



# NEWS

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Lynn Holton, Public Information Officer

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF DECEMBER 13, 2004**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#04-144 *Balboa Island Village Inn, Inc. v. Lemen*, S127904. (G031636; 121 Cal.App.4th 583; Orange County Superior Court; 01CC13243.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: When a trial court has found that a defendant in a defamation action has made repeated untruthful defamatory statements against the plaintiff and that pecuniary compensation would not afford adequate relief in the event of repeated statements in the future, may the trial court issue an injunction prohibiting defendant from continuing to make the same defamatory statements to third parties or does such an injunction constitute an unconstitutional prior restraint on speech? (See *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121.) The court ordered briefing deferred pending the decision of the United States Supreme Court in *Tory v. Cochran* (Oct. 29, 2003, B159437 [nonpub. opn.]), certiorari granted September 28, 2004, No. 03-1488, \_\_ U.S. \_\_ [125 S.Ct. 26, 159 L.Ed.2d 856], or further order of this court.

#04-145 *People v. Corpuz*, S128884. (F041563; 122 Cal.App.4th 804; Fresno County Superior Court; SC084193A.) Petition for review after the Court of Appeal reversed in part and modified and affirmed in part a judgment of conviction of criminal offenses. This case presents the following issue: Under the provisions of Penal Code

(over)

section 646.9, subdivision (b), which elevates the crime of stalking from a misdemeanor to a felony when a defendant commits the crime of stalking “when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior,” may a defendant be convicted of felony stalking when, at the time of stalking, he is subject to *a condition of probation* requiring him to stay away from the victim, or does the statute apply only when a defendant is subject to a court order in the nature of *a temporary restraining order or an injunction*?

#04-146 *Flatley v. Mauro*, S128429. (B171570; 121 Cal.App.4th 1523; Los Angeles County Superior Court; BC291551.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike. This case presents the following issue: When a plaintiff files a cause of action based upon illegal conduct (e.g., extortion) allegedly engaged in by the defendant in relation to prior litigation, is the plaintiff’s action subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16)? Related issues are before the court in *Soukup v. Stock*, S126864 (#04-118), and *Soukup v. Law Offices of Herbert Hafif*, S126715 (#04-119).

#04-147 *People v. King*, S129052. (A104219; unpublished opinion; San Francisco County Superior Court; 186344.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issues: (1) Is the offense of possession of a short-barreled rifle (Pen. Code, § 12020, subd. (a)(1)) a strict liability offense, or does it require proof that the defendant had some degree of guilty knowledge? (2) If so, what mental state does the statute require the defendant to have?

#04-148 *Prachasaisoradej v. Ralphs Grocery Company, Inc.*, S128576. (B165498, B168668; 122 Cal.App.4th 29; Los Angeles County Superior Court; BC254143.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Does an employee bonus plan based on a profit figure that is reduced by a store’s expenses, including the cost of workers compensation insurance and cash and inventory losses, violate (a) Business and Professions Code section 17200, (b) Labor Code sections 221, 400 through 410, or 3751, or (c) California Code of Regulations, title 8, section 11070?

#04-149 *Estate of Sauressig*, S129110. (B167907; 122 Cal.App.4th 1086; Los Angeles County Superior Court; BP 076076.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Can the statutory requirement that a will be signed by at least two qualified witnesses (Prob. Code, § 6110) be satisfied where an otherwise qualified witness does not sign the will until after the testator's death?

#04-150 *People v. Wells*, S128640. F043125; 122 Cal.App.4th 155; Kern County Superior Court; BF101553A.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does an anonymous tip that a driver of a motor vehicle appears to be driving under the influence afford reasonable suspicion to support a police officer's stopping of the vehicle, where the information given by the anonymous informant cannot be corroborated except as to facts (e.g., the description of the vehicle at the designated location) that do not themselves point to any criminal activity?

