

## ***ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CRIMINAL CASES***

*[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, June 17, 2011.]*

*People v. Ahmed*, S191020. (E049932; 191 Cal.App.4th 1407; Riverside County Superior Court; RIF145548.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does Penal Code section 654 apply to enhancements and thereby preclude imposition of the enhancements in this case for both personal use of a firearm and personal infliction of great bodily injury under circumstances involving domestic violence?

*People v. Aranda*, S188204. (D055701; 188 Cal.App.4th 1490; Riverside County Superior Court; SWF010404.) Petition for review after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses. The court limited review to the following issues: Is the trial court's failure to give a standard reasonable doubt instruction (CALJIC No. 2.90) reversible per se or is such failure subject to harmless error review? If so, should harmless error be assessed under *People v. Watson* (1956) 46 Cal.2d 818, or *Chapman v. California* (1967) 386 U.S. 18?

*People v. Bailey*, S187020. (H034382; 187 Cal.App.4th 1142, mod. 188 Cal.App.4th 327b; Monterey County Superior Court; SS082741.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Upon finding that the prosecution introduced insufficient evidence to support defendant's conviction for escaping from a state prison, could the Court of Appeal reduce the conviction to attempted escape, notwithstanding the trial court's failure to instruct the jury on that offense, or would doing so violate defendant's rights to due process and a jury trial?

*People v. Beltran*, S192644. (A124392; nonpublished opinion; San Francisco County Superior Court; 175503.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Was the jury misinstructed with former CALCRIM No. 570 on provocation and heat of passion as a basis for a conviction of voluntary manslaughter? (2) Did the prosecutor misstate the applicable law on the subject in argument? (3) Did the trial court accurately respond to a jury question on the subject? (4) If there was error, was defendant prejudiced?

*People v. Branner*, S179730. (C059288; 180 Cal.App.4th 308; Riverside County Superior Court; RIF138338.) Petition for review after the Court of Appeal affirmed a

judgment of conviction of a criminal offense. This case presents the following issues: (1) Did this court's opinion in *People v. McGaughran* (1979) 25 Cal.3d 577 survive the passage of Proposition 8? (2) Is defendant entitled to the retroactive application of *Arizona v. Gant* (2009) 556 U.S. \_\_\_ [129 S.Ct. 1710], in which the high court limited vehicle searches incident to the arrest of a recent occupant after the arrestee has been secured and cannot access the interior of the vehicle? (3) If so, did the Court of Appeal err by applying the good faith exception to the exclusionary rule?

*People v. Brown*, S181963. (C056510; 182 Cal.App.4th 1354; Lassen County Superior Court; CR024002.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does Penal Code section 4019, as amended to increase presentence custody credits for certain offenders, apply retroactively?

*People v. Caballero*, S190647. (B217709; 191 Cal.App.4th 1248; Los Angeles County Superior Court; MA043902.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does a sentence of 110 years to life for a juvenile convicted of committing non-homicide offenses constitute cruel and unusual punishment under the Eighth Amendment on the ground it is the functional equivalent of a life sentence without the possibility of parole? (See *Graham v. Florida* (2010) 560 U.S. \_\_\_, 130 S.Ct. 2011, 176 L.Ed.2d 825.)

*In re C.H.*, S183737. (B214707; nonpublished opinion; Ventura County Superior Court; 2005040811.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. This case presents the following issues: (1) Was minor ineligible for *commitment* to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice, because he was not found to have committed an offense enumerated in Welfare and Institutions Code section 707, subdivision (b), although his offense was enumerated in Penal Code section 290.008, subdivision (c)? (2) Assuming the juvenile court had the statutory authority to order such a commitment, did the court abuse its discretion in doing so on the ground there was no showing that minor would benefit from that commitment and because the court failed to adequately consider alternative placements?

*In re Coley*, S185303. (B224400; 187 Cal.App.4th 138.) Petition for review after the Court of Appeal denied relief on a petition for writ of habeas corpus. This case presents the following issue: Does defendant's sentence of 25 years to life under the three strikes law for failing to update his sex offender registration within five days of his birthday constitute cruel and unusual punishment?

