BASED ON THE DECLARATION FILED HEREIN, THAT THERE IS PROBABLE CAUSE TO BELIEVE THE ABOVE-NAMED DEFENDANT COMMITTED THE CRIME(S) ALLEGED IN THE COMPLAINT AND ORDERS THAT:

(X) A WARRANT BE ISSUED FOR THE ARREST OF SAID DEFENDANT.
(X) DEFENDANT BE HELD IN CUSTODY UNTIL BAIL IS POSTED.
(X) BAIL SET AT $ 200,000.

DATED: 6-3-02

JUDGE OF THE SUPERIOR COURT

2a

SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA
SUPERIOR COURT OF CALIFORN , MARTINEZ

DOCKET NO. 03-205224-9 01
000118

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

DEFENDANT BALDOMERO, GUTIERREZ GONZALEZ DEPT. 020 DATE 5/27/2011 TIME 8:30 AM
ADDRESS 2061 SOLANO WAY CONCORD CA 94519 DOB 02/27/1956
BW FEL PROB DEFENSE ATTORNEY TIME WAIVED
CUSTODIAL STATUS WARR
CHARGES 01 F PC 288(a) 02 F PC 288(a)

PROCEEDINGS

JUDGE NANCY STARK COURT REPORTER M. POPPER DEPUTY CLERK D. VILLASPIN MINUTES CERTIFIED CORRECT
ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☐ Deft. appears ☑ in custody ☐ Deft. not appearing
- ☐ With/by Atty./Pub. Def./ADO
- ☐ Deputy Dist. Atty.
- ☐ Court Probation Off.
- ☐ Other
- ☐ Interp. sworn/oath on file
- ☐ Cert. ☐ Non-Cert. ☐ Qualified per Rule 984.2
- ☐ Order Int. ☐ Int. Coord. notified

ARRAIGNMENT
- ☑ Answers true name as charged
- ☐ Waives Arr/reading of Complaint
- ☑ Handed copy of Complaint/Discovery
- ☑ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.
- ☐ PD/ADO/PVT ☐ accepts ☐ relieved
- ☐ No file / No docket

WARRANT / BAIL ORDERS
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $
- ☑ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until WARRANT RECALLED
- ☐ Bail forfeited & continued 190 days ☐ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $

REFERRALS
- ☑ Referred To: PUBLIC DEFENDER
- ☑ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Orally Conflicts, Appointed ADO
- ☐ Report to for booking
- ☐ 977 waiver filed
- ☐ 170.6 / 171 PC filed/oral ☐ Granted / Denied

WAIVERS/PLEAS
- ☐ Written Plea filed ☐ Pleads Guilty, Ct.#
- ☐ Pleads No Contest, Found Guilty, Ct.#
- ☐ Pleads Not Guilty, Ct.#
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX/Trial 10/60 Days Waived/Not Waived
- ☐ Admit/Denies Priors/Refusal/Enhance

CONTINUANCES
- ☑ 6/6 @ 8:30am
- ☑ CTP D-36
- ☐
- ☐ Vacate date of
- ☑ Def. must/need not appear
- ☐ Trailing

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont.
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds:
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face to add Ct.# a violation of section Fel/Misd/Inf
- ☐ Pursuant to 23103.5 CVC
- ☐ Substitute the word misdemeanor for felony where it appears in Complaint.
- ☐ Per Court/DA dismiss Complaint/Ct.#
- ☐ Criminal Protective Order issued/modified and served ☐ Deft. ☐ Victim ☐ DA
- ☐ PC 296 ordered/verified

PROBATION
- ☐ Court/Formal Probation granted for mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☐ Deferred Entry of Judgment
- ☐ Probation/Diversion/Reinstated/Modified/Extended to MAY 27 2011
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation for
- ☐ In re law notice given
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Suspended/Reinstated/Dismissed ☐ No Probation

