

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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|-------------------------------------|---|---------------|
| PEOPLE OF THE STATE OF CALIFORNIA,) | ) | Supreme Court |
| Plaintiff and Respondent,           | ) | No. S266606   |
|                                     | ) |               |
| v.                                  | ) |               |
|                                     | ) |               |
| CHRISTOPHER STRONG,                 | ) |               |
| Defendant and Appellant.            | ) |               |
| _____                               | ) |               |

Third Appellate District No. CO91162  
Sacramento County Superior Court No. 11FO6729

The Honorable Patrick Marlette, Judge

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APPELLANT’S REQUEST FOR JUDICIAL NOTICE

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of Legal Specialization

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,) )  
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Plaintiff and Respondent, ) )  
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CHRISTOPHER STRONG, ) )  
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TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE  
PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE  
JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 452, 453, and 459, appellant, through his counsel, requests this court to take judicial notice of the exhibit identified below, offered in support of Appellant’s Opening Brief on the Merits and which are referenced in that opening brief.

Exhibit A, attached, is relevant to understanding the intent of

the Legislature when it amended Penal Code sections 188, 189, and 1170.95, which is the issue in this proceeding. This exhibit was not presented to the trial court, but this exhibit is relevant to the interpretation of the statutes at issue in the instant proceeding and is relevant to show how the appellate courts which have considered this issue previously have misunderstood the Legislative intent.

Judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.” (Evid. Code § 452, subd. (c).) The court may judicially notice “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h).)

Appellant respectfully requests judicial notice of Exhibit A Memo from Senate Public Safety File for SB 1437 (Skinner), of the 2017-2018 Legislative Session, by Gabriel Caswell, Principal Consultant, Senate Public Safety Committee, Re: Constitutionality of SB 1437 (Skinner). This is a certified document from the California Secretary of State, which maintains the archive of files of the California Legislature. (Exhibit A, p. 1.) The certification states that this document is “a true and correct copy of the document, from the Senate Committee on Public Safety, Senate Bill 1437;2018.”

This document is properly judicially noticed. Cognizable legislative history includes reports and analysis documents prepared for the Legislative committee. (*In re J.S.* (2002) 29 Cal.4th 200, 211 [court may consult contemporary legislative committee analysis of that legislation”]; *Hutnick v. U.S. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456, 465 [“reports of legislative committees and

commissioners are part of a state’s legislative history”] *People v. Connor* (2004) 115 Cal.App.4th 669, 681, fn. 3; *People v. Snyder* (2000) 22 Cal.4th 304, 309.)

This document is relevant because it demonstrates that the Legislature was aware of two forms of felony murder recognized by California law, felony murder *simpliciter* and special-circumstances felony murder. This document is further relevant because it demonstrates that when the Legislature amended Penal Code sections 188, 189, and 1170.95, it was aware that the special circumstance allegations in Penal Code section 190.2, subdivision (a)(17) are elements of the offense of special-circumstances felony murder under California law.

For the foregoing reasons, appellant requests this court grant this request for judicial notice of Exhibit A.

Respectfully submitted,

Dated: May 17, 2021

Deborah Hawkins  
Deborah L. Hawkins  
Attorney for Appellant  
Christopher Strong

## **EXHIBIT A**



**State of California**  
**Secretary of State**

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Selected Memo; Senate Committee on Public Safety, Senate Bill 1437; 2018

That the attached transcript of 22 page(s) is a full, true and correct copy of the original record in the custody of this office.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

March 20th, 2019

A handwritten signature in black ink that reads "Alex Padilla".

ALEX PADILLA  
Secretary of State

# MEMO

To: Senate Public Safety File for SB 1437 (Skinner), of the 2017-18 Legislative Session  
From: Gabriel Caswell, Principal Consultant, Senate Public Safety Committee  
Re: Constitutionality of SB 1437 (Skinner)

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Murder is the killing of a human being, or a fetus, with malice aforethought. (PC § 187). Malice is either express or implied. (PC § 188). Murder is divided into either first or second-degree. (PC § 189).

## Felony Murder Liability: All Participants in Underlying Felony Are Liable For First Degree Murder Regardless Of Intent

A killing that occurs during the commission, attempted commission, or flight from a statutorily enumerated felony is murder of the first degree. (PC § 189). Thus, a death may be accidental, unintentional, and unforeseen, but so long as it occurred during the course of, or flight from, a statutorily-enumerated felony, all participants—whether one performed the homicidal act or not, or was even at the scene of the killing—is liable for first degree murder.

## Felony Murder History and Repeal In Other States

The felony-murder rule comes from English common law, but was abolished in the following common law jurisdictions:

- England (1957)
- Ireland
- Scotland
- India
- Canada (1990 in a judicial decision)

The following states have abolished felony murder:

- Hawaii
- Michigan
- Kentucky
- Ohio
- Massachusetts (Sept. 20, 2017)

Hawaii abolished felony murder legislatively in 1978, condemning its use and application in its findings. (See Hawaii Penal Code § 707-701, Commentary, *attached*.) In 1980, the Michigan Supreme Court abolished felony murder and condemned its use: “A felony-murder rule that punishes all homicides committed in the perpetration of a felony whether the death is intentional, unintentional or accidental, without the necessity of proving the relation of the perpetrator’s state of mind to the homicide, violates the most fundamental principle of the criminal law—‘criminal liability for causing a particular result is not justified in the absence of some culpable mental state in respect to that result.’

On September 20, 2017, in *Commonwealth v. Brown* (2017) 81 N.E. 3d 1173, the Massachusetts Supreme Court followed the lead of these other countries and states and also abolished felony murder liability as a basis for a murder conviction. In doing so, it quoted a California Supreme Court case condemning felony murder, “We have recognized that the application of the felony-murder rule erodes “the relation between criminal liability and moral culpability.” *Matchett*, 386 Mass. at 507, 436 N.E.2d 400, quoting *People v. Washington*, 62 Cal.2d 777, 783, (1965).”

Many states have limited its application significantly or abolished it for non perpetrators of the homicidal act: Arkansas, Connecticut, New Jersey, New York, North Dakota, Oregon, Washington, New Hampshire, Virginia, Wisconsin (if death occurs during felony, 15 year enhancement).

