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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. LORENA GONZALEZ, Defendant and Respondent.	E048022 (Super.Ct.No. INF063176) **OPINION**

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

Rod Pacheco, District Attorney, and Alan D. Tate, Deputy District Attorney, for Plaintiff and Appellant.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Respondent.

This is an appeal by the People from the dismissal of the misdemeanor vandalism case against defendant Lorena Gonzalez pursuant to Penal Code section 1382[1] because the trial court found there were no courtrooms available to hear the last-day case in a timely manner, and there was no good cause to continue the case.

The People contend on appeal that the trial court, pursuant to section 1050, subdivision (a), should have given precedence to the instant case over civil cases; in particular, it should have used a courtroom designated as a civil-only department in the downtown Riverside courthouse and the "Hawthorne" civil courtrooms.[2] Moreover, the trial court should have contacted the family, probate, and other designated noncriminal courtrooms to inquire if they could hear the instant matter. The refusal to make such inquiry, the denial of the request to continue the case, and resultant dismissal constituted errors of law by the trial court, and the charges against defendant should be reinstated.[3]

We find the trial court here did not abuse its discretion by dismissing defendant's case based on the unavailability of any courtrooms to try the case and by denying a continuance. We affirm the dismissal of the case.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Three courtrooms have been set up on a temporary basis at the Hawthorne Elementary School to hear civil cases. (*People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 13 (*Flores*).)

[3] This court decided *People v. Wagner* (2009) 175 Cal.App.4th 1377 [Fourth Dist., Div. Two], which addressed the same issues raised here. The Supreme Court granted review on September 30, 2009 (S175794). On October 5, 2009, the People filed a request to stay the instant case until a decision is reached in *Wagner*. We denied that request on October 9, 2009.

I

FACTUAL BACKGROUND[4]

On September 14, 2008, Indio Police Officer Paul McClain was dispatched to 46200 Calhon Street in Indio and came in contact with Alvaro Ochoa and Sergio Gonzalez. Both advised Officer McClain that they had seen defendant and her boyfriend or husband fighting in front of their mobile home. They had both told defendant they were going to call the police.

They then observed defendant pick up a rock and throw it at Sergio. The rock hit Sergio on his foot and hand. Defendant picked up another rock and threw it at Sergio's truck. It hit the front windshield and broke it. The estimated damage at the preliminary hearing was $750.

II

PROCEDURAL BACKGROUND

On September 16, 2008, defendant was charged in a felony complaint with one count of vandalism (Pen. Code, § 594, subd. (b)(1)). A preliminary hearing was conducted on September 29, 2008, and defendant was held to answer. An information was filed with the same charges as the complaint on October 10, 2008.

On October 27, 2008, defendant was arraigned on the information. On December 17, 2008, the trial court, on a motion brought by the People, amended the information to

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[4] Since the case was dismissed prior to trial, we draw a brief statement of facts from the preliminary hearing transcript.

reduce the vandalism charge to a misdemeanor. The case was continued until February 19, 2009. On the last day for trial, the trial court concluded there were no available courtrooms, and the case was set for a motion to dismiss under section 1382 on the following day. That motion was granted, and the case was dismissed. The People filed a timely notice of appeal under the authority of sections 1238, subdivision (a)(8) and 691, subdivision (f).[5]

The People contend that the trial court committed an error of law when it dismissed defendant's last-day case, finding there no courtrooms available in Riverside County to try her case, and by refusing to grant a continuance. They request that the charges be reinstated.

A. *Additional Factual Background*

On February 19, 2009, defendant's case was called on the last day in Department 2F in Indio. The trial court noted that it was the last day for the case. There were no courtrooms available in the county, and the case was likely going to be dismissed. The trial court had kept the case "local" to try to get it tried instead of sending it out. However, the trial court noted that it had felony cases in its courtroom for the following two weeks and would have to send it to downtown Riverside that afternoon. The victim, Sergio Gonzalez, was allowed to make a statement on the record rather than have to travel to Riverside.

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[5] Section 691, subdivision (f) provides, "'Felony case' means a criminal action in which a felony is charged . . . ."

The trial court advised Sergio that the "reality of the situation in Riverside County is that we have too many cases set for trial and not enough judges and not enough courtrooms," which affected Sergio's case going to trial. It then stated, "In this situation I have murderers, rapists, and child molesters, all who have priority over a misdemeanor case, so when I look at what cases should be tried and what people should be taken off the streets, I have to make a weighing of what cases have priority . . . ."

