APPENDICES A-G

APPENDIX A
DECISIONS AND ORDERS

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Supreme Court Denial Order Aug. 30, 2023

SUPREME COURT
FILED
Aug. 30 2023
Jorge Navarrete Clerk
Deputy

Court of Appeal, Second Appellate District – No. B328253
No. S281123

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent
v.
FRANDER SALGUERO, Defendant and Appellant

The request for judicial notice of the court documents in case numbers B323872, B325061, and B325333, the briefs and objection in case number S278394, and the court documents in case number MA066642 is granted. The remainder of the request for judicial notice is denied.

The petition for review is denied.

s/GUERRERO
Chief Justice

Supreme Court Denial Order July 19, 2023

SUPREME COURT
FILED
Jul 19 2023
Jorge Navarrete Clerk
Deputy

No. S278944

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FRANDER SALGUERO, Petitioner
v.
COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FIVE, Respondent;
THE PEOPLE et al., Real Parties in Interest

The "Petition for Extraordinary Writ Application for Peremptory Writ in the First Instance," filed March 6, 2023, is denied. To the extent the petition raises habeas corpus claims (see Pen. Code, § 1473, subd. (b)(1)), the denial is without prejudice to filing a petition for writ of habeas corpus in the Los Angeles County Superior Court.

s/GUERRERO
Chief Justice

Court of Appeal Dismissal order June 14, 2023

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION a

COURT OF APPEAL – SECOND DISTRICT
FILED
Jun 14, 2023
Eva McClintock, Clerk
erios Deputy Clerk

THE PEOPLE Plaintiff and Respondent, v. FRANDER SALGUERO, Defendant and Appellant.	No. B328253 (Super. Ct. No. MA066642) Los Angeles County **ORDER**

THE COURT:

Frander Salguero was convicted by a jury of attempted murder, assault with a deadly weapon and making criminal threats. Salguero was sentenced on October 12, 2016 to a term of imprisonment of 17 years to life. The judgment was affirmed in full in *People v. Salguero* (May 31, 2018, B278429) [nonpub. opn.].

On June 21, 2022, Salguero filed a motion for discovery pursuant to Penal Code section 1054.9. The superior court ordered disclosure of some discovery but denied other discovery requested by Salguero on November 18, 2022.

Salguero filed a notice of appeal on January 17, 2023 from the order denying the motion.

The order entered by the superior court on November 18, 2022 is not an appealable order. (*In re Steele* (2004) 32 Cal.4th 682, 692.)

The appeal, initiated by the notice filed on January 17, 2023, is dismissed.

/s Lui

Elwood Lui, Administrative Presiding Justice

California Supreme Court Docket

***Salguero v. Superior Court* S278394**
01/30/2023 Petition for review filed Petitioner: Frander Salguero Attorney: Arturo Fernando Gutierrez
01/31/2023 Record requested

01/31/2023 Received Court of Appeal record

02/14/2023 Answer to petition requested

Dear Counsel:
The court has directed that I request an answer to the above referenced matter. The petition is enclosed as an email attachment. The answer is to be served upon petitioner and filed in this court on or before February 28, 2023. The answer must be electronically filed. Petitioner will then have ten (10) days in which to serve and file a reply to the answer.
Your answer should address the following: Whether petitioner has established a prima facie case for relief, such that this court should grant the petition for review and transfer the matter to the Court of Appeal with instructions to issue an alternative writ. (Cal. Rules of Court, rules 8.500(b)(4), 8.528(d).) Please address the merits of petitioner's contentions as well as any procedural bars that may apply. Additionally, please detail the procedural history of this case as it relates to the claims raised in the petition for revie
Please be advised that the instant petition is a petition for review, and a ruling by the court is due on or before March 30, 2023. This request for an answer should be expedited by your office, and no request for extension of time is contemplated.

02/27/2023 Answer to petition for review filed
Real Party in Interest: The People Attorney: Nima Razfar

03/07/2023 Reply to answer to petition filed
Petitioner: Frander Salguero Attorney: Arturo Fernando Gutierrez

03/07/2023 Motion filed Frander Salguero, Petitioner Arturo Fernando Gutierrez, Retained counsel
Objection to information dehors the record and motion to strike answer filed.

03/14/2023 Opposition filed Real Party in Interest: The People Attorney: Nima Razfar

03/22/2023 Time extended to grant or deny review

The time for granting or denying review in the above-entitled matter is hereby extended to and including April 28, 2023, or the date upon which review is either granted or denied

04/12/2023 Petition for review denied

Petitioner's "Objection to Information Dehors the Record and Motion to Strike Answer Filed February 27, 2023" is denied.
The petition for review is denied.