*People v. Cornett*, S189733. (A123957; 190 Cal.App.4th 845; Sonoma County Superior Court; SCR504048.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 288.7, which proscribes specified sexual conduct with a child "10 years of age or younger," apply only to children who are

either less than 10 years of age or exactly 10 years of age and not a day more, or does it include any child who has reached the age of 10 years until the child's 11th birthday?

*People v. Correa*, S163273. (C054365; 161 Cal.App.4th 980; Sacramento County Superior Court; 06F1135.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Was defendant properly sentenced on multiple counts of being a felon in possession of a firearm where he was discovered in a closet with a cache of weapons?

*In re Cowan*, S158073. Original proceeding. In this case, which is related to the automatic appeal in *People v. Cowan* (2010) 50 Cal.4th 401, the court issued an order to show cause limited to claims why petitioner is not entitled to relief on the grounds (1) juror misconduct, (2) ineffective assistance of counsel at the guilt phase, (3) ineffective assistance of counsel at the penalty phase, and/or (4) cumulative prejudice from the above claims, in addition to any errors identified in the opinion on appeal.

*People v. Cravens*, S186661. (D054613; nonpublished opinion; San Diego County Superior Court; SCD206917.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Was the evidence sufficient to support defendant's conviction for second degree murder on a theory of implied malice when defendant, during a lull in a fight between the victim and one of defendant's friends, knocked the victim unconscious with a single punch, causing him to fall to the ground, fracture his skull, and die? (2) Did the Court of Appeal properly reduce defendant's murder conviction to voluntary manslaughter on the theory that any unintentional killing without malice that occurs during the commission of a felony assault is voluntary manslaughter?

*Doe v. Harris*, S191948. (Ninth Cir. No. 09-17362; \_\_\_ F.3d \_\_\_, 2011 WL 1226366; Northern District of California; No. 3:07-cv-03585-JL.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the issue is: "Under California law of contract interpretation as applicable to the interpretation of plea agreements, does the law in effect at the time of a plea agreement bind the parties or can the terms of a plea agreement be affected by changes in the law?"

*People v. Dowl*, S182621. (F057384; 183 Cal.App.4th 702; Kern County Superior Court; BF125801A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case includes the following issue: If the defendant raises a medical marijuana defense in a prosecution for possession of marijuana for sale, must the People call an expert who has experience in distinguishing lawful medical possession from unlawful possession?

*People v. Dungo*, S176886. (C055923; 176 Cal.App.4th 1388; San Joaquin County Superior Court; SF100023A.) Petition for review after the Court of Appeal

reversed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Was defendant denied his right of confrontation under the Sixth Amendment when one forensic pathologist testified to the manner and cause of death in a murder case based upon an autopsy report prepared by another pathologist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. \_\_\_, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555? (See also *People v. Gutierrez*, S176620; *People v. Lopez*, S177046; *People v. Rutterschmidt*, S176213.)

*People v. Elmore*, S188238. (B216917; nonpublished opinion; Los Angeles County Superior Court; TA090607.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Does the doctrine of imperfect self-defense apply when the defendant's actual, but unreasonable, belief in the need to defend himself was based solely on a psychotic delusion?

*Gomez v. Superior Court*, S179176. (C060710, C060773; 179 Cal.App.4th 614; Lassen County Superior Court; 47543, CHW2530.) Petition for review after the Court of Appeal denied petitions for peremptory writ of mandate. This case presents the following issue: Does a court commissioner, acting without the consent of the parties, have authority to summarily deny a petition for writ of habeas corpus or a petition for writ of mandate?

*People v. Gonzales*, S191240. (H032866; 192 Cal.App.4th 152; Santa Clara County Superior Court; 211111.) Petition for review after the Court of Appeal reversed an order of commitment as a sexually violent predator. This case presents the following issues: (1) Was defendant's statement to his psychotherapist that he had molested 16 children in the distant past properly admitted into evidence in a commitment proceeding under the Sexually Violent Predator Act pursuant to the "dangerous patient" exception to the psychotherapist-patient privilege? (2) Did the disclosure of defendant's statements violate a federal constitutional right of privacy?

*People v. Gonzalez*, S189856. (D055698; 190 Cal.App.4th 968; San Bernardino County Superior Court; FVA024527.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: (1) Was the evidence sufficient to convict defendant of first degree provocative act murder? (2) Was the instructional error in failing to tell jurors that defendant had to personally premeditate an attempted murder in order to be guilty of first degree provocative act murder harmless beyond a reasonable doubt?