The California Supreme Court has repeatedly urged that it be abolished. However, in California, because it is statutory, the Supreme Court cannot abolish it; only the Legislature has that power.

Defendant first asks us in effect to adopt the position taken by the Michigan Supreme Court in *People v. Aaron* (1980) 409 Mich. 672, and to abolish the felony-murder rule in a further exercise of the power we invoke in Part II of this opinion, i.e., our power to **conform the common law of this state to contemporary conditions and enlightened notions of justice.** (See, e.g., *Rodriguez v. Bethlehem Steel Corp.* (1974) 12 Cal.3d 382, 393–398, and cases cited.) Defendant emphasizes the dubious origins of the felony-murder doctrine, the many strictures leveled against it over the years by courts and scholars, and the legislative and judicial limitations that have increasingly circumscribed its operation. **We do not disagree with these criticisms; indeed, our opinions make it clear we hold no brief for the felony-murder rule. We have repeatedly stated that felony murder is a “highly artificial concept” which “deserves no extension beyond its required application.”** (*People v. Phillips* (1966) 64 Cal.2d 574, 582, *accord*, *People v. Henderson* (1977) 19 Cal.3d 86, 92–93; *People v. Poddar* (1974) 10 Cal.3d 750, 756, 111; *People v. Satchell* (1971) 6 Cal.3d 28, 33–34; *People v. Sears* (1970) 2 Cal.3d 180, 186–187; *People v.*

*Wilson* (1969) 1 Cal.3d 431, 440; *People v. Ireland* (1969) 70 Cal.2d 522, 539.)  
**And we have recognized that the rule is much censured “because it anachronistically resurrects from a bygone age a ‘barbaric’ concept that has been discarded in the place of its origin” (Phillips, supra, at p. 583, fn. 6, of 64 Cal.2d) and because “in almost all cases in which it is applied it is unnecessary” and “it erodes the relation between criminal liability and moral culpability.” (*People v. Washington* (1965) 62 Cal.2d 777, 783.)**

Nevertheless, a thorough review of legislative history convinces us that in California—in distinction to Michigan—the first degree felony-murder rule is a creature of statute. **However much we may agree with the reasoning of *Aaron*, therefore, we cannot duplicate its solution to the problem: this court does not sit as a super-legislature with the power to judicially abrogate a statute merely because it is unwise or outdated.** (See *Griswold v. Connecticut* (1965) 381 U.S. 479, 482; *Estate of Horman* (1971) 5 Cal.3d 62, 77; *People v. Russell* (1971) 22 Cal.App.3d 330, 335.)

*People v. Dillon* (1983) 34 Cal. 3d 441

Aider and Abettor Liability For Second Degree Murder Under the Natural and Probable Consequences Doctrine: Vicarious Liability

To be liable for second-degree murder, one has to act with implied malice, that is act with a “conscious disregard for human life.” It is important to note that in the context of the natural and probable consequences doctrine of second-degree murder, a co-participant in a crime does not have to intend to kill. A person can engage in behavior with co-participants (i.e. a group fight outside of a high school) – this is referred to as the “target offense” -- and if one of the co-participants does an act that results in a death – the “non target offense” -- all of his or her co-participants can be liable for second degree murder.

By its very nature, aider and abettor culpability under the natural and probable consequences doctrine is not premised upon the intention of the aider and abettor to commit the nontarget offense because the nontarget offense was not intended at all. It imposes vicarious liability for any offense committed by the direct perpetrator that is a natural and probable consequence of the target offense. Because the nontarget offense is unintended, the *mens rea* of the aider and abettor with respect to that offense is irrelevant and culpability is imposed simply because a reasonable person could have foreseen the commission of the nontarget crime.

*People v. Chiu* (2014) 59 Cal.4th 155, 164, underline added, citations omitted.

In *Chiu*, for example, there was a group fight, the prosecution alleged that the target offense was either disturbing the peace or assault, and the non-target offense was murder, as Chiu's confederate retrieved a gun from a car and shot a participant. Although Chiu did not personally commit the homicidal act, nor was there evidence that he personally intended for a homicide to occur -- he was liable for second degree murder under the natural and probable consequences doctrine.

Thus, this is a negligence standard – whether the crime was “reasonably foreseeable.” In the context of young offenders, or offenders with particular mental illnesses, there is no “reasonable 20 year old person standard” or “reasonable person suffering from PTSD.” A trier of fact will judge the defendant with an “objective standard,” notwithstanding issues of maturity, brain development, etc. See *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519 “The common law does not take account of a person's mental capacity when determining whether he has acted as the reasonable person would have acted. The law holds ‘the mentally deranged or insane defendant accountable for his negligence as if the person were a normal, prudent person.’ (Prosser & Keeton, Torts (5th ed. 1984) § 32, p. 177.)”

#### Penal Code: Culpability vs. Punishment

In the Penal Code, there are statutes that define the crime, or define the degree of the crime. Then, there are provisions that provide for the punishment for the crime. Sometimes, the elements of the crime and the punishment occur in the same statute. Many times, the elements of the crime and the punishment are established in different code sections and have been set forth at different times and by different legislative bodies, i.e. the legislature or the voters.

For example, Penal Code § 496, receipt of stolen property, establishes both liability for the crime and the punishment for the crime in the same subsection. The elements of the offense (what establishes one's culpability crime) are in italics; the punishment for the crime is underlined.

- (a) Every person who *buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained*, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

In contrast, robbery, Penal Code § 211, enacted in 1872, establishes only the elements of the offense:

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

“Fear” is defined in Penal Code § 212. Whether robbery is first or second degree is set forth in Penal Code section 212.5.