#04-151 *People v. Armstrong*, S128933. (B169138; unpublished opinion; Los Angeles County Superior Court; BA231058.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses.

#04-152 *People v. Barnes*, S128931. (H026137; 122 Cal.App.4th 858; Santa Clara County Superior Court; CC267763.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#04-153 *People v. Butler*, S129000. (A101799; 122 Cal.App.4th 910; Humboldt County Superior Court; CR024877S.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#04-154 *People v. Gaitan*, S128970. (A102560; unpublished opinion; Sonoma County Superior Court; SCR32048.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses.

#04-155 *People v. George*, S128582. (D042980; 122 Cal.App.4th 419; San Diego County Superior Court; SCE228278.) Petition for review after the Court of

Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses.

#04-156 *People v. Mallory*, S128784. (B169815, B174734; unpublished opinion; Los Angeles County Superior Court; B174734.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense and denied a petition for writ of habeas corpus.

#04-157 *People v. Sidic*, S128921. (B167344; unpublished opinion; Los Angeles County Superior Court; BA226096.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#04-158 *People v. Vaughn*, S129050. (B165489; 122 Cal.App.4th 1363; Los Angeles County Superior Court; NA049682.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Armstrong, Barnes, Butler, Gaitan, George, Mallory, Sidic*, and *Vaughn* deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. \_\_\_, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court's imposition of consecutive sentences?

## **DISPOSITIONS**

#04-76 *Powers v. The Rug Barn*, S125046, was dismissed in light of *Reeves v. Hanlon* (2004) 33 Cal.4th 1140.

#04-102 *People v. Poslof*, S126183, was transferred to the Court of Appeal for reconsideration in light of *People v. Barker* (2004) 34 Cal.4th 345.

## **STATUS**

#03-109 *Delgado v. Trax Bar & Grill*, S117287. The court directed the parties to file supplemental briefs addressing the following issues: (1) What is the effect, if any, of the "negligent undertaking" doctrine upon the duty question presented in this case? (See *Williams v. State of California* (1983) 34 Cal.3d 18, 23 et seq.; *Weissich v. County of*

*Marin* (1990) 224 Cal.App.3d 1069, 1077 et seq.; 6 Witkin, Summary of Cal. Law (9th ed. 1988), Torts, § 868, p. 234 et seq.; see also *Paz v. State of California* (2000) 22 Cal.4th 550, 558-562; *Artiglio v. Corning, Inc.* (1998) 18 Cal.4th 604, 613-618; *Schwartz v. Helms Bakery, Ltd.* (1967) 67 Cal.2d 232, 238-244; *Blankenship v. Peoria Park District* (Ill.App. 1994) 647 N.E.2d 287, 291-292; *Feld v. Merriam* (Pa. 1984) 485 A.2d 742, 746-747; *Wilson v. Texas Parks and Wildlife Dept.* (Tex. 1999) 8 S.W.3d 634, 635-636; *Nelson v. Salt Lake City* (Utah 1996) 919 P.2d 568, 573; Rest. (2d) of Torts, §§ 323 & 324A.) (2) What is the effect, if any, of *Taylor v. Centennial Bowl, Inc.* (1966) 65 Cal.2d 114, upon the duty question presented in this case?

#04-132 *Adams v. Los Angeles Unified School Dist.*, S127961. In this case in which review was previously granted, the court ordered further action deferred pending decision in *Carter v. California Dept. of Veterans Affairs*, S127921 (#04-133), which includes the following issues: (1) Prior to its amendment by Statutes 2003, chapter 671, did the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) impose a duty on an employer to take reasonable steps to prevent hostile environment sexual harassment of an employee *by a client* with whom the employee is required to interact? (2) If not, did the Legislature intend the 2003 amendment to apply retroactively to incidents that occurred prior to the effective date of the amendment? (3) If so, would application of the 2003 amendment to such cases violate the due process clause of the state or federal Constitution?

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