SUPREME COURT CALENDAR
SAN FRANCISCO SESSION
MAY 24, 25, 26, and 27, 2004

(FIRST AMENDED)

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on May 24, 25, 26, and 27, 2004.

MONDAY, MAY 24, 2004—9:00 A.M

(1)	S113136	Bronco Wine Company v. Jolly ***(Werdegar, J., not participating; Swager, J., assigned Justice Pro Tempore.)***
(2)	S119948	People v. Ault
(3)	S118034	People v. Robertson

1:30 P.M.

(4)	S111662	People v. Montoya
(5)	S011960	People v. Cynthia Lynn Coffman and James Gregory Marlow ***[Automatic Appeal]***
(6)	S026614	People v. James Marlow ***[Automatic Appeal]***

TUESDAY MAY 25, 2004—9:00 A.M.

(7)	S122923	Lockyer v. City of San Francisco
(8)	S122865	Lewis v. Alfaro
(9)	S067491	In re Ronald Seaton on Habeas Corpus

1:30 P.M.

(10)	S115654	Kulshrestha v. First Union Commercial Corporation
(11)	S115998	People v. Langston
(12)	S087243	People v. John George Brown ***[Automatic Appeal]*** ***(George, C.J., not participating; Stein, J., assigned Justice Pro Tempore.)***

WEDNESDAY, MAY 26, 2004—9:00 A.M.

(13)	S101836	In re the Marriage of Harris
(14)	S050142	In re Larry Lucas on Habeas Corpus
(15)	S115438	People v. Barker *(To be called and continued to the June 2nd calendar.)*
(16)	S109734	People v. Griffin

1:30 P.M.

(17)	S120474	People v. American Contractors
(18)	S114399	People v. Leal
(19)	S027766	People v. Stephen Cole ***[Automatic Appeal]***

THURSDAY, MAY 27, 2004—9:00 A.M

(20)	S111780	In re George T.
(21)	S113321	People v. Wallace
(22)	S115009	In re Jennings on Habeas Corpus

George
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

SUPREME COURT CALENDAR
SAN FRANCISCO SESSION
MAY 24, 25, 26, and 27, 2004

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

MONDAY, MAY 24, 2004—9:00 A.M.

(1) Bronco Wine Company v. Jolly, S113136 (Werdegar, J., not participating; Swager, J., assigned Justice Pro Tempore.)

#03-49 Bronco Wine Company v. Jolly, S113136. (C037254; 104 Cal.App.4th 598.) Petition for review after the Court of Appeal granted an original petition for a writ of mandate. This case presents the following issue: Is Business and Professions Code section 25241, which prohibits the use of the word "Napa" in a wine brand name unless at least 75 percent of the grapes from which the wine is made were grown in Napa Valley, preempted by federal regulations promulgated under the Federal Alcohol Administration Act, which imposed various requirements on wine labels and included a "grandfather clause" that exempted some existing holders of a federal Certificate of Label Approval from prohibitions on the use of appellations of origin in brand names for wines?

(2) People v. Ault, S119948

#03-146 People v. Ault, S119948. (D040184; 111 Cal.App.4th 1411; Superior Court of San Diego County; SCD156220.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court err in finding prejudice from juror misconduct and granting a motion for new trial on that ground?

(3) People v. Robertson, S118034

#03-130 People v. Robertson, S118034. (A0095055; 109 Cal.App.4th 1740; Superior Court of Alameda County; C135605.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case includes the following issue: May a second degree felony-murder conviction be based upon the predicate felony offense of discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3), or is such an application of the felony-murder rule barred by the merger doctrine of *People v. Ireland* (1969) 70 Cal.2d 522?

1:30 P.M.

(4) People v. Montoya, S111662

#03-06 People v. Montoya, S111662. (F039071; 103 Cal.App.4th 25; Superior Court of Kern County; SC082478A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Is the offense of unlawfully taking or driving a motor vehicle, in violation of Vehicle Code section 10851, a lesser included offense of carjacking (Pen. Code, § 215) precluding conviction of both offenses for a single incident?

(5) People v. Cynthia Lynn Coffman and James Gregory Marlow, S011960 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(6) People v. James Marlow [Automatic Appeal]

This matter is a automatic appeal from a judgment of death.

TUESDAY, MAY 25, 2004—9:00 A.M.

(7) Lockyer v. City and County of San Francisco, S122923

(8) Lewis v. Alfaro, S122865

Petition for original writ of mandate in the Supreme Court. Both *Lockyer* and *Lewis* include the following issue: Did respondent officials of the City and County of San

Francisco exceed or act outside the scope of their authority in refusing to enforce the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that those statutory provisions are unconstitutional?

(9) In re Ronald Seaton on Habeas Corpus

In this case, which is related to the automatic appeal in *People v. Seaton* (2001) 26 Cal.4th 598, the court issued an order to show cause including the following issue: May a criminal defendant who at trial did not take action that was necessary to preserve an issue for appeal nonetheless raise that issue in a petition for habeas corpus, or is the issue forfeited both on appeal and on habeas corpus?