Court of Appeal Denial Order Feb. 24, 2023
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

FRANDER SALGUERO, Petitioner, v. GEORGE GASCON, as District Attorney, et al., Respondents. THE PEOPLE, Real Party in Interest.	No. B325333 (Super. Ct. No. MA066642) (Emily J. Cole, Judge) **ORDER**

THE COURT:

The court has read and considered the petition for writ of mandate filed February 16, 2023. The petition is denied. The petition does not seek performance of a ministerial act. (Code Civ. Proc., § 1085, subd. (a); *AIDS Healthcare Foundation v. Los Angeles County Dep't of Public Health* (2011) 197 Cal.App.4th 693, 700.) To the extent petitioner seeks habeas relief, the petition is denied because petitioner fails to demonstrate he has sought relief from the superior court. (*People v. Seijas* (2005) 36 Cal.4th 291, 307 ["'[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a

reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court'"].) The request for judicial notice is denied. (*Sweeney v. California Reg'l Water Quality Control Board* (2021) 61 Cal.App.4th 1093, 1118 fn. 10; *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-64.)

s/Baker	s/Moor	s/Kim
BAKER, Acting P.J.	MOOR, J.	KIM, J.

Court of Appeal Denial Order Jan.. 20, 2023

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

FRANDER SALGUERO, Petitioner, v. THE SUPERIOR COURT OF LOS ANGLES COUNTY, Respondent. THE PEOPLE, Real Party in Interest.	No. B325061 (Super. Ct. No. MA066642) (Emily J. Cole, Judge) **ORDER**

THE COURT:

The court has read and considered the petition for writ of mandate filed December 14, 2022, the application for leave to file an additional exhibit filed December 16, 2022, and the request for judicial notice filed January 3, 2023. The petition is denied. Petitioner fails to demonstrate the respondent court abused its discretion in granting in part and denying in part the motion to compel discovery pursuant to Penal Code section 1054.9 The application for leave to file exhibit MM is also denied, as we do not consider evidence that was not before the trial court. The request for judicial notice is denied because leave to file the petition at case No. B325333 has been denied.

s/Baker	s/Moor	s/Kim
BAKER, Acting P.J.	MOOR, J.	KIM, J.

Trial Court Docket Nov. 18, 2022

Case No. MA066642 Page No. 93-94
Def. No. 01 Date Printed 11/21/22
The Motion to Compel Discovery to November 18, 2022 in Department A20 AT 8:30 A.M.
NEXT SCHEDULED EVENT:
11/18/22 830 am mot/for discovery Dist North District Dept A20 custody status: defendant remanded
On 11/18/22 at 830 am in North District Dept A20
Case called for mot/for discovery
Parties: Emily Cole (Judge) Vanessa Riley (Clerk) Ligia Dorame (Rep) Steven Y Mac (DA)

Defendant is not present in court, and not represented by counsel

Deputy district attorney Steven Mac appearing remotely through Webex.
Attorney Auturo [sic] Gutierrez not appearing.

The court reads and considers defense counsel's notice of non-appearance pursuant to Rules of Court, Rule 3.1304(c) filed on November 17, 2022.
Prosecutor argues.
The court ordres [sic] disclosure of eSCAR reporting party within 15 days.
All other discovery motion are denied.
Defendant's motion for sanctions is denied.
Next scheduled event:
Proceedings terminated

Court of Appeal Denial Order Nov. 4, 2022
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

FRANDER SALGUERO, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent. THE PEOPLE, Real Party in Interest.	B323872 (Super. Ct. No. MA066642) (Emily J. Cole, Judge) **ORDER**

THE COURT:

The court has read and considered the petition for writ of mandate filed October 14, 2022 and the "notice of events at respondent court and request to maintain status quo or proceed re petition for writ of mandate" filed October 27, 2022. As the respondent court has vacated its order denying petitioner's motion for post-conviction discovery, this petition is denied as moot. This denial is without prejudice to the filing of another petition after the respondent court rules on the motion.

/s/Rubin	/s/Moor	/s/Kim
RUBIN, P.J.	MOOR, J.	KIM, J.