The punishment for robbery and attempted robbery is set forth in another statute, Penal Code § 213:

- (a) Robbery is punishable as follows:
  - (1) Robbery of the first degree is punishable as follows:
    - (A) If the defendant, voluntarily acting in concert with two or more other persons, commits the robbery within an inhabited dwelling house, a vessel as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, a trailer coach as defined in the Vehicle Code, which is inhabited, or the inhabited portion of any other building, by imprisonment in the state prison for three, six, or nine years.
    - (B) In all cases other than that specified in subparagraph (A), by imprisonment in the state prison for three, four, or six years.
  - (2) Robbery of the second degree is punishable by imprisonment in the state prison for two, three, or five years.
- (b) Notwithstanding Section 664, attempted robbery in violation of paragraph (2) of subdivision (a) is punishable by imprisonment in the state prison.

### Murder Culpability and Punishment Are Set Forth In Different Statutes

In the case of murder, there are different statutes – enacted at different times (over 100 years apart) and by different bodies -- that set forth liability for murder (what constitutes the crime of murder and the degree); the degree of murder; and the punishment for murder.

Penal Code § 187, originally enacted in 1872, establishes the crime of murder,

§ 187. “Murder” defined

(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

(b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply . . .

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law.

Penal Code § 188, also originally enacted in 1872, defines “malice”:

Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

Penal Code § 189 establishes the elements of first degree murder and sets forth felony murder.

All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, “destructive device” means any destructive device as defined in Section 16460, and “explosive” means any explosive as defined in Section 12000 of the Health and Safety Code.

As used in this section, “weapon of mass destruction” means any item defined in Section 11417.

To prove the killing was “deliberate and premeditated,” it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

Penal Code § 189 was originally enacted in 1872. It has been amended many times since then.<sup>1</sup> The punishment for (*not* the definition of) first and second-degree murder under is set forth in Penal Code § 190(a).

(a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

This portion of Penal Code § 190 was enacted in 1978 by Proposition 7 or the Briggs Initiative. Thus, the voters set the punishment for first and second degree murder. The initiative did not amend Penal Code § § 187-189 in any way nor do the enacted statutes say anything about what acts or mental state constituted a defendant’s culpability for first or second degree murder.

The ballot summaries to Proposition 7 (*attached*) also say nothing about culpability for murder, or the elements of murder. The ballot summaries say nothing about accomplice liability, or about when a defendant may be found guilty of first degree murder or second degree murder. It only regarded the punishment for those found guilty of first or second degree murder.

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<sup>1</sup> Enacted in 1872. Amended by Code Am.**1873-74**, c. 614, p. 427, §16;Stats.**1949**, First Ex.Sess., c. 16, p. 30, § 1, eff. Jan. 6, 1950; **Stats.1969**, c.923, p. 1852, § 1; **Stats.1970**, c. 771, p. 1456, § 3, eff. Aug. 19,1970;**Stats.1981**,c. 404, p. 1593, § 7; **Stats.1982**, c. 949, p. 3438, § 1, eff. Sept. 13, 1982; **Stats.1982**, c. 950, p. 3440, § 1, eff. Sept. 13, 1982; Initiative Measure (Prop. 115), approved **June 5, 1990**, eff. June 6, 1990 **Stats.1993**, c. 609, (S.B.310), § 1; Stats.1993, c. 610 (A.B.6), § 4, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 4.5, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1993, c. 611 (S.B.60), § 4, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 4.5, eff. Oct. 1, 1993, operative Jan. 1, 1994; **Stats.1999**, c. 694 (A.B.1574), § 1; **Stats.2002**, c. 606 (A.B.1838), § 1, eff. Sept. 17, 2002; **Stats.2010**, c. 178 (S.B.1115), § 51, operative Jan. 1, 2012.)

## The Distinction Between Culpability and Punishment Is A Cornerstone of our Jury System

The distinction between culpability and punishment exists not only in our statutes, but in our jury system itself. In our system, the jury (or the court, if a jury has been waived) determines a defendant's guilt based on the facts presented. The jury is instructed on the elements of the offenses and the jury decides if the prosecution has established all of the elements of the offense charged. The jury is explicitly instructed not to consider punishment or sentencing. (See CALCRIM 101; 706 [jury may not consider punishment when deciding special circumstance], attached.) The jury determines the fact; the judge imposes the punishment – subject to statutory limitations -- after the finding of guilt.

## One Must Distinguish between Felony Murder *Simpliciter* (Penal Code § 189) and Felony Murder Special Circumstance (Penal Code § 190.2 (a)(17))

It is very important not to confuse felony murder *simpliciter* (Penal Code §189, enacted in 1872) with felony murder special circumstances as enacted by the voters in 1978 by repealing and amending Penal Code § 190.2(a)(17). There are critical distinctions between the two.

For aiders and abettors in the underlying felony, but not the actual killers, felony murder special circumstances (PC § 190.2(a)(17)) imposes additional requirements for a conviction. These additional requirements are that the accomplice be both 1) a “major participant” in the underlying felony and 2) act with “reckless indifference to human life.” Felony murder *simpliciter* (PC § 189) does not impose these additional requirements. (*People v. Mil* (2012) 53 Cal. 4th 400, 407 [discussing additional requirements for non-killer under § 190.2 as held by the court in *People v. Anderson* (1987) 43 Cal. 3d 1104 and as Penal Code § 190.2(c) and (d) were added by the voters in Proposition 115.]) (See CALCRIM 540B and CALCRIM 703, *attached*.)

In *People v. Banks* (2015) 16 Cal. 4th 788, 810 the Court held that to conflate elements of felony murder 189 with special circumstance felony-murder for non-killers violates the constitution.

## A Special Circumstance Is Charged Separately. The Jury Is Instructed With Separate Instructions And Must Make A Separate Factual Inquiry.

As § 189 and § 190.2 are different statutes, and contain different requirements, the court process is also distinct. A person may be charged and convicted of first-degree murder under a felony murder theory and not be charged with and/or convicted of felony murder special circumstances. These are separate statutes and require separate charges and jury findings. If the prosecution wants to charge a special circumstance, then it must be charged separately from the murder charge. In such a case, only if and when the jury finds the defendant guilty of first degree murder, does it then turn to to the special circumstance charge. The jury is instructed

separately on the special circumstance and on the evidence required to prove the special circumstance. (See CALCRIM 700-708, 730.) In order to make a true finding, the elements of the special circumstance must be proven beyond a reasonable doubt. The jury will be given a separate verdict form to determine whether the special circumstance listed in 190.2(a) has been established beyond a reasonable doubt.