1:30 P.M.

(10) Kulshrestha v. First Union Commercial Corporation, S115654

#03-84 Kulshrestha v. First Union Commercial Corporation, S115654. (C041513; Superior Court of Yolo County; 107 Cal.App.4th 415; CIV001803.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Must an out-of-state declaration that states that it is made under penalty of perjury also expressly state that it is "certified or declared under the laws of the State of California" in order to comply with Code of Civil Procedure section 2015.5?

(11) People v. Langston, S115998

#03-89 People v. Langston, S115998. (C037845; 107 Cal.App.4th 959; Superior Court of Sacramento County; 00F09092.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does a prior prison term that was served on a conviction for escape constitute a "separate" prison term for purposes of a sentence enhancement under Penal Code section 667.5(b)?

(12) People v. John George Brown, S087243 [Automatic Appeal], (George, C.J., not participating; Stein, J., assigned Justice Pro Tempore.)

This matter is a automatic appeal from a judgment of death.

WEDNESDAY, MAY 26, 2004—9:00 A.M.

(13) In re Marriage of Harris, S101836

#02-02 In re Marriage of Harris, S101836. (D036144; 92 Cal.App.4th 499.) Petition for review after the Court of Appeal reversed an order for grandparent visitation rights under Family Code section 3104. This case includes the following issue: Are Family Code sections 3103 and 3104, which govern requests for visitation by grandparents of minor children, unconstitutional in light of the United States Supreme Court's decision in *Troxel v. Granville* (2000) 530 U.S. 57?

(14) In re Larry Lucas on Habeas Corpus, S050142

In this case, which is related to the automatic appeal in *People v. Lucas* (1995) 12 Cal.4th 415, the court issued an order to show cause including the following issues:
(1) Did petitioner's trial counsel fail to investigate adequately in preparation for the penalty phase of the trial, and, if so, was the failure to investigate prejudicial?
(2) Did prejudicial jury misconduct occur at the guilt phase of the trial?

(15) People v. Barker, S115438 ***(To be called and continued to the June 2, 2004 calendar.)***

(16) People v. Griffin, S109734

#02-171 People v. Griffin, S109734. (B152731; 100 Cal.App.4th 917.) 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 "force" for purposes of the offense of rape "by means of force" (Pen. Code, § 261(a)(2)) have a specialized meaning supporting a sua sponte duty to instruct a jury on the definition of the term?

1:30 P.M.

(17) People v. American Contractors, S120474

#03-156 People v. American Contractors, S120474. (E031426; 112 Cal.App.4th 613; Superior Court of Orange County; 99NF2727.) Petition for review after the Court of Appeal affirmed an order denying a motion to vacate the forfeiture of a

bail bond in a criminal case. This case presents the following issue: If the trial court erroneously enters summary judgment on a forfeited bail bond before the time prescribed by statute, is the judgment void or merely voidable in the court's discretion?

(18) People v. Leal, S114399

#03-56 People v. Leal, S114399. (H023031; 105 Cal.App.4th 833; Superior Court of Santa Clara County; C9952837.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does the element of "duress" for purposes of forcible sexual offenses other than rape and spousal rape include within its definition the concept of "hardship" that was deleted from the definition of "duress" for forcible rape and spousal rape (Stats. 1993, ch. 595, § 1), or does the deletion of "hardship" from the definition of "duress" in those statutes apply to the meaning of "duress" for all forcible sexual offenses?

(19) People v. Stephen Cole, S027766 [Automatic Appeal]

This matter is a automatic appeal from a judgment of death.

THURSDAY, MAY 27, 2004—9:00 A.M.

(20) In re George T., S111780

#03-03 In re George T., S111780. (H023080; 102 Cal.App.4th 1422; Superior Court of Santa Clara County; J122537.) Petition for review after the Court of Appeal remanded in part and otherwise affirmed orders in a wardship proceeding. This case presents the following issue: Did sufficient evidence support the trial court's finding that defendant made a criminal threat in violation of Penal Code section 422 by giving two female classmates a poem labeled "Dark Poetry" that included the lines "I am Dark, Destructive, & Dangerous" and "I can be the next kid to bring guns to kill students at school"?

(21) People v. Wallace, S113321

#03-41 People v. Wallace, S113321. (A092782; 105 Cal.App.4th 250; Superior Court of Contra Costa County; 000223-8.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court abuse its discretion in dismissing a prior conviction allegation under the three-strikes law, where the court, in exercising its discretion, considered evidence presented at the preliminary hearing in the prior case that preceded the defendant's guilty plea in that matter?

(22) In re Jennings, S115009

#03-73 In re Jennings, S115009. (C041479; 106 Cal.App.4th 869; Superior Court of Sacramento County; 00M07614.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issues: (1) Is Business and Professions Code section 25658(c), which imposes criminal liability on those who furnish alcohol to a minor who thereafter causes great bodily injury or death, a strict liability offense? (2) Is a defendant's reasonable mistake of fact (with regard to whether the person to whom alcohol was furnished was a minor) a defense to this crime?