*In re Greg F.*, S191868. (A127161; 192 Cal.App.4th 1252; Sonoma County Superior Court; 35283J.) Petition for review after the Court of Appeal affirmed and reversed orders in a juvenile wardship proceeding. This case presents the following issue: Can a juvenile court dismiss a juvenile wardship petition in the interests of justice and commit a juvenile ward to the Department of Juvenile Justice on the basis of a prior

sustained petition, even though Welfare and Institutions Code section 733 prohibits such a commitment of a juvenile ward unless “the most recent offense alleged in any petition and admitted or found to be true by the court” is a offense specified in subdivision (c) of that section and the offense alleged in the dismissed petition was not one of those specified offenses?

*People v. Gutierrez*, S176620. (B211622; 177 Cal.App.4th 654; Los Angeles County Superior Court; BA315483.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Was defendant denied his right of confrontation under the Sixth Amendment when (a) one nurse practitioner testified as to the results of a sexual assault examination and the report prepared by another nurse practitioner, and (b) a supervising criminalist testified as to the result of DNA tests and the report prepared by another criminalist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. \_\_\_, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court’s decision in *People v. Geier* (2007) 41 Cal.4th 555? (See also *People v. Dungo*, S176886; *People v. Lopez*, S177046; *People v. Rutterschmidt*, S176213.)

*People v. Hernandez*, S178823. (H031992; 178 Cal.App.4th 1510; Santa Cruz County Superior Court; F12934.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court’s gag order, which precluded defense counsel from discussing with defendant a sealed declaration of a testifying prosecution witness and a transcript of that witness’s plea-agreement proceedings, so completely deprive defendant of his right to counsel as to constitute structural error reversible without a showing of prejudice or did the gag order implicate defendant’s right to counsel in a manner requiring a showing of prejudice before reversal would be required?

*People v. Johnson*, S188619. (A124643; nonpublished opinion; Solano County Superior Court; VCR191129.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Should trial courts apply a higher standard of mental competence for self-representation than for competency to stand trial? (See *Indiana v. Edwards* (2008) 554 U.S. 164.)

*People v. Jones*, S179552. (C060376; nonpublished opinion; Sacramento County Superior Court; 08F04254.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Did the trial court properly impose concurrent sentences for being a felon in possession of a firearm (Pen. Code § 12021, subd. (a)(1)) and carrying a loaded, concealed firearm (Pen. Code § 12025, subd. (b)(6)) under the present circumstances? (See Pen. Code, § 654; *People v. Harrison* (1969) 1 Cal.App.3d 115, 121-122.)

*People v. Lara*, S192784. (H036143; 193 Cal.App.4th 1393; Santa Clara County Superior Court; E1007527.) Petition for review after the Court of Appeal reversed a

judgment of conviction of a criminal offense and remanded for further sentencing proceedings. This case presents the following issue: Does a trial court have discretion to dismiss or strike a prior serious felony conviction under Penal Code section 1385 in order to award the defendant additional presentence credits under Penal Code section 4019?

*People v. Leiva*, S192176. (B214397; 193 Cal.App.4th 114; Los Angeles County Superior Court; PA035556.) Petition for review after the Court of Appeal affirmed an order revoking probation in a criminal case. This case presents the following issues: (1) Did the trial court have jurisdiction to revoke defendant's probation? (2) Did sufficient evidence support the trial court's finding that defendant either failed to report to his probation officer or reentered the country illegally? (3) Did the trial court's finding rely upon admissible evidence?

*People v. Lopez*, S177046. (D052885; 177 Cal.App.4th 202; San Diego County Superior Court; SCE274145.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Was defendant denied his right of confrontation under the Sixth Amendment when the trial court admitted into evidence the results of blood-alcohol level tests and a report prepared by a criminalist who did not testify at trial? (2) Was the error prejudicial in light of the testimony of a supervising criminalist about testing procedures at the lab? (3) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. \_\_\_, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555? (See also *People v. Dungo*, S176886; *People v. Gutierrez*, S176620; *People v. Rutterschmidt*, S176213.)

