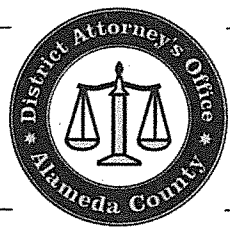


CRB/S

Office of the District Attorney  
Alameda County  
Nancy E. O'Malley, District Attorney



Rene C. Davidson Courthouse  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

RECEIVED

August 7, 2015

AUG 10 2015

FIRST DISTRICT APPELLATE PROJECT

Honorable Frank A. McGuire  
Clerk of the Court  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102

RE: Request for Depublication  
*In re Elias V.*  
California Court of Appellate District, Case No. A140263

Dear Mr. McGuire:

Pursuant to California Rules of Court, rule 8.1125(a), the Alameda County District Attorney's Office respectfully requests the above-referenced published opinion, filed June 9, 2015, and modified without change in judgment on June 24, 2015, be ordered depublished. The modified opinion is published at *In re Elias V.* (June 9, 2015) 237 Cal.App.4th 568.

The First District concluded the minor's confession in this case was involuntary under the Due Process Clause, based in part on the absence of corroborating evidence rendering it trustworthy. The First District's conclusion that trustworthiness is a factor in the determination of voluntariness establishes a new rule of law contrary to United States Supreme Court authority. For this reason, allowing the opinion to remain published will cause confusion both in juvenile and adult criminal courts. Consequently, depublication is requested.

**A. Statement of Interest**

The Alameda County District Attorney's Office has an interest in this matter because of its prosecutions in both juvenile and adult court. The First District's standard for voluntariness in confessions may render inadmissible statements that would otherwise be properly admitted under United States Supreme Court authority.

**B. Discussion**

Under the First District's analysis, the absence of any evidence corroborating an inculpatory statement is a factor to be considered in evaluating the voluntariness of that statement. (*In re Elias V.*, *supra*, 237 Cal.App.4th at pp. 586-587.) The First District states that corroboration is the ultimate test of trustworthiness, and that "[a] suspect saying 'I did it,'"

does not provide assurance that the admission is true; ‘internal indicia of reliability and independent evidence’ are necessary.” (*Id.* at p. 592, quoting Ofshe & Leo, *The Decision to Confess Falsely* (1997) 74 Denver U. L.Rev. 979, 990-991.)

Thus, the First District’s opinion suggests that a statement, even if given freely, may be deemed involuntary unless there was some corroboration of the suspect’s guilt, or at least some “internal indicia” of reliability. This is not the view of the United States Supreme Court. The test for voluntariness is whether “the confession is the product of an essentially free and unconstrained choice by its maker.” (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 225.) A statement that was freely given is, by definition, voluntary – no additional indicia of reliability is required. Instead, if a defendant contends that his statement was unreliable even though it was voluntary, he can either ask the trial court to suppress it on grounds that its probative value is outweighed by its unreliability (Evid. Code, § 352), or let the jury decide whether the statement was unreliable. But there is no precedent permitting a court to suppress an uncoerced statement on grounds that its lack of reliability demonstrated that it was involuntary.

Likewise, a statement is deemed involuntary if the suspect’s “will was overborne at the time he confessed.” (*Lynumn v. Illinois* (1963) 372 U.S. 528, 534.) The trustworthiness of the confession is not relevant to that determination. (*Rogers v. Richmond* (1961) 365 U.S. 534, 541.)

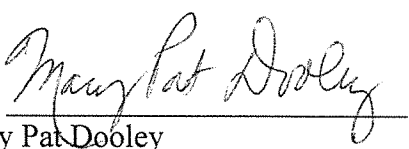
Thus, the First District’s opinion, in identifying the reliability of the statement as a factor in determining its voluntariness, is contrary to well-established United States Supreme authority. Indeed, the First District, apart from its reliance on a law review article, cites no legal authority for its analysis. The First District creates a new rule affecting the constitutional requirements for voluntariness.

### C. Conclusion

For the reasons stated above, depublication is warranted.

Respectfully submitted,

NANCY E. O’MALLEY  
District Attorney

By:   
Mary Pat Dooley  
Deputy District Attorney  
[SBN: 114786]

3 PROOF OF SERVICE

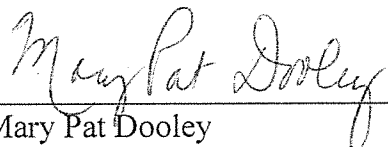
4 I declare that I am employed in the County of Alameda, State of California; that I am  
5 over the age of eighteen years; that I am not a party to this action; and that my business  
6 address is 1225 Fallon Street, 9<sup>th</sup> Floor, Oakland, California 94612.  
7

8 On August 7, 2015, I personally served an original and two copies of the attached  
9 REQUEST FOR DEPUBLICATION, Court of Appeal No. A140263, Superior Court No.  
10 37612J, on:  
11

12  
13 Honorable Frank A. McGuire  
14 Clerk of the Court  
15 Supreme Court of the State of California  
16 350 McAllister Street  
17 San Francisco, CA 94102  
18  
19  
20

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct.

23 Dated: August 7, 2015

24   
25 \_\_\_\_\_  
26 Mary Pat Dooley  
27 Deputy District Attorney  
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## PROOF OF SERVICE

I declare that I am employed in the County of Alameda, State of California; that I am over the age of eighteen years; that I am not a party to this action; and that my business address is 1225 Fallon Street, 9<sup>th</sup> Floor, Oakland, California 94612.

On August 7, 2015, I served a copy of the attached REQUEST FOR DEPUBLICATION, Court of Appeal No. A140263, Superior Court No. 37612J, on each of the following:

Christina vomSaal  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

L. Richard Braucher  
First District Appellate Project  
730 Harrison Street, Suite 201  
San Francisco, CA 94107

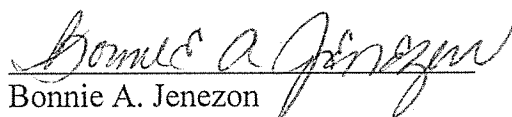
Megan Glynn Crane  
Joshua A. Tepfer  
Center on Wrongful Convictions of  
Youth – Bluhm Legal Clinic  
Northwestern University School of Law  
375 East Chicago Avenue  
Chicago, IL 60611

Honorable Raima H. Ballinger  
Sonoma County Superior Court  
3055 Cleveland Avenue  
Santa Rosa, CA 95403  
  
First District Court of Appeal  
350 McAllister Street  
San Francisco, CA 94102

23 ☒ U.S. MAIL – I served the above-described document in the above-numbered action  
24 by placing a true and correct copy thereof enclosed in a sealed envelope with postage  
25 thereon fully prepaid, in the U.S. Mail, addressed as indicated above.

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

27 Dated: August 7, 2015

28   
Bonnie A. Jenezon  
Supervising Clerk III