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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

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THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF YUBA COUNTY,

Respondent;

ANGELIC LOUISE RAMPONE,

Real Party in Interest.

C060522

(Super. Ct. No. CRF050000699)

After a jury acquitted Michael Huggins of felony murder but found him guilty of voluntary manslaughter for killing two men, real party in interest Angelic Rampone argued that collateral estoppel barred the People from prosecuting her for felony murder for the same killings. The superior court ultimately agreed and ordered that Rampone could not be prosecuted for felony murder on the theory that the killings occurred during the commission or attempted commission of robbery or burglary.

On the People's writ petition, we conclude the superior court erred in applying the doctrine of collateral estoppel to the circumstances of this case. Accordingly, we will issue a writ of mandate directing the superior court to vacate its order precluding the prosecution of Rampone for felony murder.

#### FACTUAL AND PROCEDURAL BACKGROUND

We take the relevant facts from the People's petition, the trial court documents submitted in support of that petition, and the appellate record in a related case of which we have taken judicial notice.<sup>1</sup> Before we do so, however, we pause to address two procedural matters.

The first matter relates to the allegations in the People's petition. The respondent superior court did not file a return to the alternative writ this court issued, and Rampone, as real party in interest, filed only an "opposition," asserting she was "not legally obligated to answer the specific allegations of the Petition" because she is not the respondent. Rampone is partially correct -- she was not "obligated to answer" the allegations of the petition, but then neither was the respondent court. The pertinent rule provides that "[i]f the court issues an alternative writ . . . , the respondent or any real party in interest, separately or jointly, *may* serve and file a return by demurrer, verified answer, or both." (Cal. Rules of Court, rule

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<sup>1</sup> At the People's request, we have taken judicial notice of the record in Huggins's appeal from his convictions for voluntary manslaughter (case No. C056765).

8.487(b)(1), italics added.) Technically, an "opposition" is permissible only "[i]f the court notifies the parties that it is considering issuing a peremptory writ in the first instance" (*ibid.*), which did not happen here. Thus, while Rampone was not obligated to answer the petition, her only other option was to file a return by way of demurrer.

Because no one filed an answer denying any of the allegations in the People's petition, we must accept the facts alleged in the petition as true. (*Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 741; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 996, fn. 2.) Thus, in effect, Rampone's "opposition" is actually a return by demurrer, because a demurrer admits the facts pleaded in a writ petition. (See *Bay Area Rapid Transit Dist. v. Superior Court* (1995) 38 Cal.App.4th 141, 143.) Thus, we treat the facts alleged in the petition as true.<sup>2</sup>

The second procedural matter relates to the superior court documents the People submitted in support of their petition. A petition for a writ of mandate must be verified. (Code Civ. Proc., § 1086; Cal. Rules of Court, rule 8.486(a)(4).) In

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<sup>2</sup> Fortunately for Rampone, those "facts" do not include the People's allegations in the seventh paragraph of their petition, which allege "[t]he respondent Superior Court exceeded its jurisdiction in precluding the People from trying real party for felony murder. The offenses were properly charged and are not barred by collateral estoppel." That paragraph does not allege facts, but legal conclusions, which a demurrer does not admit. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713.)

addition, "A petition that seeks review of a trial court ruling must be accompanied by an adequate record, including copies of: [¶] (A) The ruling from which the petition seeks relief; [¶] (B) All documents and exhibits submitted to the trial court supporting and opposing the petitioner's petition; [and] [¶] (C) Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review." (Cal. Rules of Court, rule 8.486(b)(1).)

Because the petitioner's right to relief will ordinarily "be resolved upon the parties' verified papers" (*Star Motor Imports, Inc. v. Superior Court* (1979) 88 Cal.App.3d 201, 205), without the taking of additional evidence, it is important that the verification encompasses not only the allegations of the petition but also the authenticity and accuracy of the exhibits submitted in support of the petition. (See *ibid.* ["A valid petition for mandate and such exhibits as may be referenced or incorporated therein will ordinarily state facts, verified as required by Code of Civil Procedure section 1086, calling for judicial relief," (italics omitted)]; 1 Appeals and Writs in Criminal Cases (Cont.Ed.Bar 3d ed. 2008) § 8.42, pp. 421-422 ["The record should be verified by specific reference in the verified petition, by separate declaration, or by certificates"].)

Here, the petition does not allege that the exhibits submitted in support of it are true and correct copies of documents submitted to the superior court and/or contained in

the superior court's file in this matter, nor did the People submit a separate declaration attesting to the authenticity and accuracy of their exhibits.<sup>3</sup>

Because Rampone has not challenged the accuracy of any of the People's exhibits, we will treat them as though they were properly authenticated and verified. In the future, however, the People would be well-advised to properly authenticate and verify the documents they submit to this court in support of their writ petitions.

With these procedural matters concluded, we turn to the relevant facts of this case.

At a joint preliminary hearing in August 2006, the People offered evidence that in September 2005, Huggins and Rampone and several individuals they lived with concocted a plan to steal marijuana from a house in Olivehurst at gunpoint. Rampone was the driver, and Huggins was to point the gun at the victims. Unfortunately, the plan went awry and Huggins ended up shooting the victims, Scott Davis and Christopher Hance, to death.

