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NEWS RELEASE

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Summary of Cases Accepted During the Week of November 13, 2006

[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 statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#06-123 *In re Boyette*, S092356. Original proceeding. In this case, which is related to the automatic appeal in *People v. Boyette* (2002) 29 Cal.4th 381, the court issued an order to show cause limited to claims of juror misconduct.

#06-124 *Brodie v. Workers' Comp. Appeals Bd.*, S146979. (A112003; 142 Cal.App.4th 685.) Petition for review after the Court of Appeal annulled a decision of the Board.

#06-125 *Welcher v. Workers' Comp. Appeals Bd.*, S147030. (C051263, C051409, C051790, C051894; 142 Cal.App.4th 818.) Petition for review after the Court of Appeal denied petitions for writ of review of decisions of the Board.

Brodie and *Welcher* both present the following issues: (1) Did the repeal of Labor Code section 4750 and the enactment of new apportionment statutes (Stats. 2004, ch. 34) change the law of apportionment of permanent disability indemnity as determined by this court in *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1? (2) If so, how is permanent disability indemnity to be apportioned between injuries?

#06-126 *People v. Concepcion*, S146288. (E036353; 141 Cal.App.4th 872; Riverside County Superior Court; SWF004991.) Petition for review

(over)

after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Is a defendant who escapes from custody after trial commences voluntarily absent from trial, permitting trial to continue in his absence once he is rearrested and held in custody? (2) If such flight and rearrest does not constitute voluntary absence, is proceeding with trial in such circumstances subject to harmless error analysis, or is it a structural error requiring reversal?

#06-127 *People v. Nelson*, S147051. (C047366; 142 Cal.App.4th 696; Sacramento County Superior Court; 02F06021.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issues: (1) Is the methodology for assessing the statistical significance of a “cold hit” from a DNA database a novel scientific question requiring proof of general scientific acceptance under *People v. Kelly* (1976) 17 Cal.3d 24 and *People v. Leahy* (1994) 8 Cal.4th 587? (2) How should the statistical significance of a “cold hit” from a DNA database be calculated?

#06-128 *People v. Cruz*, S147076. (H029302; unpublished opinion; Santa Clara County Superior Court; CC331753.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Crandell*, S134883 (#05-186), which presents the following issue: Does the imposition of a restitution fine under Penal Code section 1202.4, subdivision (b), violate a defendant’s plea agreement if the fine was not an express term of the agreement?

#06-129 *People v. Johnson*, S146207. (A111007; 141 Cal.App.4th 1161; Alameda County Superior Court; 148761.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Gomez*, S140612 (#06-32), which presents the following issue: Can a defendant be convicted of robbery for using force or fear in the victim’s immediate presence while carrying away stolen property, or does such a conviction require that the defendant use force or fear in the victim’s immediate presence while taking the property or preventing the victim from regaining it?

DISPOSITIONS

Review in the following cases was dismissed:

#3-32 *People v. Baker*, S112982. The opinion of the Court of Appeal, originally printed at 104 Cal.App.4th 774, was ordered republished.

#03-119 *People v. Marichalar*, S117796. The opinion of the Court of Appeal, originally printed at 109 Cal.App.4th 1513, was ordered republished.

The following cases were transferred for reconsideration in light of *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750 and *General Motors Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 773:

#05-207 The Limited Stores, Inc. v. Franchise Tax Bd., S136922.

#06-86 Toys “R” Us, Inc. v. Franchise Tax Bd., S143422.

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