Trial court solicitation for opposition Oct. 5, 2022

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

FILED
Superior Court of California
County of Los Angeles
OCT 05, 2022
Sherri R. Carter, Executive Officer/Clerk
By *s/ Vanessa Riley* Deputy
Vanessa Riley

People of the State of California,	) No. MA066642
Plaintiff	) **RESPONSE TO**
vs.	) **MOTION TO**
FRANDER SALGUERO	) **COMPEL**
Defendant	) **DISCOVERY**
_____	)

The court has read and considered the defendant's Motion to Reconsider request to compel discovery in this post-conviction matter pursuant to Penal Code section 1054 received on October 3rd, 2022.

The court is calendaring a Hearing on the Motion for a response from the District Attorney on October 24, 2022 at 8:30 AM.
A copy of this order is sent via US mail as follows:

ARTURO GUTIERREZ
ATTORNEY FOR FRANDER SALGUERO
1000 TOWN CENTER DR. #300
OXNARD, CA 93036

ALEXANDER LARA, DDA

LOS ANGELES COUNTY DISTRICT ATTORNEY
42011 4TH STREET WEST
LANCASTER, CA 93534

Dated: 10/5/22

s/Emily Cole
Emily Cole
Judge of the Superior Court

Trial court denial Sept. 15, 2022
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

FILED
Superior Court of California
County of Los Angeles
Sep 15, 2022
Sherri R. Carter, Executive Officer/Clerk
By *s/ Vanessa Riley* Deputy
Vanessa Riley

People of the State of California,	) No. MA066642
Plaintiff	) **ORDER**
vs.	) **DENYING**
FRANDER SALGUERO	) **MOTION TO**
Defendant	) **COMPEL**
	) **DISCOVERY**

The court has read and considered the defendant's request to compel discovery in this post-conviction matter pursuant to Penal Code section 1054 and *Brady v. Maryland*, received on March 26, 2010. The only provision in Penal Code section 1054 allowing for post-conviction discovery to a defendant in a criminal case is section 1054.9. However, because the defendant was not sentenced to death, or to life without the possibility of parole, he does not qualify for post-conviction discovery under section 1054.9.

Therefore, the defendant's Motion to Compel Post-Conviction Discovery is DENIED.

A copy of this order is sent via US mail as follows:

U.S. Cent. Dist. Ct. Cal. West. Div. Document 17

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

FRANDER SIFREDO SALGUERO, Petitioner, v. JOE SULLIVAN, WARDEN, Respondent.	CASE NO. CV 19-07414-CJC (AS) **ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records herein and the attached Report and Recommendation of United States Magistrate Judge to which no objections were filed. Accordingly, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

IT IS ORDERED that Judgment shall be entered denying and dismissing the Petition with prejudice.

IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Magistrate Judge's Report and Recommendation and the Judgment herein on Petitioner and counsel for Defendant.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: June 10, 2020.

s/*CJG*
CORMAC J. CARNEY
CHIEF UNITED STATES DISTRICT JUDGE

U.S. Cent. Dist. Ct. Cal. West. Div. Document 18
UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

FRANDER SIFREDO SALGUERO, Petitioner, v. JOE SULLIVAN, WARDEN, Respondent.	CASE NO. CV 19-07414-CJC (AS) **JUDGMENT**

Pursuant to the Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge, IT IS ADJUDGED that the Petition is denied and dismissed with prejudice.

DATED: June 10, 2020.

s/*CJG*
CORMAC J. CARNEY
CHIEF UNITED STATES DISTRICT JUDGE

U.S. Cent. Dist. Ct. Cal. West. Div. Document 19

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

FRANDER SIFREDO SALGUERO, Petitioner, v. JOE SULLIVAN, WARDEN, Respondent.	CASE NO. CV 19-07414-CJC (AS) **ORDER DENYING CERTIFICATE OF APPEALABILITY**

Rule 11 of the Rules governing Section 2254 cases in the United States District Courts requires a district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the applicant.

Under 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal quotations omitted).

Here, after duly considering Petitioner's contentions regarding the sufficiency of the evidence to support his convictions for willful, deliberate and premeditated attempted murder, as alleged in the Petition, the Court concludes that Petitioner has not made the requisite showing for the issuance of a certificate of appealability.

Accordingly, a Certificate of Appealability is denied in this case.

DATED: June 10, 2020. s/*CJG*

CORMAC J. CARNEY
CHIEF UNITED STATES
DISTRICT JUDGE

California Supreme Court Docket

People v. Salguero S249843 (direct review)

07/09/2018

Petition for review filed Defendant and Appellant: Frander Salguero Attorney: Maxine Weksler

07/09/2018

Record requested Court of Appeal record imported and available electronically.