The California Supreme Court has held that the special circumstance finding that the jury makes when they consider whether defendant is guilty of Penal Code § 190.2 is not a sentencing function. As Penal Code section 190.2(a) is a separate and distinct statute from felony murder *simpliciter*, (or other murder charges) there must be a separate factual determination, separate instructions, and separate elements.

Proceedings do not move into the penalty, or sentencing, phase until after a defendant is convicted of first degree murder *and* the special circumstance is found to be true. (Pen.Code, §§ 190.1, 190.2.) In the California scheme the special circumstance is not just an aggravating factor: it is a fact or set of facts, found beyond reasonable doubt by a unanimous verdict (Pen.Code, § 190.4), which changes the crime from one punishable by imprisonment of 25 years to life to one which must be punished either by death or life imprisonment without possibility of parole. The fact or set of facts to be found in regard to the special circumstance is no less crucial to the potential for deprivation of liberty on the part of the accused than are the elements of the underlying crime which, when found by a jury, define the crime rather than a lesser included offense or component.

People v. Superior Court (Engert) (1982) 31 Cal.3d 797, 803, italics in original, footnote omitted.  
**California Supreme Court Case Law Authorizes An Amendment to Penal Code § § 189 or 188 For Accomplice Liability by A Majority Vote**

#### **A. The Law**

The California Supreme Court has repeatedly held that the Legislature is free to amend statutes, despite the fact that there has been a voter initiative, when the amendment addresses the same general subject matter that an initiative addresses. The Legislature is free to address:

- 1) a related but distinct area of law or
- 2) a matter that an initiative does not “specifically authorize or prohibit.”

(*People v. Superior Court (Pearson)* (2010) 48 Cal. 4th 464; *People v. Kelly* (2010) 47 Cal. 4th 1008; *People v. Cooper* (2002) 27 Cal. 4th 38

Only when the statutory language is unclear may a court look to the ballot materials to determine voter intent. A court (or in this case the legislature) may not find read into the language some assumed voter intent not apparent from the language of the statute. If there is ambiguity, then the ballot materials may be examined to divine the voter intent. (*People v. Superior Court (Pearson)* (2010) 48 Cal. 4th 564, 571.)

1. *People v. Superior Court (Pearson)* (2010) 48 Cal. 4th 464

*Pearson* was a case in which the Court addressed Legislative amendment of the same statute that was added by an initiative. (Penal Code § 1054)<sup>2</sup> After Proposition 115, the Legislature added Penal Code § 1054.9, passing it with a majority, which allowed for post-conviction discovery on habeas. The district attorney opposed a motion for post conviction discovery, arguing that Penal Code § 1054.9 was an unconstitutional amendment of Proposition 115. The Court looked to the language of the initiative to say that, notwithstanding Prop 115's language that no discovery in criminal cases should occur except as authorized by its language, post-conviction discovery on habeas is a related but distinct area of law not prohibited by 115.

We have described an amendment as “a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision.” (*People v. Cooper* (2002) 27 Cal.4th 38, 44.) But this does not mean that any legislation that concerns the same subject matter as an initiative, or even augments an initiative's provisions, is necessarily an amendment for these purposes. “The Legislature remains free to address a ‘ “related but distinct area” ’ [citations] or a matter that an initiative measure ‘does not specifically authorize or prohibit.’ ” (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025–1026; see also *Cooper, supra*, at p. 47; *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 830, 81 Cal.Rptr.3d 461.) In deciding whether this particular provision amends Proposition 115, we simply need to ask whether it prohibits what the initiative authorizes, or authorizes what the initiative prohibits.

The Court held that post-conviction discovery was a related but distinct area of law, not specifically prohibited by Proposition 115. The Court also stated that if the statutory language was subject to multiple interpretations, a court could look to ballot summaries and arguments to determine voter intent.

“[T]he voters should get what they enacted, **not more and not less.**” (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)

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<sup>2</sup> In contrast, Propositions 7, 21, 36, enacted or amended different statutes – not § § 187-189. Proposition 115 amended Penal Code Section 189, adding crimes. Those amendments are discussed below.

¶ This is a question of statutory interpretation. When we interpret an initiative, we apply the same principles governing statutory construction. We first consider the initiative’s language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and **we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language**. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters’ intent and understanding of a ballot measure. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.)  
*Pearson, supra*, 48 Cal. 4th at 571, emphasis added.

1. *People v. Kelly* (2010) 47 Cal. 4th 1008

Although *Kelly* involved an entirely different subject matter, it is useful to examine *Kelly* because it involved the scope of what the Legislature may do on a subject matter that has previously been passed by voter initiative.

*Kelly* was a case involving the Compassionate Use Act (CUA) ballot initiative and the subsequent Legislatively-enacted Medical Marijuana Program (MMP). The CUA, enacted by the voters, allowed for a person who was facing felony charges of marijuana possession to present a defense that the amount s/he possessed was “reasonably necessary” for his or her medical needs. The CUA did not impose quantity limitations. The CUA did not protect a person from arrest, it allowed for an affirmative defense at trial.

The Legislature then enacted the MMP that, among other things, set up an identification card program for Medical Marijuana users. The MMP provided protection from arrest to those who had a valid MM card. However, the MMP also set up a quantity limit on possession that purported that 8 oz. of marijuana and a certain number of plants was what was “reasonably necessary” to qualify not only for protection from arrest, but the limits of possession under the CUA.

As to limiting the amount to possess to present an affirmative defense under the CUA, the Court held that that was an unconstitutional amendment of the CUA. However, as to the main issue, the *Kelly* Court reversed the Court of Appeal, and found that the 8 oz. quantity limitations in the MMP for those who voluntarily participated in the identification card program of the MMP was *not* an unconstitutional amendment of the CUA.