L. HOLDEN

FINES/FEES
- ☐ Pay a fine of $ ☐ Rest. Fine of
- ☐ Pay $10 Cite Fee / $25 Booking Fee / CJA $
- ☐ Pay Security Fee $ CCA $ Other
- ☐ Pay balance of fine / ☐ In lieu of fine ☐ Susp. $ after fine.
- ☐ Make payments to the Court's collection agency, AllianceOne.
- ☐ hours Volunteer work by Fee $
- ☐ Re-refer/reinstate to Alcohol Program
- ☐ Referred to PCU for Attorney Fee Costs of $
- ☐ License Suspended/Revoked months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ Pay Probation Violation fine of $
- ☐ Fines/fees transferred to docket
- ☐ Pay fine/comply or appear on
- at

COMMITMENTS
- ☐ Be imprisoned days/months/years
- ☐ days/months/years credit
- ☐ days/months/years suspended
- ☐ Sentence to commence
- ☐ Serve consecutive/concurrent ☐ with ☐ with any sentence
- ☐ Report to Martinez Jail ☐ Electronic Home Detention ☐ WAP
- ☐ Contact CAF immediately / within 15 days.
- ☐ Day-for-day credit for time served in approved residential program. Proof by
- ☐ Deemed satisfied

OR CONDITIONS
- ☑ Obey all laws.
- ☐ Use true name/DOB
- ☐ Not drive vehicle unless properly licensed and insured.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from
- ☐ /yards
- ☐ SCRAM / GPS

☐ REMANDED to County Jail ☐ Ordered released ☐ On OR ☐ Promise to Appear ☐ Def. to be allowed phone calls
Bail Set in the amt. of $ 200,000 ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.
☐ See other minute pages/additional orders.

DATED: 5/27/11

JUDGE OF THE SUPERIOR COURT J. KAHN

3a

SUPERIOR COURT OF CALIFORNIA, MARTINEZ

03-205224-9 01

000197

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

DEFENDANT GUTIERREZ BALDEMERO GONZALEZ DEPT. 036 DATE 7/22/2011 TIME 8:30 AM

ADDRESS 2061 SOLANO WAY CONCORD CA 94519 DOB 02/27/1956

PX FEL PROB DEFENSE ATTORNEY PD-THOMAS TIME WAIVED

CUSTODIAL STATUS CUST TARGET: 8/1

CHARGES 01 F PC 288(a) 02 F PC 288(a)

PROCEEDINGS

JUDGE CLARE M. MAIER COURT REPORTER J. PELLETIER DEPUTY CLERK K. LAW MINUTES CERTIFIED CORRECT

ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☑ Deft. appears ☑ in custody ☐ Deft. not appearing
- ☑ With/by Atty/Pub. Def./ADO Thomas
- ☐ Deputy Dist. Atty. Blumberg
- ☐ Court Probation Off.
- ☐ Other
- ☐ Interp. _____ sworn/oath on file
- ☐ Cert. ☐ Non-Cert. ☐ Qualified per Rule 984.2
- ☐ Order _____ Int. ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged
- ☐ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.
- ☐ PD/ADO/PVT ☐ accepts ☐ relieved
- ☐ No file / No docket

WARRANT / BAIL ORDERS
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ _____
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until _____
- ☐ Bail forfeited & continued 190 days ☐ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $ _____

REFERRALS
- ☐ _____ Referred To: PUBLIC DEFENDER
- ☐ _____ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Orally Conflicts, Appointed ADO
- ☐ Report to _____ for booking
- ☐ 977 waiver filed
- ☐ 170.6 / 171 PC filed/oral ☐ Granted / Denied

WAIVERS/PLEAS
- ☐ Written Plea filed ☐ Pleads Guilty, Ct.#_____
- ☐ Pleads No Contest, Found Guilty, Ct.# _____
- ☐ Pleads Not Guilty, Ct.# _____
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX/Trial 10/60 Days Waived/Not Waived
- ☐ Admit/Denies _____ Priors/Refusal/Enhance

CONTINUANCES
- ☐ cont 8-4 @ 8:30 D11
- ☐
- ☐
- ☐ Vacate date of _____
- ☑ Def. must/need not appear
- ☐ Trailing _____

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont: Stipulated
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: Wout preg.
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face to add Ct.# _____ a violation of section _____ Fel/Misd/Inf
- ☐ Pursuant to 23103.5 CVC
- ☐ Substitute the word misdemeanor for felony where it appears in Complaint.
- ☐ Per Court/DA dismiss Complaint/Ct.# _____
- ☐ Criminal Protective Order issued/modified and served ☐ Deft. ☐ Victim ☐ DA
- ☐ PC 296 ordered/verified

PROBATION
- ☐ Court/Formal Probation granted for _____ mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☐ Deferred Entry of Judgment
- ☐ Probation/Diversion/Reinstated/Modified/Extended to _____
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation for _____
- ☐ In re law notice given
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Suspended/Reinstated/Dismissed ☐ No Probation

- do not be around children under age of 18 unless accompanied by other adult
- No children allowed to spend the night in home
- OK for grandchild Christopher Ramos to live w/ deft.

