

CAVEAT: This sample is provided to demonstrate style and format. It is not intended as a model for the substantive argument, and therefore counsel should not rely on its legal content which may include research that is out-of-date.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff and Respondent,)	
)	2d Crim. B012345
v.)	
)	(Sup.Ct.No. BA123456)
Jane Doe,)	
)	
Defendant and Appellant.)	
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APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

Honorable Robert P. O'Neill, Judge

**APPELLANT'S OPENING BRIEF
REQUEST FOR INDEPENDENT REVIEW OF RECORD
(PEOPLE V. WENDE (1979) 25 CAL.3D 436)**

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TABLE OF AUTHORITIES

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People v. Wende
(1979) 25 Cal.3d 436

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STATEMENT OF APPEALABILITY

This appeal is from a final judgment of conviction after jury trial, and is authorized by Penal Code section 1237.

STATEMENT OF THE CASE

An information charged appellant Jane Doe with possession of cocaine base in violation of Health and Safety Code section 11350, subdivision (a) [count 2], and codefendant Jane Smith with sale of cocaine base [count 1] (CT 19-24). The codefendants were tried jointly by jury, with all motions made by either of them to be deemed joined by the other (CT 38).

Prior to the introduction of evidence, the court held an *in camera* hearing on the defendants' motion for disclosure of the observation point from which police had observed appellant taking possession of the cocaine. The court denied the motion on the grounds that the public interest in confidentiality outweighed the defendants' need for disclosure. (CT 38; RT 29, 108-109, 121-135.) The court then overruled the defendants' objections to limitations placed on

their cross-examination of the observing officer, denied a defense request that the jury be informed that the officer had exercised the privilege of confidentiality, and denied a defense request for mistrial (RT 136-139).

Two more defense motions for mistrial were denied after the court overruled defense objection to People's Exhibit 7, a police "information card" (RT 295-296), and allowed the prosecutor, over defense objection, to utilize certain documents provided in discovery to impeach a witness who testified for the codefendant (RT 305-307).

Both defendants were found guilty as charged (CT 83-85). At probation and sentencing proceedings conducted on October 26, 1995, the court suspended imposition of appellant's sentence and placed her on three years probation with the condition, *inter alia*, that she serve 365 days in county jail. Appellant was also ordered to pay a \$50 lab fee and a \$2,000 restitution fine or, in the alternative, provide 250 hours community service.¹ She was credited with 169 days of presentence custody. (CT 87.)

Appellant filed a timely Notice of Appeal (CT 91).

¹ Although the judge imposed the \$2,000 fine and community service in the alternative, ordering the service to be performed only in the event appellant could not afford the fine (RT 403), the minute order of judgment erroneously records them as separate and independent conditions (CT 87).

STATEMENT OF FACTS

Prosecution Case

On July 6, 1995, Los Angeles Police Detective David Perez was stationed at an observation post near Seventh and Central Avenues, an area of blatant narcotics activity. His duties were to observe street narcotics transactions and report them to "chase cars" in the area. (RT 156-158.)

At about 3:45 p.m., Perez, looking through 10 x 50 binoculars, saw codefendant Smith from a distance of 75 to 100 feet. Smith paced the street for a few minutes and then appellant approached and engaged her in conversation. Smith showed appellant a number of rock-like objects² Appellant plucked several of the objects out of Smith's palm, gave Smith some bills, and then walked west on Seventh Street. (RT 159-163.)

Perez notified the chase units of what he had seen, providing a description of appellant (RT 165, 171-175, 215-216). The chase units arrived within seconds, but not before Smith walked into the Riviera Hotel (RT 166-167). Perez watched one of the responding officers take appellant into custody (RT 167-168).

Officers Villatoro and Von Lutzow occupied the responding chase unit that took appellant into custody. As Villatoro approached appellant and asked her to stop, she dropped some white rocks on the sidewalk; Villatoro retrieved them while Von Lutzow detained appellant. (RT 227-242.) The white rocks were later determined to contain .46 grams of cocaine base (RT 260-267), which was stipulated to be usable amount (RT 271).

About an hour and 15 minutes later, Smith emerged from the hotel doorway, observed by Perez who was still at the same observation post. Perez notified the chase units, and then watched them arrive and arrest Smith (RT 167-168, 243-254).