In so holding, the Court re-affirmed a broader view of the Legislature’s ability to pass legislation despite the fact that the general subject matter has been the subject of an initiative and questioned

past cases holding otherwise. The Court’s holding means that the fact that voters enacted an initiative related to something does not mean that henceforth, that initiative occupies the entire field related to the subject matter. The Legislature was free to legislate medical marijuana, or institute an identification card program with its own rules, (“a related but distinct area of law”) so long as the legislation doesn’t authorize or prohibit that which the initiative authorizes or prohibits. To the extent the MMP limited an affirmative defense under CUA, it would be unconstitutionally applied. To the extent it created distinct legislation that involves the same matter, (medical marijuana), it was fine.

2. People v. Cooper (2002) 27 Cal. 4th 38

In *Cooper*, the Court held that the Legislature’s 1994 enactment of § 2933.1, which limited presentence conduct credits under § 4019 for people convicted of murder, was not an unconstitutional amendment of Proposition 7.

The Court found that the amendment was constitutional because the Briggs Initiative *did not specifically authorize or prohibit presentence conduct credit*. Thus, section 2933.1 was not an invalid modification of the initiative.

B. Proposition 7 Does Not Prohibit The Legislature From Amending Penal Code § § 188 or 189

As noted above, Proposition 7 repealed and added Penal Code § § 190, et. seq. It did not repeal or amend in any way amend Penal Code § § 188 or 189.

In Proposition 7, the voters set the punishment for first and second degree murder. Not only did Proposition 7 not amend Penal Code § § 187-189, but the statutes that it did enact say nothing about what acts or mental state constituted a defendant’s liability for first or second- degree murder under Penal Code § § 187-189. The statutory language said nothing about an accomplice’s liability under Penal Code § 189 nor for second degree murder under § 188.

Under the two-part inquiry regarding whether the proposed amendment is a “related but distinct” are of law, or an amendment does something that the initiative expressly prohibits: 1) culpability for murder is related to the punishment one can receive, but as addressed above, culpability and punishment are clearly distinct, both in the statutes, and in our entire jury system; and 2) there is nothing in Proposition 7 that specifically prohibits the Legislature from amending the statutes that govern this culpability.

If there is any ambiguity in the statutory language of Proposition 7, then one could look to the ballot materials. The ballot summaries say nothing about aider and abettor liability, about when a defendant may be found guilty of first degree murder or second degree murder pursuant to

Penal Code § § 188 or 189. There is a limited discussion about the intent requirement for the death penalty or a special circumstance requirement. However, that is different, as the California Supreme Court has repeatedly held. The materials regarded the punishment for those found guilty of first or second degree murder, not the culpability for murder.

#### The Legislature Has Amended Penal Code § 189 since the passage of Proposition 7

The provisions of Proposition 7 may only be amended by a statute that becomes effective upon the approval of the voters. Penal Code § 189 was not addressed in Proposition 7. As further evidence of this, it is thus important to note that Penal Code § 189 has been amended by the Legislature multiple times since 1977.

Between 1977 and 1990, (the time of Proposition 115), Penal Code § 189 was amended twice. In 1981, § 189 was amended to clarify the definition of “deliberate and premeditated.” In 1982, § 189 was amended to add that a murder from the knowing use of metal piercing ammunition was first-degree murder. Neither of these amendments were passed by initiative. Thus, the opinion at the time was that Proposition 7 did **not** prevent the Legislature from amending § 189.

Further, in 1989, the Legislature enacted § 190.05, which allowed for either a 15 to life punishment or an LWOP sentence for second-degree murder when that person had committed a prior first or second degree murder. § 190.05 also enacted specific evidentiary requirements that must be met before a person could be liable for the enhanced penalty. Thus, § 190.05, adopted by Legislative statute, increased the punishment for a particular kind of second-degree murder. It does not appear that this statute was viewed as something that was prohibited by Penal Code § 190(a) of the Briggs Initiative, which provided for a 15 to life sentence for second-degree murder.

#### A. Proposition 115 Does Not Prevent The Legislature From Amending Penal Code § 189 To Affect Non-Killer Liability. Proposition 115 Did Not Amend Penal Code § 188.

Penal Code § 189, initially enacted in 1872, was amended by Proposition 115 in 1992. Sec. 9 of Proposition 115 added the following crimes to the list of felony-murder: kidnapping, trainwrecking, and certain sex crimes (Penal Code §§ 286, 288, 288a, and 289.) This was the text of Sec. 9, Proposition 115:

Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, <<+ kidnapping, train wrecking,+>> or any act punishable under <<-\* \* \*->> <<+Section 286, 288,

**288a, or 289,** is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, “destructive device” shall mean any destructive device as defined in Section 12301, and “explosive” shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was “deliberate and premeditated,” it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

Thus, in contrast to Proposition 7, which repealed and replaced all the statutes it addressed (again, not Penal Code § § 187-189), Proposition 115 did not repeal and replace all of Penal Code § 189, it simply added language to the existing Penal Code § 189.

Proposition 115 did not amend or address second-degree murder in Penal Code § 188.

Proposition 115 also contained the following language:

SEC. 30. The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

It is thus true that the Legislature cannot abolish the statutory provisions added to Penal Code § 189 --kidnapping, train-wrecking, and Penal Code sections 286, 288, 288a, and 289 -- by a 2/3 vote of the Legislature.

However, merely because these provisions were added to Penal Code § 189 by Proposition 115 does not end the inquiry as to those who did not commit the homicidal act.

Proposition 115, which amended Penal Code § 189 by adding other felonies to support felony-murder liability, does not say anything about non-killer liability under those provisions (kidnapping, train wrecking, Penal Code sections 289, 288, 288a, or 289) Thus, it does not contain a reference to the body of law that imposes liability for murder on mere accomplices under the felony murder doctrine, nor does it specifically authorize or prohibit anything regarding accomplice liability under felony-murder.

Thus, although the Legislature cannot strike out the provisions added by Proposition 115, it can limit liability for accomplices who did not commit the homicide.

C. Proposition 21 Does Not Prevent Legislative Amendments To Penal Code § § 188 or 189.

1. The Provisions of Proposition 21 (2000), The Gang Violence and Juvenile Crime Prevention Act of 1998

Juvenile Crime

Proposition 21 provided that Juveniles 14 years of age or older charged with committing certain types of murder or a serious sex offense, under Prop 21, were generally no longer eligible for juvenile court and prosecutors were allowed to directly file charges against juvenile offenders in adult court for a variety of circumstances without having to get the permission of juvenile court to do that. This was changed with Proposition 57.