*People v. Lowery*, S179422. (E047614; 180 Cal.App.4th 630; Riverside County Superior Court; INF062558.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Is Penal Code section 140, subdivision (a), which makes it a crime to threaten a victim or witness who provided assistance to law enforcement, unconstitutionally overbroad, because it fails to require either the specific intent to retaliate against the victim with the present ability to do so or the specific intent that the threat be communicated to the potential victim?

*In re Lucas*, S181788. (C062809; 182 Cal.App.4th 797; Placer County Superior Court; SCV23989.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issues: (1) What constitutes "good cause" for the imposition of a 45-day hold and extension of a scheduled parole date under Welfare and Institutions Code section 6601.3 to permit evaluation of the defendant under the Sexually Violent Predator Act? (2) Is California Code of Regulations, title 15, section 2600.1, subdivision (d), which defines the term "good cause" as used in section 6601.3 as "some evidence" that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior, a valid regulation? (3) Does the "good faith mistake of law or fact" exception apply in these cases? (See also *People v. Superior Court (Sharkey)*, S182355.)

*In re M.M.*, S177704. (E045714; 177 Cal.App.4th 1339; San Bernardino County Superior Court; J220179.) Petition for review after the Court of Appeal reversed orders in a juvenile wardship proceeding. This case presents the following issue: Is a campus security officer employed by a public school district a “public officer” for purposes of a charge of willfully resisting, delaying, or obstructing a “public officer” in violation of Penal Code section 148?

*People v. Maikhio*, S180289. (D055068; 180 Cal.App.4th 1178; San Diego County Superior Court; CA211304.) Petition for review after the Court of Appeal affirmed an order granting a motion to suppress evidence. This case includes the following issues: (1) Do Fish and Game Code sections 1006 and 2012 authorize a warden to make a traffic stop when there is reasonable suspicion to believe the driver has been fishing? (2) Must the warden suspect illegal activity in order to make such a stop? (3) Are hunting and fishing inspections without suspicion of illegal activity justified as “special needs” searches or authorized by implied consent?

*Maldonado v. Superior Court*, S183961. (A126236; 184 Cal.App.4th 739; San Mateo County Superior Court; SC065313.) Petition for review after the Court of Appeal granted in part and denied in part a peremptory petition for writ of mandate or prohibition. This case includes the following issues: (1) Was the order compelling a mental examination of petitioner under Penal Code section 1054.3, subdivision (b), reviewable by pretrial writ? (2) Should the prosecution be permitted to attend the examination? (3) Should the results of the mental examination be disclosed to the prosecution before trial, or only after the defendant presents mental state evidence at trial? (4) Should the trial court review the results of the mental examination in camera and on the motion of the defense to determine if they contain privileged material?

*People v. Manzo*, S191400. (D055671; 192 Cal.App.4th 366; San Diego County Superior Court; SCS212840.) Review on the court’s own motion after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issue: Could defendant be convicted of discharging a firearm at an occupied motor vehicle in violation of Penal Code section 246, if he was outside the vehicle at the time he discharged his firearm but the firearm itself was inside the vehicle?

*People v. Maultsby*, S182042. (C060532; nonpublished opinion; Yolo County Superior Court; 08868.) Petition for review after the Court of Appeal dismissed an appeal from a judgment of conviction of a criminal offense. The court limited review to the following issue: Was defendant required to obtain a certificate of probable cause to raise on appeal a claim that his admissions regarding prior conviction allegations were not knowingly and intelligently made, even though he was convicted by jury of the underlying offense? (See Pen. Code, § 1237.5; *People v. Fulton* (2009) 179 Cal.App.4th 1230.)

*People v. Mena*, S173973. (D052091; 173 Cal.App.4th 1446; San Diego County Superior Court; SCD205930.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Did defendant forfeit his right to appeal the denial of his request for a physical identification lineup prior to the preliminary hearing (see *Evans v. Superior Court* (1974) 11 Cal.3d 617) because he failed to seek immediate review of the ruling by filing a petition for writ of mandate?

*People v. Mesa*, S185688. (D056280; 186 Cal.App.4th 773; Riverside County Superior Court; RIF137046.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 654 bar the imposition of separate sentences for the offense of active participation in a criminal street gang in violation of Penal Code section 186.22, subdivision (a), and for the crimes used to prove one element of that offense—that the defendant have promoted, furthered, and assisted felonious criminal conduct by members of the gang?

