2024 TEACHER'S UPDATE

to

CALIFORNIA CRIMINAL LAW: CASES AND PROBLEMS
(5th Edition)

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Dear Colleague,

The following material updates our Teacher's Manual. We hope you find this material useful, and we welcome your comments, questions and suggestions. The authors can be contacted as follows: Steve Shatz at shatzs@usfca.edu, Scott Howe at swhowe@chapman.edu and Amy Flynn at amflynn@usfca.edu.

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CHAPTER 1 – INTRODUCTION

Problem 4 (p. 113)

In *City of Grants Pass, Oregon v. Johnson*, ___ S.Ct. ___, 2024 WL 3208072 (2024), the Supreme Court held that the enforcement of generally applicable laws regulating camping on public property when applied to the homeless does not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment. Citing *Powell*, the Court declared that the Cruel and Unusual Punishments Clause focuses on what punishment a government may impose after a criminal conviction, not on whether a government may criminalize particular behavior in the first place. The Court concluded that the punishments Grants Pass imposes for the offenses in question did not qualify as cruel and unusual. The city imposes only limited fines for first-time offenders, an order temporarily barring an individual from camping in a public park for repeat offenders, and a maximum sentence of 30 days in jail for those who later violate an order. The Court also rejected the argument that *Robinson* could apply to limit the criminalization of the conduct. The Court concluded that the Grants Pass, public-camping ordinances do not criminalize mere status. The public-camping laws prohibit actions undertaken by any person, regardless of status. Further, the Court rejected the argument that it should extend *Robinson* to prohibit the enforcement of laws that proscribe certain acts that are in some sense "involuntary." The Court noted that it had already rejected that argument in *Powell.*

CHAPTER 3 – MENTAL STATE (MENS REA)

Notes and Problems (p. 164)

There have been many recent cases from California concerning whether various state and federal statutes regulating the possession of weapons infringe the Second Amendment, as interpreted in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, ___U.S. ___, 142 S.Ct. 2111 (2022). *See, e.g., People v. Alexander*, 91 Cal.App.5th 469 (2023) (state prohibition on being a felon in possession of a firearm and ammunition did not violate Second Amendment); *People v. Mosqueda*, 97 Cal.App.5th 399 (2023) (good cause requirement for issuance of state concealed carry license for handgun violated Second Amendment); *Nguyen v. Bonta*, ___ F.Supp.3d ___, 2024 WL 1057241 (S. Dist. Cal. 2024) (state law limiting purchase of firearms to every 30 days violated the Second Amendment); *Fouts v. Bonta*, ___ F.Supp.3d ___, 2024 WL 751001 (S. Dist. Cal. 2024) (state prohibition on possessing or carrying a "billy" violated the Second Amendment); *United States v. Perez-Garcia*, 96 F.4th 1166 (9th Cir. 2024) (federal Bail Reform Act's condition of release prohibiting possessing firearms pending criminal trial did not violate the Second Amendment). Some of these problems may now be made more or less complicated by the United States Supreme Court's decision in *United States v. Rahimi*, 602 U.S. ___, 2024 WL 3074728 (2024) (prosecution under a federal statute that prohibits individuals subject to a domestic violence restraining order from possessing a firearm does not violate the Second Amendment).

CHAPTER 4 – HOMICIDE: INTENTIONAL KILLINGS

Notes and Problems (p. 258)

In *People v. Lopez*, 99 Cal.App.5th 1242 (2024), the court held that the passage of S.B. 1437 did not abrogate the doctrine of transferred intent. Petitioner had aided and abetted a co-defendant who shot multiple times into a parked van with the premeditated intent to kill an intended victim but killed an unintended victim. Defendant acted as an aider and abettor to the shooter and had his own premeditated intent to kill the intended victim. The court held that malice was, therefore, not imputed to him through the natural and probable consequences doctrine and that S.B. 1437 did not render invalid his conviction for first-degree, premeditated murder.

CHAPTER 5– HOMICIDE: UNINTENTIONAL KILLINGS

Problem 38 (p. 295)

In *People v. Zemek*, 93 Cal.App. 5th 313 (2023), the source case for the problem, the court upheld Defendant's conviction for first degree murder, finding sufficient evidence that she acted with the premeditated intent to kill and proximately caused Victim's death.

CHAPTER 7 – HOMICIDE: THIRD PARTY KILLINGS

Problem 50 (p. 354)

In *People v. Carney*, 14 Cal.5th 1130 (2023), the court upheld convictions for first degree murder of defendants who participated in a gun battle although there was conclusivce evidence that neither of them fired the fatal shot that killed a bystander. Applying *Sanchez'*s "substantial concurrent cause" analysis, the court found that each of the defendant's conduct was a proximate cause of the bystander's death.

CHAPTER 9 – INCHOATE CRIMES

People v. Mayers (p. 505)

In *People v. Bueno*, 83 Cal.App.5th 44 (2022), the court upheld the felony conviction of an inmate on the charge of conspiracy to violate P.C. § 4576 (a misdemeanor), prohibiting possession with intent to deliver or actual delivery of a cell phone to a prison inmate. Bueno analogized the scenario to cases involving drug sales, in which, in federal court in the Ninth Circuit, the "buyer-seller rule" precludes the purchaser from being convicted for a conspiracy to sell drugs to himself. Alternatively he argued that the the existence of a separate statute punishing with only a loss of credits an inmate who possesses a cell phone rendered Wharton's Rule applicable. However, the court rejected both arguments. The court noted that California courts have not adopted the "buyer-seller rule," but that, in any event, it would not apply where the parties have conspired together in a prearranged plan to obtain and deliver the contraband item, which Bueno did in this case. Further, the court rejected the application of Wharton's Rule because Bueno had done much more than merely possess the cell phone. He had actively participated in a collaborative plan to ensure that another person would bring a cell phone into

the prison. The court found no legislative intent to preclude a conspiracy charge for such conduct.