Sergio advised the trial court that he was upset because defendant had broken his toe and a window on his truck. Sergio indicated that he just wanted to be compensated for his damages. The trial court advised Sergio that it was without legal authority to order defendant to reimburse him. The trial court advised him to seek reimbursement in small claims court.

At 4:00 p.m. on that same day in a downtown Riverside courtroom, defendant's case was recalled. It was recalled with at least five other misdemeanor cases. The trial court then stated, "Judge Trask in Department 1 is now designated a full-time civil trial department by the presiding judge, Judge Cahraman, pursuant to the authority of Guderan and, however, that would be the only other traditional civil department that would be open. [¶] At some point Judge Hopp's court in Indio will also be converted to a full-time civil department. But at his point Judge Hopp is, in fact, engaged in an attempted murder case, and has one other case trailing. [¶] So it will not happen for a while for him. But at this point there is clearly one civil department that had been used for criminal cases that could be assigned one of these six cases. So I did want to incorporate that into the

record. [¶] Except for that one civil department the only other open courts are the Hawthorn[e] courts doing civil, and the traditional family law, probate, and so forth."

The People then argued that it objected to the designation of Judge Trask's courtroom as a civil courtroom only. It was expressly against the directives of section 1050 to designate a courtroom expressly for hearing civil cases. Further, the People asked that the trial court look to the family law, probate, guardianship and other designated noncriminal courts to hear the cases that were going to be dismissed. The People stated, "We disagree with the court's policy of not checking with those courtrooms to determine if any of them are available to hear one of these jury trials especially since several of these are very short jury trials." The People also believed the cases should be assigned to the "Hawthorn[e] and Palm Springs court judges."[6] Those judges (presumably the Hawthorne judges) could use courtrooms in the downtown Riverside courthouse if there was a concern for security.

The People argued, "Finally it is the position of the People the court has done everything that is required of it to find a courtroom and none appear available, then that would constitute good cause, and these cases should be continued for one day."

The trial court responded that it hoped that this issue was addressed by the reviewing courts. Initially, the trial court noted, "I would hope that if they decided to

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[6] There is no information in the record as to which department in Palm Springs the People were referring, and they have provided no further information on appeal.

take this up, they would address the Hawthorne Courts and whether you can do what we do in the Hawthorn[e] situation, address whether or not family law, probate and juvenile are designated civil or not civil. [¶] These are all issues that will be continuing issues that will not help us at all if they just tell us that we'll go back to having to have Judge Trask do criminal cases. I implore if this case does get addressed again by some appellate court they just don't limit their discussions to Judge Cahraman's decision to reopen two more civil departments. [¶] To be fair to Judge Cahraman he is, in fact, closing one of the DCD Courts in Indio and transferring that to a full-time criminal department. And in terms of actual days available for trial we actually gain about three half days for criminal case[s], so a lot happens."

The People agreed that they wanted the issue reviewed. There was no discussion regarding good cause for a continuance. The trial court then explained that all six cases, including defendant's case, would be dismissed the following day. Defendant's case was dismissed the following day.

B. *Analysis*

1. *Standard of review*

"The right to a speedy trial is a fundamental right. [Citation.] It is guaranteed by the state and federal Constitutions. [Citations.] The Legislature has also provided for '"a speedy and public" trial as one of the fundamental rights preserved to a defendant in a criminal action. [Citation.]' [Citation.] To implement an accused's constitutional right

to a speedy trial, the Legislature enacted section 1382. [Citation.]" (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776.)

Here, defendant's case was dismissed because it had reached the last day, there were no available courtrooms, and the trial court refused to grant a continuance under section 1050, subdivision (a). Pursuant to section 1050, subdivision (a), criminal cases shall take precedence over civil cases as long as such precedence is consistent with the stated policy that hearing a criminal case before a civil case furthers the "ends of justice."

In *People v. Osslo* (1958) 50 Cal.2d 75 (*Osslo*), the Supreme Court concluded that the decision of whether a criminal case takes precedence over a civil case must not be arbitrary. The language of section 1050 vests discretion in the trial court to make these decisions, which evokes the abuse-of-discretion standard on appeal. Accordingly, we uphold the trial court's decision "except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316, italics omitted.)

The People contend that review is de novo because the trial court committed errors of law. They rely on the recent case of *People v. Hajjaj* (2009) 175 Cal.App.4th 415, but review was granted in that case (S175307) on September 30, 2009, subsequent to the filing of the People's briefs. We do not find the trial court committed an error of law in this case. It properly exercised its discretion in finding no available courtrooms (as we will discuss in more detail, *post*) and in denying the People's request for a continuance due to court congestion.