² The officer first testified there were 15 to 20 (RT 161-162); he later amended that to 10 to 15 (RT 182).

Defense Case

Betty Smyth testified on behalf of codefendant Smith. At the time of the incident, Smyth and Smith were roommates at the Rivers Hotel, 124 East Seventh Street. That day, the two roommates left the hotel at noon. They cashed a check at 65th and South Spring, then walked to Broadway to shop. There, they put \$50 down for a gold chain at a jewelry store, proceeded to Kentucky Fried Chicken at Sixth and Broadway for lunch, then walked back to the hotel, arriving there a little after 3:30 p.m. (RT 277-286.)

Smyth paid their rent in the hotel lobby, while Smith stayed outside talking to a male friend; she was visible to Smyth through the hotel's glass window. When Smyth finished paying the rent, she and Smith walked to a store in front of the Astoria Hotel to buy a soda. As Smith was crossing the street just after exiting the store, a police officer stopped and arrested her. (RT 287-293.)

ARGUMENT

APPELLANT REQUESTS THAT THIS
COURT INDEPENDENTLY EXAMINE
THE ENTIRE RECORD ON APPEAL

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal for arguable issues.

Present counsel has written to appellant, advising her that she may file a supplemental brief with the court within 30 days and may request the court to relieve present counsel. Present counsel remains available to brief any issue(s) upon invitation of the court. (See Declaration attached hereto.)

DATED: July 26, 1996

Respectfully submitted,

CALIFORNIA APPELLATE PROJECT

JONATHAN B. STEINER
Executive Director

NANCY GAYNOR

Attorneys for Appellant

DECLARATION OF NANCY GAYNOR
IN SUPPORT OF REQUEST FOR INDEPENDENT JUDICIAL REVIEW
OF THE ENTIRE APPELLATE RECORD

I, NANCY GAYNOR, declare as follows:

I am the Staff Attorney at the California Appellate Project assigned to represent appellant, Jane Doe, on appeal following her judgment of conviction for violation of Health and Safety Code section 11350(a), possession of cocaine base.

I have reviewed the entire record on appeal, consisting of the Clerk's Transcript (1 vol.) and the Reporter's Transcript (2 vols.), and discussed appellant's case with trial counsel. The superior court file has been reviewed.

On June 13, 1996, I wrote to appellant at the most current address I then had for her, *Janet Doe, a.k.a. Jane Doe, W-12345, Central California Women's Facility Reception Center, P.O. Box 1508, Chowchilla, California 93610*, explaining my evaluation of the record on appeal and my intention to file this pleading. In that letter, I also informed her of her right to file a supplemental brief. I received no response. Today, July 22, 1996, I wrote appellant again at her most current address as of this date: *Janet Doe, W-12345, c/o Midtown Parole Unit, 1725 West 6th Street, Fifth Floor, Los Angeles California 90017, Attn: Agent Moss*, enclosing the transcripts of the record on appeal and a copy of this brief.

I do not at this time move to withdraw as counsel of record for appellant, and I remain available to brief any issues that the Court requests. I have also advised appellant that she may request this court to relieve me.

I declare under penalty or perjury that the foregoing is true and correct and that I signed this declaration on July 26, 1996, at Los Angeles, California.

NANCY GAYNOR

PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is *. I am employed by a member of the bar of this court.

On *, I served the within

WENDE BRIEF

in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows, and deposited the same in the United States Mail at Los Angeles, California.

Bill Lockyer, Attorney General (hand delivered)
300 South Spring Street
Fifth Floor, North Tower
Los Angeles, CA 90013

Steve Cooley, District Attorney
*, Deputy District Attorney
18000 Criminal Courts Building
210 W. Temple St.
Los Angeles, CA 90012

The Clerk of the Court for delivery to
The Honorable *, Judge Presiding
210 W. Temple Street, Dept. M-6
Los Angeles, CA 90012-3210

Michael P. Judge, Public Defender
*, Deputy Public Defender
19-513 Criminal Courts Building
210 West Temple Street
Los Angeles, CA 90012

* (client)

I declare under penalty of perjury that the foregoing is true and correct.

Executed * at *, California.

*