07/11/2018

Received Court of Appeal record One doghouse.

08/29/2018

Petition for review denied

08/30/2018

Returned record 1 doghouse

Opinion Affirming on Direct Review
Filed 5/31/18 P. v. Salguero CA2/5
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

THE PEOPLE Plaintiff and Respondent, v. FRANDER SALGUERO, Defendant and Appellant.	B278429 (Los Angeles Super. Ct. No. MA066642)

Filed May 31, 2018

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed.

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

In July 2015, defendant and appellant Frander Salguero (defendant) drove to the home of his friend and occasional methamphetamine provider George Ayala (Ayala) and, once there, started a fight and stabbed Ayala. Defendant also threatened and slashed Ayala's partner, Mark Thomas (Thomas), who witnessed Ayala's stabbing. A jury convicted defendant on two counts of willful, deliberate, and premeditated attempted murder (one each for victims Ayala and Thomas), as well as assault with a deadly weapon and criminal threats charges. We consider whether substantial evidence establishes (1) defendant did not stab Ayala in unreasonable self-defense, (2) defendant's stabbing of Ayala was premeditated, and (3) defendant intended to kill Thomas. We also decide whether reversal is warranted due to asserted prosecutorial misconduct.

I. BACKGROUND

A. The Offense Conduct As Established by the Evidence at Trial

1. Events prior to July 21, 2015

Victims Ayala and Thomas met in 2013 or 2014. At some point, they began a romantic relationship. Thomas helped Ayala find and move into a triplex unit in Palmdale, California in the spring or summer of 2014. Ayala lived alone, but he and Thomas traveled back and forth between Ayala's home in Palmdale and Thomas's home in Hollywood to visit one another.

Soon after moving into the Palmdale home, Ayala purchased a used refrigerator from defendant's uncle. When Ayala called the uncle to complain that the ice maker was broken, the uncle sent defendant to Ayala's home to replace a part. Defendant said his name was "Fred."

When defendant asked Ayala to sign an invoice acknowledging receipt of the part, Ayala opened a kitchen drawer to find a pen. Defendant noticed that Ayala had lines of methamphetamine prepared inside the drawer and asked Ayala if he could have some of the drug. Ayala initially refused, but relented after further conversation.

Defendant and Ayala thereafter became friendly, and defendant returned to smoke marijuana and methamphetamine with Ayala every two-to-four weeks—always unannounced. Ayala furnished the drugs and, because he considered defendant a friend and appreciated his company, did not request or accept payment from defendant. Ayala explained that he and defendant "would just talk [their] problems out . . . and [defendant] would help [Ayala] out with certain things like food or something and [Ayala] would help [defendant] out with what's going on with him and his family that [Ayala did not] even know."

Defendant continued to visit Ayala sporadically from June 2014 until later in July 2015. Throughout this time, Ayala believed defendant to be a friend and the two never had an argument.

2. Defendant's July 21, 2015, attack on Ayala and Thomas

Ayala and Thomas were at Ayala's Palmdale home on July 21, 2015; they had plans to drive to Los Angeles that evening. Around 6:00 p.m., Ayala was outside playing with his two dogs and Thomas was inside. Defendant arrived unannounced, and after getting out of his car, said: "Hey, what's up, George? Smoke me out." Ayala was surprised because defendant was wearing pajamas and Ayala was irritated because a neighbor had likely overheard

defendant's comment about smoking. Ayala told defendant to leave and said he did not want to smoke with him any longer. Defendant appeared "upset," pointed at Ayala, and said, "take care of you [*sic*] and I will take care of you." This was the first time Ayala had declined to smoke with defendant. Thomas overheard some of the conversation from inside the house, but could only recall that Ayala told someone to leave.

Defendant left, but he returned later when Ayala was in the shower. By then, defendant had changed out of his pajamas and into a shirt, khakis, and shoes. Thomas heard defendant "pounding" on the metal security/screen door covering the solid interior front door. Thomas opened the interior door, but left the security door locked. Defendant repeatedly asked to be let into the apartment, but because Thomas did not know him, Thomas left the security door locked and said that he would get Ayala. Defendant told Thomas his name was Frander, a name that neither Ayala nor Thomas had heard before. Thomas shut and locked the interior door and told Ayala, who was still in the shower, that someone was at the door demanding to be let in.