2. *Section 1050, subdivision (a)*

Section 1050, subdivision (a) provides in pertinent part, "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. . . . It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings."

In *Osslo*, *supra*,50 Cal.2d 75, which still remains good law, the defendant claimed that his case was erroneously continued after the date set for trial because civil cases were being given precedence over his criminal case under section 681a. (*Osslo*, at p. 106.) The trial court indicated that there were several judges out on assignment, the juvenile courts were congested, and another department was handling the case of a person who was confined as mentally ill. (*Id.* at pp. 105-106.) It also rejected the defendant's objection to the continuance on the ground that there were civil trials occurring in other departments over which his criminal trial took precedence. (*Id.* at p. 104.)

At the time of *Osslo*, section 681a provided, "'The welfare of the people of the state of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice.'" (*Osslo, supra,* 50 Cal.2d at p. 106.) The Supreme Court also cited to the then section 1050, which provided, "'Criminal cases shall be given precedence over all civil matters and proceedings.'" (*Ibid.*)[7]

Without defining "civil matters and proceedings" the Supreme Court held, "It does not appear that the policy of sections 681a and 1050 was disregarded. [The trial court]'s explanation of the condition of the calendar shows that defendants were not being deprived of precedence over civil cases for any arbitrary reason. . . . Rather, it appears that the orderly administration of a crowded calendar required the continuances to enable trial of the case in a proper department. *The precedence to which criminal cases are entitled is not of such an absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned.*" (*Osslo, supra,* 50 Cal.2d at p. 106, italics added.)

Osslo clearly provides that the provisions of section 1050 are not absolute and that a trial court is afforded the discretion to determine if a particular criminal case should be

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[7] In 1959, the Legislature amended section 1050 to include the language in section 681a and repealed section 681a. (Stats.1959, ch. 1693, §§ 1, 2, pp. 4092-4093.)

heard before a civil case. Further, it approves of the practice of providing separate departments for civil and criminal trials. Finally, at no time did the *Osslo* court state that the trial court was to consider the particular cases that were being heard in the various departments, including traditional civil courtrooms or juvenile courts.

Based solely on the findings in *Osslo* (which we are bound to follow (see *Auto Equity Sales Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456)), where the Supreme Court authorized that separate departments for civil and criminal cases are permissible and that the decision to hear a criminal case over a civil case must not be arbitrary, we conclude the trial court did not abuse its discretion in this case by finding that there were no available courtrooms. Under *Osslo*, the presiding judge and court administrators can designate separate civil departments that need not be considered to try criminal matters. As such, the trial court exercises its discretion by prioritizing cases in the available courtrooms. Section 1050 and *Osslo* require nothing more.

Here, based on the record, the presiding judge of the Riverside County Superior Court had designated one additional courtroom in downtown Riverside to hear civil cases. The other designated civil courtroom in Indio was hearing a criminal matter. This did not violate section 1050. Further, we cannot conclude such decision was arbitrary, as at the same time, another courtroom was being converted to a criminal-only courtroom. The designation of the civil-only department at the downtown courthouse was not arbitrary and was permissible.

Further, as stated in *People v. Flores* (2009) 173 Cal.App.4th Supp. 9 (*Flores*), which we will discuss in more detail, *post*, up until the time that the Hawthorne judges were appointed, very few civil cases were being heard in Riverside County. (*Id*. at p. Supp. 22.) We cannot find that the special appointment of three judges to hear civil cases and the trial court's refusal to divert those judges to criminal cases was an arbitrary decision.

Moreover, the Hawthorne courts are conducting civil trials at an elementary school. The People continue to argue that such space could be used for criminal trials, but they have not addressed the concerns of this court regarding provisions for adequate security. Moreover, there is nothing in this record that supports there were any available courtrooms in downtown Riverside where one of the Hawthorne judges could conduct a trial.

Further, the trial court here did not need to inquire about all matters occurring in all other courtrooms, i.e., family, probate, etc. We believe that the trial court clearly may exercise its discretion in implementing section 1050 by considering the various departments and the types of cases heard in those departments. Asking the calendar judge to review each case in every department would be an insurmountable task and is not mandated by either section 1050 or the Supreme Court. Section 1050 only requires that the trial court's decision regarding the precedence of a criminal matter over any type of civil case is not arbitrary.