FINES/ORDERS/FEES
- ☐ Pay a fine of $ _____ ☐ Rest. Fine of _____
- ☐ Pay $10 Cite Fee / $25 Booking Fee / CJA $ _____
- ☐ Pay Security Fee $ _____ CCA $ _____ Other _____
- ☐ Pay balance of fine / ☐ In lieu of fine ☐ Susp. $ ___ after fine.
- ☐ Make payments to the Court's collection agency, AllianceOne.
- ☐ _____ hours Volunteer work by _____ Fee $ _____
- ☐ Re-refer/reinstate to _____ Alcohol Program
- ☐ Referred to PCU for Attorney Fee Costs of $ _____
- ☐ License Suspended/Revoked _____ months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ Pay Probation Violation fine of $ _____
- ☐ Fines/fees transferred to docket _____
- ☐ Pay fine/comply or appear on _____ at _____

COMMITMENTS
- ☐ Be imprisoned _____ days/months/years
- ☐ _____ days/months/years credit
- ☐ _____ days/months/years suspended
- ☐ Sentence to commence _____
- ☐ Serve consecutive/concurrent ☐ with _____ ☐ with any sentence
- ☐ Report to Martinez Jail ☐ Electronic Home Detention ☐ WAP
- ☐ Contact CAF immediately / within 15 days.
- ☐ Day-for-day credit for time served in approved residential program. Proof by _____
- ☐ Deemed satisfied JUL 28 2011

S. MENA

OR CONDITIONS
- ☑ Obey all laws.
- ☐ Use true name/DOB
- ☐ Not drive vehicle unless properly licensed and insured.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend _____ AA/NA meetings per week and present proof at each court appearance.
- ☑ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from _____
- ☐ _____ /yards
- ☐ SCRAM / GPS

REMANDED to County Jail: ☑ Ordered released ☐ On OR ☐ Promise to Appear ☐ Def. to be allowed _____ phone calls

Bail Set in the amt. of $ _____ ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.

☐ See other minute pages/additional orders.

DATED: JUL 22 2011

JUDGE OF THE SUPERIOR COURT

4a

See back of form for additional information.

CR-3005 Local Court Form - Mandatory / Rev. 4/15/11

SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

DOCKET NO. 05-111975-[illegible]

MARTINEZ

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

000264

DEFENDANT [illegible] DEPT. [illegible] DATE [illegible] TIME [illegible]

ADDRESS [illegible] DOB [illegible]

R[illegible] PROB [illegible] DEFENSE ATTORNEY [illegible] TIME [illegible] WAIVED

CUSTODIAL STATUS

CHARGES [illegible] W/E

PROCEEDINGS

JUDGE [illegible] COURT REPORTER [illegible] DEPUTY CLERK [illegible] MINUTES CERTIFIED CORRECT

ASSIGN. TO DEPT. [illegible] JUDGE [illegible] COURT REPORTER [illegible] DEPUTY CLERK [illegible]

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☐ Deft. appears ☐ in custody ☑ Deft. not appearing
- ☑ With/by Atty./Pub. Def./ADO Thomas / M. Delehoy
- ☑ Deputy Dist. Atty. Wagner
- ☐ Court Probation Off. [illegible]
- ☐ Other [illegible]
- ☐ Interp. [illegible] sworn/oath on file
- ☐ Cert. ☐ Non-Cert. ☐ Qualified per Rule 984.2
- ☐ Order [illegible] Int. ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged [illegible]
- ☑ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.
- ☐ PD/ADO/PVT ☐ accepts ☐ relieved
- ☐ No file / No docket

WARRANT
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ [illegible]
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until [illegible]