At the end of the preliminary hearing, Huggins and Rampone were each held to answer on two charges of first degree murder.

In an amended information filed in December 2006, Huggins was charged with first degree murder on the theory the killings

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<sup>3</sup> The four exhibits that are copies of reporter's transcripts of relevant oral proceedings in the case do include copies of reporter's certificates certifying the completeness and accuracy of the transcriptions, but nowhere is it alleged or attested that these copies are true and correct copies of the original transcripts or certificates.

occurred during the commission or attempted commission of robbery or burglary (felony murder). In May 2007, the jury in Huggins's case found him not guilty of the felony murder charges but guilty of two counts of the lesser included offense of voluntary manslaughter (on the theory he acted with the intent to kill or with conscious disregard for human life).

Originally Rampone had been charged with first degree murder on the theory the killings were deliberate and premeditated. In May 2007, however, a week after the verdicts in Huggins's case, the People amended the information against Rampone to charge her with felony murder on the same theory they had prosecuted Huggins -- that the killings occurred during the commission or attempted commission of robbery or burglary.

Relying on *People v. Taylor* (1974) 12 Cal.3d 686, Rampone filed a motion, based on the acquittal of Huggins, for an order preventing the People from prosecuting her for felony murder or murder on any theory of vicarious liability. The superior court originally denied the motion. Two months later, however, at a hearing in July 2007 involving a similar motion by another one of the participants in the scheme (Sparks), the court announced its intention to reconsider its collateral estoppel ruling against Rampone. In August 2007, Rampone filed a motion for reconsideration. But by that time this court had stayed further trial court proceedings in the case in connection with a writ petition the People filed on another issue. (*People v. Superior Court (Rampone)* (C056008, stay issued July 26, 2007, pet. denied and stay vacated Feb. 8, 2008).)

In August 2008, after the lifting of the stay, Rampone raised the collateral estoppel issue again by filing another motion for reconsideration. Following a hearing in September, the superior court issued its ruling reversing its position on that issue. Relying on *Taylor*, the court concluded the People were "collaterally estopped from pursuing a conviction for homicide . . . on the basis the homicides allegedly occurred during the commission of a robbery, burglary, or an attempt of either crime."

The People commenced this proceeding by filing a petition for writ of mandate to compel the superior court to vacate its order barring the prosecution of Rampone for felony murder. In January 2009, we issued an alternative writ and stayed further trial court proceedings in the matter.

#### DISCUSSION

The People contend the verdict in Huggins's case "should not be given binding effect in Rampone's" case because "[p]ublic policy generally permits disparate verdicts for an aider and a perpetrator." The People further argue that "[a]ssuming the continuing vitality of *Taylor*, its narrow exception to the general rule [allowing disparate verdicts] does not apply to this case" because "[t]he evidence in Rampone's trial will be very different from that in Huggins's trial . . . ." We agree

that, even assuming *Taylor* remains good law,<sup>4</sup> it cannot be applied here to bar prosecution of Rampone for felony murder.

The doctrine of collateral estoppel precludes a party from relitigating matters litigated and decided in a prior proceeding. (*People v. Sims* (1982) 32 Cal.3d 468, 477.) The doctrine can apply if: (1) the issue is identical to the one which is sought to be relitigated; (2) the prior proceedings resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the previous proceedings. (*People v. Taylor, supra*, 12 Cal.3d at p. 691.) The issue of whether collateral estoppel applies is a question of law that we review de novo. (*Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 618.)

Relying on *Taylor*, the trial court found that collateral estoppel applied here because it would "promote judicial economy" by precluding a "third trial on these same facts"<sup>5</sup> and would prevent inconsistent judgments, "eliminat[ing] the risk of undermining the integrity of the justice system."

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<sup>4</sup> The continuing validity of *Taylor* is presently before the California Supreme Court in another case arising from the same incident underlying this case. (*People v. Superior Court (Sparks)*, review granted Sept. 17, 2008, S164614.)

<sup>5</sup> In addition to Huggins, another participant in the scheme to steal the marijuana (Griffin) was prosecuted for felony murder; he, too, was found not guilty of that crime.



In *Taylor*, three men (Daniels, Smith, and Taylor) planned to commit a liquor store robbery. (*People v. Taylor, supra*, 12 Cal.3d. at p. 689.) Taylor (like Rampone here) was the getaway driver. (*Ibid.*) During the course of the robbery, one of the victims shot and killed Smith. (*Id.* at p. 690.)

In a pretrial writ proceeding, the Supreme Court held that Taylor could not be prosecuted for felony murder (because the killing was committed by a victim), but "could be found guilty of murder on a theory of vicarious liability." (*Taylor v. Superior Court* (1970) 3 Cal.3d 578, 582.)