We note that there were six cases before the trial court on this particular day. At no time did the People prioritize these cases based on the seriousness of each case. Even had a courtroom been available, the record is devoid of any evidence as to which case the trial court should have sent out for trial. Moreover, this is not like the situation in *People v. Cole* (2008) 165 Cal.App.4th Supp. 1, where the seriousness of the case required that a courtroom be found no matter what the circumstances. (*Id.* at p. 16.) As stated, *ante*, the victim, who was clearly wronged by defendant's actions, was most concerned with being reimbursed for his losses due to defendant's vandalism. This was not a case warranting disrupting any courtroom to ensure it was heard.

Further support for the above conclusion that the court did not abuse its discretion in dismissing the instance case is found in the published superior appellate court cases of *Cole, supra*, 165 Cal.App.4th Supp. 1, and *Flores, supra*, 173 Cal.App.4th Supp. 9, which, although not binding on us, are nevertheless persuasive in their reasoning.

In *Cole*, the trial court found that there were no available courtrooms to try two misdemeanor cases. It noted that this type of situation was not an emergency but a "continuing problem of constantly rising caseloads." (*Cole, supra*, 165 Cal.App.4th Supp. at p. Supp. 6, fn. omitted.) All of the civil courtrooms were hearing criminal trials.[8] The trial court interpreted section 1050, subdivision (a) to exclude family law, probate, juvenile, traffic or small claims matters, and in any event, the important work

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[8] It appears at the time there were no judges hearing cases at Hawthorne Elementary School.

done by these departments "would be completely eliminated" if criminal trials took precedence over those matters. Such elimination would be "detrimental to the citizens of the community." (*Cole*, at p. Supp. 8.) The case was dismissed pursuant to section 1382 because there were no available courtrooms. (*Cole*, at p. Supp. 9.)

The *Cole* court concluded a precise definition of "civil matters and proceedings," as used in section 1050, subdivision (a), was "unnecessary based on the discretionary nature of section 1050, subdivision (a), which gives the trial court discretion to allocate its resources in a manner consistent with the ends of justice." (*Cole, supra*, 165 Cal.App.4th Supp. at p. Supp. 14.) Thus, the court found that "civil matters or proceedings" had not been defined in section 1050 and did not believe such definition was necessary. (*Cole*, at pp. Supp. 13-14.) It then held that section 1050 was merely directory and not mandatory. (*Cole*, at p. Supp. 14.) It concluded that "whether a particular criminal case takes precedence over civil matters is within the court's discretion." (*Id.* at p. Supp. 15.)

The *Cole* court found that the trial court had not abused its discretion in dismissing the cases: "We conclude that the trial court was entitled to exercise, and did exercise, its discretion in a manner consistent with the policy and objectives of section 1050, subdivision (a). It considered all relevant circumstances, including the welfare of the citizens of the State of California. It indicated that separate from its legal interpretation of the term 'civil,' its decision was based on its finding that traditional civil courtrooms were already exclusively devoted to criminal trials, that the work done by the family,

probate, traffic, small claims and juvenile courts was of great importance to the community, and that depriving the community of these remaining judicial services would be highly detrimental to its citizens. Because the policy of criminal case precedence expressed in section 1050, subdivision (a), is based on the welfare of the citizens of the State of California, this is a valid and relevant consideration in determining whether a particular criminal case should receive precedence." (*Cole*, *supra*, 165 Cal.App.4th at p. Supp. 16.)[9]

After the decision in *Cole*, in *Flores*, the trial court called the case and stated that all courtrooms in the entire county were unavailable and that most of the civil courtrooms were engaged in criminal trials. (*Flores, supra,* 173 Cal.App.4th at p. Supp. 13.) The court then referred to the Hawthorne civil judges that had been appointed to conduct civil cases only. It also stated that security was inadequate at the facility to ensure the safety of the jurors and court staff. (*Ibid*.) It refused to transfer the judges to a secure courtroom because it would be interrupting civil trials. (*Id*. at p. Supp. 16.) It also rejected that it would assign any cases to family law or juvenile courts, as they had huge caseloads and were protecting children and spouses. (*Id*. at pp. Supp. 13-14.) The case was dismissed. (*Id*. at p. Supp. 16.)

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[9] This court declined to exercise its discretion to transfer *Cole* for further consideration, leaving the opinion certified for publication. Further, the California Supreme Court denied their writ of review and request for depublication.

On appeal to the appellate department of the superior court, the court first expanded on *Cole* and concluded that "'civil matters and proceedings' in section 1050, subdivision (a), is broad indeed, and means any civil action or special proceeding of a civil nature which is not clearly a criminal action," but that a "precise definition" is not necessary. (*Flores, supra*, 173 Cal.App.4th at p. Supp. 20, fn. omitted.) The *Flores* court then reiterated that section 1050, subdivision (a) was not absolute and only required granting precedence in a criminal case if to do so is just. (*Flores*, at p. Supp. 22.) It agreed with *Cole* that family, probate, and juvenile departments should not make way for criminal matters. (*Flores*, at p. Supp. 22.)