*People v. Mil*, S184665. (F056605; nonpublished opinion; Kern County Superior Court; BF116677B.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Is harmless error analysis appropriate when the trial court omits multiple elements from a jury instruction on special circumstance murder, and if so, was the error harmless in this case?

*People v. Mills*, S191934. (A125969; nonpublished opinion; Alameda County Superior Court; C154217.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Did the trial court err by instructing the jury to accept a conclusive presumption that defendant was legally sane for purposes of the guilt phase of the trial?

*People v. Milward*, S182263. (C058326; 182 Cal.App.4th 1477; Sacramento County Superior Court; 02F05876.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Is assault with a deadly weapon (Pen. Code § 245, subd. (a)(1)) a necessarily included offense of assault by a life prisoner with a deadly weapon (Pen. Code § 4500)? (2) Was *People v. Noah* (1971) 5 Cal.3d 469 binding on the Court of Appeal unless and until overruled by this court?

*People v. Mosley*, S187965. (G038379; 188 Cal.App.4th 1090; Orange County Superior Court; 05NF4105.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does the discretionary imposition of lifetime sex offender registration, which includes residency restrictions that prohibit registered sex offenders from living “within 2000 feet of any public or private school, or park where children regularly gather” (Pen. Code, § 3003.5, subd. (b)), increase the “penalty” for the offense within the meaning of *Apprendi v. New Jersey* (2000) 530 U.S. 466, and require that the facts supporting the

trial court's imposition of the registration requirement be found true by a jury beyond a reasonable doubt?

*People v. Murphy*, S180181. (E046742; 180 Cal.App.4th 905; San Bernardino County Superior Court; FSB060016.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Was defendant's conviction under Penal Code section 115 preempted by Vehicle Code sections 20 and 10501, subdivision (a)?

*People v. Nelson*, S181611. (G040151; nonpublished opinion; Orange County Superior Court; 04ZF0072.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Did the 15-year-old defendant's request to speak with his mother while he was being questioned by police constitute a request to speak with an attorney that required the officer to cease the questioning immediately?

*In re Richards*, S189275. (E049135; nonpublished opinion; San Bernardino County Superior Court; SWHSS700444.) Petition for review after the Court of Appeal reversed the grant of relief on a petition for writ of habeas corpus. This case presents the following issues: (1) When a petitioner seeks relief on habeas corpus because an expert witness who testified at trial later fundamentally alters the opinion he or she rendered, should this be viewed as a claim that false evidence substantially material or probative on the issue of guilt was presented at trial or as a claim that newly discovered evidence casts "fundamental doubt on the accuracy and reliability of the proceedings" and "undermine[s] the entire prosecution case and point[s] unerringly to innocence or reduced culpability"? (*In re Hardy* (2007) 41 Cal.4th 977, 1016.) (2) Is petitioner entitled to relief on either ground in this case? (3) Is petitioner entitled to habeas corpus relief based on newly discovered DNA evidence?

*People v. Rodriguez*, S187680. (C060227; 188 Cal.App.4th 722; Yuba County Superior Court; CRF07288.) Petition for review after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses. This case presents the following issue: May an active participant in a criminal street gang be found guilty of violating Penal Code section 186.22, subdivision (a), when, acting entirely alone, he commits a felony, and there is no other evidence indicating the crime had anything to do with the gang?

*People v. Runyan*, S187804. (B218863; 188 Cal.App.4th 1010; Los Angeles County Superior Court; BA322080.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Did the trial court err in awarding restitution to a manslaughter victim's estate as a "direct victim" of the crime within the meaning of Penal Code section 1202.4, subdivision (k)(2)?

*People v. Rutterschmidt*, S176213. (B209568; 176 Cal.App.4th 1047; Los Angeles County Superior Court; BA615654.) Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Was defendant denied her right of confrontation under the Sixth Amendment when a supervising criminalist testified as to the result of drug tests and the report prepared by another criminalist? (2) How does the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. \_\_\_, 129 S.Ct. 2527, 174 L.Ed.2d 314, affect this court's decision in *People v. Geier* (2007) 41 Cal.4th 555? (See also *People v. Dungo*, S176886; *People v. Gutierrez*, S176620; *People v. Lopez*, S177046.)

