



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MAY 10, 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.]

#04-40 *People v. Garcia*, S124003. (A098872; 116 Cal.App.4th 404; Santa Clara County Superior Court; 210516.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issue: When the jury has visited the crime scene during the presentation of evidence at trial and then asks to revisit the crime scene during deliberations, does defendant and his or her counsel have the right, upon request, to be present at the jury's revisit to the crime scene?

#04-41 *Hicks v. Superior Court*, S123054. (B167843; 115 Cal.App.4th 77; Los Angeles County Superior Court; BC198414.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issues: (1) Can the implied warranty of quality and fitness applicable to new homes be waived? (2) If so, was the implied warranty disclaimer at issue in this case nonetheless unenforceable either because it was not sufficiently conspicuous or because it was unconscionable?

#04-42 *In re Howard N.*, S123722. (F043006; 115 Cal.App.4th 1134; Kern County Superior Court; JW081822-03.) Petition for review after the Court of Appeal reversed an order of extended civil commitment of a juvenile offender. This case presents the following issue: Are the provisions for civil commitment of a juvenile

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offender who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality (Welf. & Inst. Code, § 1800 et seq.) unconstitutional in failing to require a finding that the juvenile is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality that causes serious difficulty in controlling behavior? (See *Kansas v. Crane* (2002) 534 U.S. 407.)

#04-43 *People v. Hudson*, S122816. (B162812; unpublished opinion; Los Angeles County Superior Court; BA226321.) 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) What circumstances properly should be considered in determining whether a peace officer's motor vehicle is "distinctively marked" within the meaning of section 2800.1, subdivision (a)(3), of the Vehicle Code? (2) Does the trial court have a sua sponte duty to instruct the jury regarding the meaning of the term "distinctively marked" as used in that section, and if so, how should that term be defined?

#04-44 *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Company, Inc.*, S123238. (G030681, G030825; 115 Cal.App.4th 512; Orange County Superior Court; 01CC00661.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Is a contractor that is unlicensed at the time of executing a contract, but that obtains the license partway through performance, barred from any recovery on the contract by Business & Professions Code section 7031, or can it nonetheless bring an action to collect on the portion of the work performed while it had a valid license?

#04-45 *Rusheen v. Cohen*, S123203. (B152948; unpublished opinion; Los Angeles County Superior Court; EC022640.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Are actions taken to collect a judgment, such as obtaining a writ of execution and levying on the judgment debtor's property, protected by the litigation privilege of Civil Code section 47, subdivision (b), as communications in the course of a judicial proceeding? (2) Is a claim for abuse of process based on the filing of an allegedly false declaration of service barred by the litigation privilege on the ground the claim is necessarily founded on a communicative act?

#04-46 *People v. Smith*, S123074. (C042876; 115 Cal.App.4th 567; Sacramento County Superior Court; 00F01948.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant properly convicted of two counts of attempted murder for firing a single shot toward two victims on the theory that both victims were within the so-called “kill zone” at the time of the shooting? (See *People v. Bland* (2002) 28 Cal.4th 313.)

#04-47 *Walker v. Los Angeles County Metropolitan Transportation Authority*, S123853. (B156420; 116 Cal.App.4th 43; Los Angeles County Superior Court; BC199069.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. This case presents the following issue: Under what circumstances, if ever, should the Court of Appeal construe a notice of appeal from a non-appealable order, such as a notice of appeal from the denial of a motion for new trial, as a notice of appeal from the underlying, appealable judgment?

#04-48 *Gradle v. Doppelmayr USA, Inc.*, S123905. (C041861; 116 Cal.App.4th 276; Mono County Superior Court; 12815.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court ordered briefing deferred pending decision in *Elsner v. Uveges*, S113799 (#03-62), which includes the following issue: Are regulations promulgated under the California Occupational Safety and Health Act admissible to prove the standard of care and/or establish a presumption of negligence in a personal injury action by an employee against a party other than his or her own employee? (See Lab. Code, § 6304.5.)

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#04-31 *People v. Brendlin*, S123133. The court directed the parties to brief the following issues in this case: (1) Was defendant, as a passenger in a vehicle subjected to a traffic stop, thereby “detained” for purposes of the Fourth Amendment, thus allowing him to challenge the legality of the stop? (2) Could the vehicle be stopped on reasonable suspicion that it was being operated while unregistered, in violation of the Vehicle Code, when it exhibited an expired license plate registration tag, but also displayed what appeared from a distance to be a current temporary registration permit?