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Public Information Office
455 Golden Gate Avenue
San Francisco, CA 94102-3688
www.courtinfo.ca.gov

415-865-7740

Lynn Holton
Public Information Officer

NEWS RELEASE

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Summary of Cases Accepted During the Week of April 11, 2005

[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.]

#05-78 *Lockheed Litigation Cases, S132167.* (B166347; 126 Cal.App.4th 271; Los Angeles County Superior Court; 2967.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does Evidence Code section 801, subdivision (b), permit a trial court to review the evidence an expert relied upon in reaching his or her conclusions in order to determine whether that evidence provides a reasonable basis for the expert's opinion?

#05-79 *Muzzy Ranch Co. v. Solano County Airport Land Use Com., S131484.* (A104955; 125 Cal.App.4th 810, mod. 126 Cal.App.4th 163a; Solano County Superior Court; FCS020127.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issue: Did the adoption of an airport land use compatibility plan for an area near an air force base constitute a "project" within the meaning of the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) where the plan recommended maintenance of the status quo under the county's existing general plan and prohibited any change of zoning that would allow more dwelling units than were allowed under current zoning?

#05-80 *Reigelsperger v. Siller, S131664.* (C045534; 125 Cal.App.4th 1008; Sutter County Superior Court; CVCS031466.) Petition for review after the Court of Appeal affirmed an order denying a motion to compel arbitration. This case presents the following issue: Did a written arbitration agreement that was entered into at the time of a patient's first treatment by a chiropractor, which stated that it would "bind the patient and the health care provider . . . who now or in the future treat[s] the

(over)

patient,” apply to the patient’s second treatment by the chiropractor for a different condition two years later?

#05-81 *People v. Carrasco*, S131882. (H026049; unpublished opinion; Santa Clara County Superior Court; 173067.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-82 *People v. Lammers*, S131050. (H025678; unpublished opinion; Santa Clara County Superior Court; 132803.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-83 *People v. Liddell*, S130977. (B168810; unpublished opinion; Los Angeles County Superior Court; KA060591.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-84 *People v. Rodriquez*, S131962. (B169227; unpublished opinion; Los Angeles County Superior Court; BA238426.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-85 *People v. Sprankle*, S132120. (A103850; unpublished opinion; Alameda County Superior Court; H33168B.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Carrasco*, *Lammers*, *Liddell*, *Rodriquez*, and *Sprankle* 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?

#05-86 *People v. Cuevas*, S132016. (B168269; unpublished opinion; Los Angeles County Superior Court; LA040073.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Shelton*, S124503 (#04-67), which includes the following issue: Was defendant required to obtain a certificate of probable cause (Pen. Code, § 1237.5; Cal. Rules of Court, rule 31) in order to claim on appeal that the manner of calculating the maximum sentence he agreed to in a plea agreement violated Penal Code section 654?

#05-87 *People v. Patrick*, S131176. (B172437; unpublished opinion; San Luis Obispo County Superior Court; F340973.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Watson*, S131052 (#05-75), which presents the following issue: Is a state prison inmate who has been transferred to a state hospital for mental health treatment (see Pen. Code, § 2684) a person who is “confined in a state prison” for the purpose of such offenses as battery by a person confined in state prison upon a non-confined person in violation of Penal Code section 4501.5? (See Pen. Code, § 4504.)

#05-88 *People v. Rivas*, S131315. (B171183; unpublished opinion; Los Angeles County Superior Court; BA244067.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. ___, 124 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

STATUS

#05-29 *People v. Calhoun*, S129896. The court directed the parties to brief and argue the following issues in this case: (1) Was defendant subject to an enhancement under Vehicle Code section 2001, subdivision (c), for fleeing the scene after “committing” the offense of gross vehicular manslaughter although he was convicted of that crime as an aider and abettor? (2) Was the evidence sufficient to show that defendant “committed” the offense of gross vehicular manslaughter for purposes of that enhancement? (3) Was there a meaningful opportunity to object to imposition of an upper term sentence, within the meaning of *People v. Scott* (1994) 9 Cal.4th 331 and *People v. Gonzalez* (2003) 31 Cal.4th 745, when the reason given for the upper term was not mentioned by the probation department or by the trial court prior to pronouncement of judgment? (4) Can an upper term sentence be imposed for gross vehicular manslaughter based upon multiple victims as an aggravating factor, even though only one victim was named in each count?

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