While the writ proceeding was pending in the Supreme Court, "Daniels was separately tried and convicted of the robbery but was acquitted of the murder charge." (*People v. Taylor, supra*, 12 Cal.3d at p. 691.) Taylor, however, was subsequently convicted of murder. (*Id.* at p. 689.) On review, the Supreme Court determined that under "the particular circumstances of the instant case where an accused's guilt must be predicated on his vicarious liability for the acts of a previously acquitted confederate," the People were barred by the doctrine of collateral estoppel from relitigating the issue of whether Daniels or Smith "entertained the requisite malice aforethought" necessary to convict Taylor for murder on a theory of vicarious liability. (*Id.* at pp. 691, 698.)

Whether *Taylor* remains good law is subject to some doubt. For example, in determining that collateral estoppel should apply in that case, the Supreme Court noted that among the "persuasive related cases which favor the application of

collateral estoppel to foreclose the conviction of an accused based on his vicarious responsibility for the acts of a previously acquitted confederate" were "criminal conspiracy cases which, like the instant case, involve criminal responsibility for other than purely unilateral conduct." (*People v. Taylor, supra*, 12 Cal.3d at p. 694.) Citing an earlier California Court of Appeal case -- *People v. Reeves* (1967) 250 Cal.App.2d 490 -- the Supreme Court observed that collateral estoppel had been applied "to preclude the conviction of an alleged conspirator when all other alleged coconspirators have been acquitted." (*Taylor*, at pp. 694-695.) More recently, however, in *People v. Palmer* (2001) 24 Cal.4th 856, the California Supreme Court disapproved of *Reeves* and other similar cases and "conclude[d] that the rule of consistency is a vestige of the past with no continuing validity," and therefore "[i]f substantial evidence supports a jury verdict as to one defendant, that verdict may stand despite an apparently inconsistent verdict as to another defendant." (*Taylor*, at pp. 858, 861, 867.)

It is not for us to decide, however, whether *Taylor* remains valid. For us, it is enough to conclude that *Taylor* does not justify the application of collateral estoppel here for two reasons.

First, the Supreme Court expressly limited its holding in *Taylor* "to the particular circumstances of [that] case" (*People v. Taylor, supra*, 12 Cal.3d at pp. 698), which involved whether collateral estoppel precluded the People, who had previously

failed to establish that either of the robbers in the liquor store entertained the requisite malice aforethought, should be allowed to relitigate that issue in prosecuting the getaway driver for murder on a theory of vicarious liability. The Supreme Court in *Taylor* specifically observed that felony murder was not at issue there because that doctrine had been held inapplicable in the earlier writ proceeding. (*Id.* at p. 690.) Thus, construed narrowly, *Taylor* does not stand for the proposition that collateral estoppel can be applied to preclude prosecution of the getaway driver for felony murder just because another jury has acquitted the shooter of felony murder.<sup>6</sup>

Second, the Supreme Court in *Taylor* implicitly limited application of collateral estoppel, even in the circumstances then facing the court, to situations in which there were no "differences in evidence" at the trials. (*People v. Taylor, supra*, 12 Cal.3d at p. 698.) The *Taylor* court stated, "Contrary to the contention of the People the inconsistency in the results of Daniels' trial and defendant's trial cannot be explained by differences in evidence" because (1) "[t]he description of Daniels' conduct given by the prosecution witnesses was substantially the same in both trials"; (2) the jury in Daniels's case "did not believe his [contrary] account of the

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<sup>6</sup> Because Rampone was charged only with felony murder, and the trial court's order precluded her prosecution only on those charges, this case does not raise any question of whether Rampone could be prosecuted for murder on a theory *other* than felony murder notwithstanding Huggins's acquittal.

occurrences in the liquor store," while Taylor did not dispute the People's version of the events in the store; and (3) both defendants were caught in falsehoods and forced to admit they lied in pretrial statements. (*Ibid.*, fn. omitted.)

Here, because Rampone has not yet been tried, it is not possible to determine whether the evidence in her case will be identical to the evidence in Huggins's case. For example, Rampone claims it was Huggins's testimony that he had abandoned the plan to steal the marijuana before he shot the two victims that led to his acquittal for felony murder. She has also argued, however, that the jury in her case will not hear Huggins's testimony, while the People have argued that it is uncertain whether he is going to be a witness in the case. Under these circumstances, we conclude that *Taylor* does not compel or justify the application of the doctrine of collateral estoppel to bar the People from prosecuting Rampone for felony murder based on the theory that the killings occurred in the commission or attempted commission of robbery or burglary.<sup>7</sup> Accordingly, the superior court erred in concluding otherwise.

#### DISPOSITION

The petition is granted. Let a peremptory writ issue directing the superior court to: (1) vacate its order precluding the People from trying real party in interest Rampone

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<sup>7</sup> This is not to say that collateral estoppel can *only* be applied after the second trial has occurred. But where, as here, there is a substantial question whether the evidence will be the same in both trials, we believe *Taylor* does not apply.

for felony murder; and (2) enter a new order denying Rampone's motion. Having served its purpose, the alternative writ is discharged. Upon finality of this opinion, the stay previously issued is vacated.

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ SCOTLAND \_\_\_\_\_, P. J.

\_\_\_\_\_ CANTIL-SAKAUYE \_\_\_\_\_, J.