*People v. Sanchez*, S188453. (F057147; 189 Cal.App.4th 374, mod. 189 Cal.App.4th 1307a; Tulare County Superior Court; PCF204260A.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issues: (1) When a defendant indicates the intention to move to withdraw a plea of guilty or no contest on the ground of ineffective assistance of appointed counsel, is the trial court obligated to conduct a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118) and determine whether counsel should be removed and replaced by new appointed counsel? (2) Was defendant required to obtain a certificate of probable cause (Pen. Code, § 1237.5) in order to raise this issue on appeal?

*People v. Sanders*, S191341. (F059287; nonpublished opinion; Kern County Superior Court; BF126309A.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Is possession of a firearm after conviction of a specified violent offense (Pen. Code, § 12021.1, subd. (a)) a necessarily included offense of possession of a firearm after conviction of a felony (Pen. Code, § 12021, subd. (a)(1))? (2) Was defendant properly sentenced to concurrent terms for his simultaneous possession of two firearms in violation of Penal Code section 12021, subdivision (a)(1)?

*People v. Saucedo-Contreras*, S191747. (G041831; nonpublished opinion; Orange County Superior Court; 07NF0170.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issues: (1) After defendant had been given his *Miranda* rights, did his statement — “If you can bring me a lawyer . . . that way I can tell you everything that I know and everything that I need to tell you and someone to represent me” — constitute a clear invocation of his right to counsel that required questioning to cease and did not permit the interrogating officers to attempt to clarify what defendant meant? (2) Was any error in the admission of defendant's subsequent statements harmless beyond a reasonable doubt?

*People v. Schmitz*, S186707. (G040641; 187 Cal.App.4th 722; Orange County Superior Court; 06HF2342.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: When conducting a vehicle search authorized by a passenger's parole condition, can the

police search any areas of the vehicle's interior that appear reasonably accessible to the passenger?

*In re Shaputis*, S188655. (D056825; nonpublished opinion; San Diego County Superior Court; HC18007.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. This case presents the following issue: Did the Court of Appeal err in setting aside the denial of parole by the Board of Parole Hearings?

*Sharp v. Superior Court*, S190646. (B222025; 191 Cal.App.4th 1280; Ventura County Superior Court; 2008014330.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. The court limited review to the following issue: Does Penal Code section 1054.3, subdivision (b), as amended effective January 1, 2010, alter the existing provisions of law regarding court-ordered examinations of criminal defendants in sanity proceedings, specifically Penal Code sections 1026 and 1027?

*People v. Skiles*, S180567. (G040808; 180 Cal.App.4th 1363; Orange County Superior Court; 08HF0799.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Are faxed copies of certified court records admissible to establish that a prior conviction qualifies as a serious or violent felony for purposes of the three strikes law?

*People v. Superior Court (Sharkey)*, S182355. (B219011; 183 Cal.App.4th 85; Los Angeles County Superior Court; ZM014203.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) What constitutes "good cause" for the imposition of a 45-day hold and extension of a scheduled parole date under Welfare and Institutions Code section 6601.3 to permit evaluation of the defendant under the Sexually Violent Predator Act? (2) Is California Code of Regulations, title 15, section 2600.1, subdivision (d), which defines the term "good cause" as used in section 6601.3 as "some evidence" that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior, a valid regulation? (3) Does the "good faith mistake of law or fact" exception apply in these cases? (See also *In re Lucas*, S181788.)

*Smith v. Superior Court*, S188068. (A124763; 189 Cal.App.4th 769; San Francisco County Superior Court; 207788.) Petition for review after the Court of Appeal granted a peremptory petition for writ of mandate. This case presents the following issues: (1) When a defendant has asserted his or her statutory right to a speedy trial within 60 days, but a jointly-charged codefendant has requested a trial beyond the 60-day period because of his or her counsel's unavailability for good cause, may the 10-day grace period described in Penal Code section 1382, subdivision (a)(2)(B), be applied to the objecting defendant? (2) In such circumstances, does good cause exist under Penal Code section 1382, subdivision (a), or Penal Code section 1050.1 to continue the objecting defendant's trial to maintain joinder?