Proposition 21 also provided that probation departments did not have the discretion to determine if juveniles arrested for any one of more than 30 specific serious or violent crimes should be released or detained; rather, Prop 21 made detention mandatory under those defined circumstances.

The initiative also prohibited the use of informal probation for any juvenile offender who committed a felony and reduced confidentiality for juvenile suspects and offenders by barring the sealing or destruction of juvenile offense records for any minor 14 years of age or older who has committed a serious or violent offense.

Gang Enhancement

Proposition 21 amended PC § 186.22. Section 186.22(a) is a substantive crime of membership in a gang. Proposition 21 added 186.22(i) to affirm an appellate court holding that in order to be convicted of § 186.22(a), it is not necessary that the defendant devote a “substantial amount of time to the gang.” (Proposition 21, Sec. 35.)

Proposition 21 increased the extra prison terms for gang-related crimes to two, three, or four years, for non-serious and nonviolent crimes. For serious or violent crimes done for “the benefit of the gang,” the new extra prison terms would be five and ten years.

Serious and Violent Crimes

Proposition 21 also added to the list of serious or violent offenses, making most of them subject to the longer sentence provisions of existing law related to serious and violent offenses. (PC § § 667.5 and 1192.7)

Special Circumstances

Proposition 21 also provided that if it is shown that a defendant committed a murder for the benefit of a gang, that defendant was eligible for the death penalty or LWOP. (Penal Code § 190.2(a)(22).)

Although the statutes in Proposition 21 contain multiple references to “murder” and “attempted murder” “voluntary manslaughter,” and “unlawful homicide,” these references were present in the existing statutes, i.e. Penal Code § § 186.22, et. seq.; 629.52, 667.5, 1192.7. Proposition 21 merely increased the punishment in certain circumstances related to gang crimes, including authorizing a new special circumstance for a murder done for the benefit of the gang.

#### 1. The Findings and Declarations of Proposition 21

The Findings and Declarations of Proposition 21 made clear that its purpose was related to increasing punishment for juvenile offenders and for gang crimes.

#### SECTION 1. SHORT TITLE.

This act shall be known, and may be cited, as the Gang Violence and Juvenile Crime Prevention Act of 1998.

#### SEC. 2. FINDINGS AND DECLARATIONS.

The people find and declare each of the following:

- (a) While overall crime is declining, juvenile crime has become a larger and more ominous threat. The United States Department of Justice reported in 1996 that juvenile arrests for serious crimes grew by 46 percent from 1983 to 1992, while murders committed by juveniles more than doubled. According to the California Department of Justice, the rate at which juveniles were arrested for violent offenses rose 54 percent between 1986 and 1995.
- (b) Criminal street gangs and gang-related violence pose a significant threat to public safety and the health of many of our communities. Criminal street gangs have become more violent, bolder, and better organized in recent years. Some gangs, like the Los Angeles-based 18th Street Gang and the Mexican Mafia are properly analyzed as organized crime groups, rather than as mere street gangs. A 1996 series in the Los Angeles Times chronicled the serious negative impact the 18th Street Gang has had on neighborhoods where it is active.
- (c) Vigorous enforcement and the adoption of more meaningful criminal sanctions, including the voter-approved “Three Strikes” law, Proposition 184, has resulted in a substantial and

consistent four year decline in overall crime. Violent juvenile crime has proven most resistant to this positive trend.

- (d) The problem of youth and gang violence will, without active intervention, increase, because the juvenile population is projected to grow substantially by the next decade. According to the California Department of Finance, the number of juveniles in the crime-prone ages between 12 and 17, until recently long stagnant, is expected to rise 36 percent between 1997 and 2007 (an increase of more than one million juveniles). Although illegal drug use among high school seniors had declined significantly during the 1980s, it began rising in 1992. Juvenile arrest rates for weapons-law violations increased 103 percent between 1985 and 1994, while juvenile killings with firearms quadrupled between 1984 and 1994. Handguns were used in two-thirds of the youth homicides involving guns over a 15-year span. In 1994, 82 percent of juvenile murderers used guns. The number of juvenile homicide offenders in 1994 was approximately 2,800, nearly triple the number in 1984. In addition, juveniles tend to murder strangers at disproportionate rates. A murderer is more likely to be 17 years old than any other age, at the time that the offense was committed.
- (e) In 1995, California's adult arrest rate was 2,245 per 100,000 adults, while the juvenile arrest rate among 10 to 17-year-olds was 2,430 per 100,000 juveniles.
- (f) Data regarding violent juvenile offenders must be available to the adult criminal justice system if recidivism by criminals is to be addressed adequately.
- (g) Holding juvenile proceedings in secret denies victims of crime the opportunity to attend and be heard at such proceedings, helps juvenile offenders to avoid accountability for their actions, and shields juvenile proceedings from public scrutiny and accountability.
- (h) Gang-related crimes pose a unique threat to the public because of gang members' organization and solidarity. Gang-related felonies should result in severe penalties. Life without the possibility of parole or death should be available for murderers who kill as part of any gang-related activity.
- (i) The rehabilitative/treatment juvenile court philosophy was adopted at a time when most juvenile crime consisted of petty offenses. The juvenile justice system is not well-equipped to adequately protect the public from violent and repeat serious juvenile offenders.
- (j) Juvenile court resources are spent disproportionately on violent offenders with little chance to be rehabilitated. If California is going to avoid the predicted wave of juvenile crime in the next decade, greater resources, attention, and accountability must be focused on less serious offenders, such as burglars, car thieves, and first time non-violent felons who have potential for rehabilitation. This act must form part of a comprehensive juvenile justice reform package which incorporates major commitments to already commenced "at-risk" youth early intervention programs and expanded informal juvenile court alternatives for low-level offenders. These efforts, which emphasize rehabilitative protocols over incarceration, must be expanded as well under the provisions of this act, which requires first time, non-violent juvenile felons to appear in court, admit guilt for their offenses, and be held accountable, but also be given a non-custodial opportunity to demonstrate through good conduct and compliance with a court-monitored treatment and supervision program that the record of the juvenile's offense should justly be expunged.
- (k) Dramatic changes are needed in the way we treat juvenile criminals, criminal street gangs, and the confidentiality of the juvenile records of violent offenders if we are to avoid the predicted, unprecedented surge in juvenile and gang violence. Californians deserve to live without fear of violent crime and to enjoy safe neighborhoods, parks, and schools. This act addresses each of these issues with the goal of creating a safer California, for ourselves and our children, in the Twenty-First Century.