BAIL ORDERS
- ☐ Bail forfeited & continued 190 days ☐ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $ [illegible]

REFERRALS
- ☐ [illegible] Referred To: PUBLIC DEFENDER
- ☐ [illegible] Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Orally Conflicts, Appointed ADO
- ☐ Report to [illegible] for booking
- ☐ 977 waiver filed
- ☐ 170.6 / 171 PC filed/oral ☐ Granted / Denied

WAIVERS/PLEAS
- ☐ Written Plea filed ☐ Pleads Guilty, Ct.# [illegible]
- ☐ Pleads No Contest, Found Guilty, Ct.# [illegible]
- ☐ Pleads Not Guilty, Ct.# [illegible]
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX/Trial 10/60 Days Waived/Not Waived
- ☐ Admit/Denies [illegible] Priors/Refusal/Enhance

CONTINUANCES
- ☐ [illegible]
- ☐ [illegible]
- ☐ [illegible]
- ☐ Vacate date of [illegible]
- ☐ Def. must/need not appear
- ☐ Trailing [illegible]

MOTIONS/ORDERS
- ☑ Peo/Def Motion to/for/cont. Cont. Motion to dismiss
- Submitted with argument ☐ without argument
- ☑ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: [illegible]
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face to add Ct.# [illegible]
- a violation of section [illegible] Fel/Misd/Inf
- ☐ Pursuant to 23103.5 CVC
- ☐ Substitute the word misdemeanor for felony where it appears in Complaint.
- ☑ Per Court/DA dismiss Complaint/Ct.# 1, 2
- ☐ Criminal Protective Order issued/modified and served
- ☐ Deft. ☐ Victim ☐ DA
- ☐ PC 296 ordered/verified

PROBATION
- ☐ Court/Formal Probation granted for [illegible] mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☐ Deferred Entry of Judgment
- ☐ Probation/Diversion/Reinstated/Modified/Extended to [illegible]
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation for [illegible]
- ☐ In re law notice given
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Suspended/Reinstated/Dismissed ☐ No Probation

Court finds Brady violation

FINES/FEES ORDERS
- ☐ Pay a fine of $ [illegible] ☐ Rest. Fine of [illegible]
- ☐ Pay $10 Cite Fee / $25 Booking Fee / CJA $ [illegible]
- ☐ COA $ [illegible] CCA $ [illegible] Other [illegible]
- ☐ Pay balance of fine / ☐ In lieu of fine ☐ Susp. $ [illegible] after fine.
- ☐ Make payments to the Court's collection agency, AllianceOne.
- ☐ [illegible] hours Volunteer work by [illegible] Fee $ [illegible]
- ☐ Re-refer/reinstate to [illegible] Alcohol Program
- ☐ Referred to PCU for Attorney Fee Costs of $ [illegible]
- ☐ License Suspended/Revoked [illegible] months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ Pay Probation Violation fine of $ [illegible]
- ☐ Fines/fees transferred to docket [illegible]
- ☐ Pay fine/comply or appear on [illegible]
- at [illegible]

COMMITMENTS
- ☐ Be imprisoned [illegible] days/months/years
- ☐ [illegible] days/months/years credit
- ☐ [illegible] days/months/years suspended
- ☐ Sentence to commence [illegible]
- ☐ Serve consecutive/concurrent
- ☐ with [illegible] ☐ with any sentence
- ☐ Report to Martinez Jail ☐ Electronic Home Detention ☐ WAP
- ☐ Contact CAF immediately / within 15 days.
- ☐ Day-for-day credit for time served in approved residential program. Proof by [illegible]
- ☐ Deemed satisfied

OR CONDITIONS
- ☐ Obey all laws.
- ☐ Use true name/DOB
- ☐ Not drive vehicle unless properly licensed and insured.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend [illegible] AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from [illegible]
- ☐ [illegible] /yards
- ☐ SCRAM / GPS

☐ REMANDED to County Jail: ☐ Ordered released ☐ On OR ☐ Promise to Appear ☐ Def. to be allowed [illegible] phone calls

Bail Set in the amt. of $ [illegible] ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.

☐ See other minute pages/additional orders.

DATED: 2-10-12

John T. Laettner

JUDGE OF THE SUPERIOR COURT

5a