



NEWS RELEASE

Release Number: **S.C. 12/11**

Release Date: **March 25, 2011**

JUDICIAL COUNCIL OF
CALIFORNIA
ADMINISTRATIVE OFFICE
OF THE COURTS
Public Information Office
455 Golden Gate Avenue
San Francisco, CA 94102-3688
www.courts.ca.gov

415-865-7740

Lynn Holton
Public Information Officer

Summary of Cases Accepted During the Week of March 21, 2011

[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 statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#11-27 *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?

#11-28 *Ennabe v. Manosa, S189577.* (B222784; 190 Cal.App.4th 707; Los Angeles County Superior Court; KC053945.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Is a person who hosts a party at a residence, and who furnishes alcoholic beverages and charges an admission fee to uninvited guests, a “social host” within the meaning of Civil Code section 1714, subdivision (c), and hence immune from civil liability for furnishing alcoholic beverages? (2) Under the circumstances here, does such a person fall within an exception stated by Business and Professions Code section 25602.1 to the ordinary immunity from civil liability for furnishing alcoholic beverages provided by Business and Professions Code section 25602, subdivision (b)?

#11-29 *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?

#11-30 *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 of force likely to produce great bodily injury, resulting in death (Pen. Code § 273ab, subd. (a))?

#11-31 *In re Adamar, S190226.* (B223279; nonpublished opinion; Los Angeles County Superior Court; BH006554.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *In re Shaputis, S188655* (#11-15), which presents the following issue: Did the Court of Appeal err in setting aside the denial of parole by the Board of Parole Hearings?

#11-32 *People v. Cabrera, S189414.* (G042390; 191 Cal.App.4th 276; Orange County Superior Court; 30-2009-00125352.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Rodriguez, S187680* (#11-01), which 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?

DISPOSITION

The following case was transferred for reconsideration in light of *Catlin v. Superior Court* (2011) 51 Cal.4th 300:

#10-135 *Baca v. Superior Court, S186253.*

STATUS

People v. Riccardi, S056842. In this automatic appeal, the court directed the Attorney General to prepare and file a complete transcript of a witness's police interview from the

electronic recording identified as People's Exhibit 69. The court directed the parties to file supplemental letter briefs addressing the following issues: (1) The significance of the previously untranscribed portions of People's Exhibit 69, as it relates to defendant's claim that the trial court erroneously admitted this evidence as a prior consistent statement; (2) whether defendant's awareness of the decedent victim's fear of him, and her actions in conformity with that fear, rendered her fearful state of mind relevant to prove defendant's motive under Evidence Code section 1250; and (3) whether the trial court had a duty to give a limiting instruction on the court's own motion concerning those nonhearsay statements presented as circumstantial evidence of the decedent victim's state of mind.

#