CHAPTER 10 – CRIMES AGAINST THE GOVERNMENT

People v. Pic'l. (p. 517)

In *People v. Reynoza*, 15 Cal.5th 982 (2024), the court applied the rule of lenity in interpreting a provision of the witness dissuasion statute, P.C. § 136.1(b)(2), which makes it a crime to attempt to dissade a victim or witness from "[c]ausing a complaint. . . to be sought and prosecuted, and assisting in the prosecution thereof." Defendant was found guilty based on actions that occurred entirely after the complaint had been filed. The court concluded that the provision was equally susceptible to conjunctive and disjunctive constructions. It therefore applied the rule of lenity, favoring the interpretation more favorable to the defendant, and concluded that the statute does not permit a conviction to rest soley on proof of dissuasion after an already-filed complaint.

CHAPTER 13 – ACCOMPLICE AND CORPORATE VICARIOUS LIABILITY

Note and Problems (p. 664)

With S.B. 1437's elimination of the natural and probable consequences doctrine as a theory with which to prosecute accomplices for unintended killings, prosecutors have turned to prosecuting accomplices for second degree murder as direct aiders and abettors of implied malice killings. Defendants have argued that, just as one cannot be guilty of *attempt* to commit an unintentional murder (*People v. Collie*, p. 438) or *conspiracy* to commit an unintentional murder (*People v. Swain*, p. 485), so one cannot be guilty of *aiding and abetting* an unintentional murder. However, the Court of Appeal disagrees. In several recent cases, the court has held that the mens rea that must be personally harbored by the direct aider and abettor is knowledge that the perpetrator intended to commit *the act*, intent to aid the perpetrator in the commission of *the act*, knowledge that *the act* is dangerous to human life, and acting in conscious disregard for human life. See, *e.g.*, *People v. Powell*, 63 Cal.App.5th 689 (2021); *People v. Glukhoy*, 77 Cal.App.5th 576 (2022). This issue is currently before the California Supreme Court. *See, e.g.*, *People v. Werntz,* 311 Cal.Rptr.3d 320 (rev. granted, Aug. 9, 2023).

People v. Cooper (p. 666)

In *People v. Gaines*, 93 Cal.App.5th 91, 121-31 (2023) the court held that Defendant could be convicted and separately punished for attempted murder and assault as a principal and for being an accessory after the fact to the same crimes by the co-defendant. Defendant's attempted murder and assault convictions were based on his initial acts of driving the co-defendant to the scene of the shooting, positioning the vehicle to allow the co-defendant close access to the victims, and waiting as the co-defendant fired the gun. His accessory conviction was based on his later actions when he allowed the co-defendant back into the vehicle and drove away. The court found that the separate convictions were proper because "(1) there was nothing inconsistent between conviction of [Defendant] as a principal to the attempted murder and assaults and his conviction as an accessory after the fact, (2) the elements of the offenses do not

overlap, and (3) each conviction depended upon an entirely different intent and conduct." *Id.* at 131.

CHAPTER 14 - SCOPE OF VICARIOUS LIABILITY

Problems (p. 713)

Students might be presented with the following additional problem:

Defendant, who was eighteen, joined his older brother's gang, which celebrated violent acts committed, "just for the fun of it." Defendant took part in some robberies and an arson. Then, one night, while Defendant was with his brother and other gang members at a pool hall, he and his brother and another gang member decided to rob a driver in a nearby car waiting at the drive-through of a fast-food restaurant. Defendant and the other gang member waited at some distance while his brother confronted the driver with a gun. The victim tried to drive away, but the brother shot multiple times into the car. Defendant and his brother pursued the car on foot until it crashed nearby. The brother gave the gun to Defendant and rifled the victim's clothes for money, taking $200. The brothers split the cash evenly. Believing the Victim was dead, Defendant did not render or summon aid. Instead, he and his brother returned to the pool hall. Hit by five bullets, the victim died on the scene. Defendant is charged with first-degree murder (P.C. §§ 187-189). What are the arguments as to his guilt?

Defendant would argue that, while he was an accessory to a robbery, he is not guilty as an accessory to first-degree murder. He did not actually kill or intend to kill. He also did not act as a major participant with reckless indifference. He was unarmed and did not supply the gun. There is also insufficient evidence Defendant knew his brother was armed or that the brother intended to use a gun during the robbery. Defendant was also an unknown distance from the Victim at the time of the shooting. Defendant also failed to render aid because he assumed the Victim was dead. Further Defendant's youth and inexperience suggest that he could not have foreseen a shooting rather than a garden variety robbery. The prosecution will respond that Defendant previously had committed acts of violence with the gang. Also, Defendant actively participated in the robbery by chasing after the car and holding brother's gun. He also shared evenly with his brother in the proceeds and made no attempt to render or summon aid for the victim. Defendant's youth cannot overcome these indications of major participation and reckless indifference to human life.

(source: *People v. Mitchell*, 81 Cal.App.5th 575 (2022) – sufficient evidence that Defendant was a major participant who acted with reckless indifference to human life)

APPENDIX

Where there have been substantive amendments to statutes in the casebook Appendix, the current version of the statute or portion of the statute that was amended are set forth below:

§ 487 Grand theft is theft committed in any of the following cases:

> . . .
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> (e) If the value of the money, labor, real property, or personal property taken exceeds nine hundred fifty dollars ($950) over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general