The *Flores* court then recognized that after *Cole*,the Hawthorne Elementary School judges were hearing civil cases and that the district attorney was arguing those courtrooms should be used to conduct criminal trials. It concluded that the denial of access to courts implicates due process and that civil litigants are entitled to meaningful access to the court system. (*Flores, supra*, 173 Cal.App.4th at pp. Supp. 23-24.) The court recognized that all traditional civil courtrooms in Riverside County were already being used for criminal trials. It then held, It then held, "We therefore disagree with the District Attorney's position that even further precedence must be granted to criminal matters. Conducting criminal trials at Hawthorne, temporarily assigning the judges currently assigned to Hawthorne to secure courtrooms at other facilities, or forcing family and probate departments to conduct criminal trials, would simply not be 'consistent with

the ends of justice,' and is therefore not mandated by section 1050, subdivision (a)." (*Id*. at p. Supp. 24.)[10]

The reasoning in *Flores* and *Cole* is sound. The People in the instant appeal have provided nothing new to this court that would change such reasoning. The policy to expedite criminal cases in conformance with the ends of justice makes it a reasonable determination on the part of the trial court to refuse to disturb those courts hearing civil matters to hear a criminal case. Making an absolute rule that criminal cases should take precedence over these types of cases would not serve the "ends of justice.'" (*Flores, supra,* 173 Cal.App.4th at p. Supp. 24.), We conclude that the trial court here did not err or abuse its discretion by finding that there were no available courtrooms to try this last-day case.

3. *Refusal to grant continuance due to court congestion*

The People additionally argue on appeal that they were unable to establish good cause for a continuance because the trial court committed legal error (which constituted an exceptional circumstance) by refusing to use civil courtrooms to try the instant case and that court congestion was cause for a continuance.

In *Cole*, the appellate court rejected the People's argument that the trial court abused its discretion by refusing to continue the trial beyond the statutory limit of section

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[10] On April 13, 2009, we denied the People's request to transfer *Flores* to this court, leaving the case certified for publication. The People's writ of mandate/prohibition filed in the California Supreme Court has been denied.

1382. The *Cole* court found "chronic court congestion and overcrowding do not constitute good cause for a continuance under section 1382." (*Cole, supra,* 165 Cal.App.4th at p. Supp. 17; see also *Rhinehart v. Municipal Court, supra,* 35 Cal.3d at p. 782 ["absent exceptional circumstances, a trial court's congested calendar does not constitute good cause to avoid a dismissal under section 1382"].)

In *Flores*, the court rejected the People's argument that the trial court's mismanagement by placing the Hawthorne courts off limits was grounds for "good cause" for the continuance. It found, "The situation in 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.] Because we have already concluded the trial court did not abuse its discretion by not utilizing available noncriminal resources to try Flores's case, we find no court mismanagement whatsoever." (*Flores, supra,* 173 Cal.App.4th at pp. Supp. 24-25.)

The *Flores* court concluded, "Lack of resources, not court mismanagement or congestion caused by an exceptional or emergency situation, lay behind the delay in Flores's trial. Under this state of affairs, granting a continuance would have been an abuse of discretion." (*Flores, supra,* 173 Cal.App.4th at p. Supp. 25.)

The findings in *Flores* and *Cole* are correct, and we see no reason to hold otherwise. Here, the trial court did not discuss whether there was a good cause for a continuance. The People did not argue the reasons that good cause existed, and therefore, we cannot even address whether exceptional circumstances warranted a continuance.

Further, we have already found that the trial court did not abuse its discretion by refusing to use civil courtrooms for the intstant case. As such, we find there was no good cause to continue the case.

We conclude the trial court did not abuse its discretion by dismissing this case. Section 1382 bars the refiling of this case as a misdemeanor. (*Avila v. Municipal Court* (1983) 148 Cal.App.3d 807, 812 ["[o]nce a misdemeanor has been dismissed pursuant to section 1382, it cannot be filed again"].) Further, even if there was some argument that the People could refile the case as a felony, this appeal forecloses any refiling of the charges under the directives of section 1238, subdivision (b).

VI

DISPOSITION

We affirm the dismissal of this case.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P.J.

We concur:

GAUT
J.

KING
J.