*Stark v. Superior Court*, S145337. (C051073, C051074, C051075; 140 Cal.App.4th 567; Sutter County Superior Court; CRMS051001, CRMS051030, CRMS051031.) Petition for review after the Court of Appeal granted in part and denied in part petitions for peremptory writ of mandate. This case presents the following issues: (1) Does the offense of falsification of accounts or misappropriation of public funds by a public officer or employee in violation of Penal Code section 424 require intentional violation of a known legal duty or is it a general intent crime? (2) Does Government Code section 3060, authorizing an accusation for willful or corrupt misconduct in office, require a knowing and purposeful refusal to follow the law or does general intent suffice? (3) Can a defendant move to set aside an indictment under Penal Code section 995, subdivision (a)(1)(B), or object to the sufficiency of an accusation pursuant to Government Code section 3066 on the ground the grand jury was misinstructed on the required mental state? (4) What is the standard for assessing a district attorney's alleged conflict of interest when the issue is raised on a motion under Penal Code section 995?

*Steen v. Appellate Division*, S174773. Original proceeding. The court issued an order to show cause why petitioner's misdemeanor conviction for failure to appear in court on a traffic infraction should not be vacated, as requested in the petition for writ of mandate, on the ground that Penal Code section 959.1, subdivision (c)(1), violates the separation of powers doctrine (Cal. Const., art. III, § 3) by permitting a clerk of court, rather than a prosecutor, to issue a complaint "for the offenses of failure to appear, pay a fine, or comply with an order of the court."

*People v. Stanley*, S185961. (C063661; 187 Cal.App.4th 120; Yolo County Superior Court; 093110.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court err in awarding the victim restitution for the costs of repairing her damaged truck, when the estimated cost of the repairs was over three times the purchase price she paid 18 months earlier?

*People v. Thomas*, S185305. (F056337; nonpublished opinion; Madera County Superior Court; MCR10473.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did Penal Code section 781 permit the prosecution of defendant for possession of cocaine in Madera County, where defendant lived and arranged his drug sales, even though he stored the contraband in adjacent Fresno County? (2) If not, should the Court of Appeal have considered whether defendant was prejudiced by the trial court's denial of his motion to dismiss for improper venue?

*People v. Turnage*, S182598. (C059887; 183 Cal.App.4th 458; Yolo County Superior Court; 065019, 041665.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Does Penal Code, section 148.1, subdivision (d), violate equal protection principles because a violation is punishable as an alternative

felony-misdemeanor without a finding that a person was placed in sustained fear? (See Pen. Code, § 11418.1.) (2) If so, what is the proper remedy?

*People v. Vang*, S184212. (D054343, D054636; 185 Cal.App.4th 309; San Diego County Superior Court; SCD213306.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: (1) Did the Court of Appeal correctly find that the trial court erred in permitting the use of hypothetical questions of the prosecution expert witness? (2) If so, did the Court of Appeal correctly find the error to be harmless?

*People v. Villalobos*, S176574. (F056729; 177 Cal.App.4th 82; Tulare County Superior Court; VCF189886A.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Did the imposition of a restitution fine and a parole revocation restitution fine violate defendant's plea agreement in light of the circumstance that he was told he might be required to pay restitution but no mention was made of restitution fines?

*People v. Wilkins*, S190713. (G040716; 191 Cal.App.4th 780; Orange County Superior Court; 06NF2339.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Should the trial court have instructed the jury, as requested, with CALCRIM No. 3261, on the theory that a homicide and an underlying felony do not constitute one continuous transaction for purposes of the felony-murder rule if the killer has escaped to a place of temporary safety before the homicide takes place?

*People v. Wyatt*, S189786. (A114612; nonpublished opinion; Alameda County Superior Court; C147107.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Did the trial court prejudicially err by failing to instruct the jury on the court's own motion regarding simple assault (Pen. Code § 240) as a lesser included offense of assault on a child by means likely to produce great bodily injury, resulting in death (Pen. Code § 273ab, subd. (a))?

*People v. Yarbrough*, S192751. (B222399; 193 Cal.App.4th 921; Los Angeles County Superior Court; PA065170.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Did the Court of Appeal err in determining that an unenclosed second floor balcony "is not part of a building" such that entry onto the balcony could not constitute burglary?