CRIMES—JUVENILES—GANG VIOLENCE, 2000 Cal. Legis. Serv. Prop. 21 (WEST)

1. Proposition 21 Does Not Amend Penal Code § § 188 or 189. It Does Not Address Culpability for Murder Nor Does It Address Accomplice Liability Under Penal Code § § 188 and 189

There is nothing in Proposition 21 that established a defendant's culpability for murder, referenced culpability for felony murder, or referred to culpability for second degree murder. In fact, its references are to "murder," without reference to first or second degree murder. The only exception is the addition to 190.2(a)(22), referring to a defendant "intentionally" killing the victim, because 190.2(a) already required a first-degree murder conviction. It references "unlawful homicide or manslaughter" and refers generally to the homicide statutes, "commencing with section 187."

Proposition 21 provides for enhancements for murders committed for the benefit of the gang. There is nothing in Proposition 21 that prohibits the legislature from amending a statute to address an accomplice's liability for felony-murder or accomplice liability for second degree murder under the natural and probable consequences doctrine. There is nothing in the proposed amendments to § § 188 or 189 that Proposition 21 even addresses, let alone prohibits. A defendant convicted of first or second degree murder (or manslaughter) would still be subject to the enhanced punishment of § 186.22 or § 190.2(a)(22) if those murders were done for the benefit of the gang.

As *Cooper* held, only if the statutory language is ambiguous should one turn to the ballot materials. There is nothing ambiguous in Proposition 21's language regarding culpability for murder. However, if one were to examine the ballot materials, (the findings and declarations to Proposition 21 are in full above) there is nothing that remotely suggests that the voters' intent of Proposition 21 was to address the way in which a defendant could be found liable for first or second degree murder. Proposition 21 clearly addressed enhanced *punishment* for gang members who were found guilty of a whole number of felonies, from vandalism to murder. There is nothing in Proposition 21 that expresses an intent by the voters to determine how a defendant may be found liable for these underlying felonies.

D. Proposition 36 Does Not Prevent Legislative Amendments To Penal Code § § 188 or 189.

1. The Provisions of Proposition 36

California voters passed Proposition 36 in 2012. Proposition 36 made changes to Proposition 184, the California Three Strikes Law, which mandated a sentencing model where individuals

with a prior serious or violent felony would have their sentence doubled for any subsequent felony. The law also mandated that individuals with two prior violent or serious felonies would receive a sentence of 25 years to life for any subsequent felony. Proposition 36 changed the sentencing model as follows: 1) changed the sentencing structure to only allow life sentence when the new felony conviction is “serious or violent” (with certain exceptions listed in § 1170.12(c)(2)(C)) and 2) allows offenders serving a life sentence for a third strike that was not serious or violent to petition for resentencing.

## 2. The Findings and Declarations of Proposition 36

The Findings and Declarations of Proposition 36 say nothing about culpability for any of the felonies listed, but address only punishment for recidivists.

### SECTION 1. Findings and Declarations:

The People enact the Three Strikes Reform Act of 2012 to restore the original intent of California's Three Strikes law--imposing life sentences for dangerous criminals like rapists, murderers, and child molesters.

This act will:

- (1) Require that murderers, rapists, and child molesters serve their full sentences--they will receive life sentences, even if they are convicted of a new minor third strike crime.
- (2) Restore the Three Strikes law to the public's original understanding by requiring life sentences only when a defendant's current conviction is for a violent or serious crime.
- (3) Maintain that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of a life sentence.
- (4) Save hundreds of millions of taxpayer dollars every year for at least 10 years. The state will no longer pay for housing or long-term health care for elderly, low-risk, non-violent inmates serving life sentences for minor crimes.
- (5) Prevent the early release of dangerous criminals who are currently being released early because jails and prisons are overcrowded with low-risk, non-violent inmates serving life sentences for petty crimes.

PROPOSITION—THREE STRIKES REFORM ACT, 2012 Cal. Legis. Serv. Prop. 36  
(Proposition 36) (WEST)

### 1. Proposition 36 Does Not Address the Definition of Murder, Or Accomplice Liability

Proposition 36 prevents a life sentence for a third strike if the offense is not a serious or violent felony, however, where a prior conviction involved murder, Proposition 36 maintained the 25 to

life penalty. Nothing in Proposition 36 effects how murder or homicide are defined; the proposition only impacts punishment and which felony convictions constitute serious and/or violent felonies.

2. Penal Code Section 1170.125 Limits the Relief A Defendant May Get Under Proposition 36. It Does Not Address the Definition of Murder.

Section 1170.125 does not freeze the definition of serious and/or violent felonies; rather it limits the relief defendants may get under Proposition 36. Section 1170.125 must be read in reference to the sections it explicitly references.

Penal Code section 1170.125 states that “for all offenses committed on or after November 7, 2012, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they existed on November 7, 2012.”

Section 1170.12(b) states that a “prior conviction of a serious and/or violent felony shall be defined as [a]ny offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.”

Section 1170.126 sets forth the provisions for re-sentencing under the revised Three Strikes law for people who are serving third strike sentences when the 3rd strike was for a non-serious/violent felony.

Thus, under 1170.12 and 1170.126 if a felony listed in 1170.12 is changed after November 2012, the person convicted does not get the benefit of re-sentencing. In that case, 1170.125 is activated — i.e. because § 189 (or whatever felony is at issue) was what it was in November 2012, not in 2018, the defendant does not get the benefit of the new legislation.

Similarly, assume a defendant is convicted for a 3rd non-serious/violent felony and has two prior serious felony convictions, one of which was for a homicide offense. Penal Code section 189 or 188 has been amended as proposed. That defendant makes the argument that s/he can't be sentenced under 3 strikes because under the facts of his or her case, s/he could not now be convicted of murder. However, pursuant to § 1170.125 and 1170.12(c)(2)(C)(IV), the defendant does not get the benefit of any change to the murder statutes.

The purpose of amending the Penal Code to include PC 1170.125 was to 1) incorporate new punishment, enhancement, and priorability provisions, 2) set forth how resentencing provisions would work, and 3) confirm the list of convictions that would constitute serious and/or violent felonies. Nothing in this section affects how murder is defined.

Proposition 36 may confirm the list of felony convictions that constitute serious and/or violent felonies, but Proposition 36 did not define or set forth the felonious conduct that constitutes the underlying felony offense. For instance, if a legislative amendment sought to remove murder from the list of serious and/or violent felonies, that would conflict with the voter's intent and would require a 2/3 vote. Conversely, adding or removing elements necessary to prove murder have no bearing on whether the ultimate murder conviction can be categorized as a serious and/or violent felony.

3. The Statutory Provisions of Provisions of Proposition 36 Are Not Ambiguous. However, There Is Nothing in The Ballot Materials That Discuss A Defendant's Culpability For Murder.

If statutory language in an initiative is ambiguous, then a court could look to ballot literature to determine voter intent.

There is nothing within Proposition 36 regarding whether voters intended to set a defendant's culpability for any of the felonies listed in that initiative. Further, there is nothing discussed in the ballot materials for Proposition 36 that address culpability for murder, either first or second degree, the elements of murder, or the elements of any offense listed as a serious and/or violent felony.

Through Proposition 36, voters only intended to label the offenses listed in subdivision (c) of Section 667.5 as violent and label those offenses listed in subdivision (c) of Section 1170.12 as serious. Proposition 36 sets forth punishment for recidivists who are convicted of serious or violent felonies. Proposition 36 does not set forth provisions on culpability for the offenses listed in them or set forth the elements to prove a conviction.

Attachments

- Hawaii Penal Code § 707-701, Commentary regarding abolition of felony murder
- Proposition 7 Ballot Summaries
- CALCRIM 101 (jury may not consider punishment)
- CALCRIM 706 (jury may not consider punishment when deciding special circumstance)
- Proposition 115 Ballot Summary
- CALCRIM 540B (felony murder *simpliciter*: Co-participant allegedly committed homicidal act)

- CALCRIM 703 (felony murder special circumstance when defendant not the actual killer)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,) )  
Plaintiff and Respondent, ) ) Supreme Court  
 ) ) No. S266606  
v. ) )  
CHRISTOPHER STRONG, ) )  
Defendant and Appellant. ) )  
\_\_\_\_\_ ) )

Third Appellate District No. C091162  
Sacramento County Superior Court No. 11F06729

The Honorable Patrick Marlette, Judge

\_\_\_\_\_  
[PROPOSED] ORDER  
\_\_\_\_\_

Appellant's request for judicial notice of Exhibit A,  
Memo from Senate Public Safety File for SB 1437 (Skinner), of the 2017-2018  
Legislative Session, by Gabriel Caswell, Principal Consultant, Senate Public Safety  
Committee, Re: Constitutionality of SB 1437 (Skinner) is

GRANTED/DENIED

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

Case Name: People v. Strong

Case No. S266606

### **DECLARATION OF SERVICE**

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, and not a party to the subject cause. My business address is 1637 E. Valley Parkway PMB 135 Escondido, California 92027.

On May 17, 2021, I served the attached

#### **Appellant's Request for Judicial Notice**

of which a true and correct copy of the document filed in the cause is served by TrueFiling or by United States mail by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Jorge E. Navarrete, Clerk  
California Supreme Court  
Room 1295  
350 McAllister Street  
San Francisco, California 94102  
(electronic)

Andrea K. Wallin-Rohmann  
Court of Appeal, Third District  
914 Capitol Mall, 4th Floor  
Sacramento, California 95814  
(electronic)

Office of The Attorney General  
1300 "I" Street  
P.O. Box 944255  
Sacramento, California 94244-2550  
(electronic)

The Hon. Patrick Marlett,  
Judge of the Superior Court  
Sacramento County  
720 9th Street  
Sacramento California 95814  
(U.S. Mail)

Case Name: People v. Strong

Case No. CO91162

Anne Marie Schubert, District Attorney  
c/o Stefanie Mahaffey, Deputy  
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Sacramento, California 95814  
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Central California Appellate Program  
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Sacramento, California 95833  
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Christopher Strong #AT4834  
Salinas Valley State Prison  
P.O. Box 1050  
Soledad, California 93960  
(U.S. Mail)

Each document was filed through TrueFiling or deposited in the United States mail by me at Escondido, California, on May 17, 2021.

I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed at Escondido, California on May 17, 2021.

DEBORAH L. HAWKINS

*Deborah Hawkins*

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**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PEOPLE v. STRONG**

Case Number: **S266606**

Lower Court Case Number: **C091162**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **dhawkins8350@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

| <b>Filing Type</b>          | <b>Document Title</b>                  |
|-----------------------------|--|
| REQUEST FOR JUDICIAL NOTICE | S066606.STRONG.REQUEST.JUDICIAL.NOTICE |

Service Recipients:

| <b>Person Served</b>                                | <b>Email Address</b>              | <b>Type</b> | <b>Date / Time</b>   |
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| Deborah Hawkins<br>Deborah L. Hawkins<br>127133     | dhawkins8350@gmail.com            | e-Serve     | 5/17/2021 9:07:04 AM |
| Catherine Tennant<br>Ofc Attorney General<br>179182 | catherine.tennantnieto@doj.ca.gov | e-Serve     | 5/17/2021 9:07:04 AM |
| Elizabeth Smuth<br>300643                           | lsmutz@capcentral.org             | e-Serve     | 5/17/2021 9:07:04 AM |

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/17/2021

Date

/s/Deborah Hawkins

Signature

Hawkins, Deborah (127133)

Last Name, First Name (PNum)

Deborah L. Hawkins

Law Firm