Thomas returned to the front door and told defendant, "I let [Ayala] know, and he said he would come out of the shower but I can't let you in." Defendant continued to pound on the door, "fast and hard and strong," and yelled to be let in. Thomas again closed the interior door and told Ayala defendant was still demanding to be let in. Without drying off, Ayala got out of the shower, wrapped a towel around himself, and went to the front door. Ayala opened the interior door and, recognizing defendant, said, "Oh, it's Fred, Mark." Ayala then

opened the security door, reached down to prevent his towel from slipping, and immediately felt three blows to his face. After one of defendant's blows caused Ayala to slip and fall on the wet tile floor, Ayala stood up and the two began "just hitting each other. Blocking each other's hits. Just swinging."

The fight progressed from Ayala's living room into the kitchen, with defendant advancing and Ayala moving backward. Until they reached the kitchen, defendant and Ayala fought facing one another. Once in the kitchen, it is undisputed that defendant pulled what Ayala described as a 12-inch "chef's butterfly knife" from a knife block (the largest knife in the block) and stabbed Ayala in the abdomen, twisting the blade before he pulled it out. Defendant and Ayala were no longer face-to-face once they entered the kitchen, but the issue of whether Ayala stood directly behind defendant (such that defendant could not see him) or rather at a slight angle to defendant's back was disputed during trial, as we shall now describe in more detail.

Ayala testified he found himself standing directly behind defendant in the kitchen prior to the stabbing. Ayala saw defendant reach for something on the counter (the knife, as Ayala would soon realize) with his right hand at the time a frying pan fell from a hanging rack as the result of the continuing struggle. Ayala was "getting ready to hit [defendant]" with the pan, "but by that time [defendant] had done something with whatever he had and swung it backwards" with his left hand.[52] Ayala hit defendant

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[52] On cross-examination, Ayala was asked to explain his preliminary hearing testimony that defendant was looking at him when he thrust the knife backward. Ayala responded that

in the head with the pan and then realized he "already had the knife inside [his] stomach." With the knife inside Ayala, defendant "turned around" and twisted the knife. Ayala described his sensations and defendant's expression: "I could feel everything inside me moving to the right and then [defendant] turning [the knife] and pulling it. I had everything in my hands . . . . My intestines came out. I had them in my hands. I just saw blood coming out and he just stood there with a smirk on his face like it was funny or some shit." The last thing Ayala remembered before passing out was defendant threatening Thomas: "If you call the cops, I'm gonna kill you, too."

Thomas testified Ayala was directly behind defendant when Thomas saw defendant with his left hand on the knife in Ayala's abdomen.[53] With regard to Ayala's attempt to defend himself with the frying pan, Thomas testified Ayala "grabbed the pan after he had already been stabbed."[54]

"[defendant's] back was facing towards me. He grabbed the knife like this. Swung it around. Okay? That is what exactly he did."

53 Defense counsel sought to impeach this testimony with Thomas's preliminary hearing testimony that defendant stabbed Ayala "forward" with his right hand. Thomas replied he was "more clear on the situation and how things played out than [he] was right after the incident" and reiterated that "[defendant] had to have stabbed forward in order to stab [Ayala]," but he explained that he meant "forward as in straight into [Ayala] . . . . The knife went straight into [Ayala]. It didn't go in at any kind of angle . . . ." Thomas did concede defendant "was probably to the right of [Ayala] a little," but he emphasized he was "guessing," adding "I don't recall."

54 Defense counsel again confronted Thomas with his preliminary hearing testimony, specifically, his statement that Ayala had the pan and was "bringing the pan down" when defendant stabbed him. Thomas explained that "when [he]

While defendant and Ayala were fighting, but before defendant stabbed Ayala, Thomas yelled he was going to call 911. Thomas continued to threaten to call 911 once he saw Ayala had been stabbed, and defendant then turned his attention to Thomas. Defendant told Thomas, "If you call the police, I'm going to kill you, too." Thomas started dialing, and defendant "came at [him]" with the knife. Defendant did not run, but he took "really large strides, fast," jumping over a sectional sofa that stood between him and Thomas as Thomas made for the front door.

Defendant continued to pursue Thomas as he ran toward an outside gate on the property. Thomas saw defendant raise the knife as Thomas struggled with the gate's latch. The knife came down "right at the same time the gate opened," and Thomas "fell basically forward through the gate and just kept running." Defendant's slashing motion with the knife as Thomas was going through the gate caused a cut on Thomas's upper chest that required six or seven stitches to close. Defendant abandoned chasing Thomas when he made it past a neighbor's house. Thomas saw defendant get into his car with the knife and drive away.

Thomas thereafter returned to Ayala, called 911, and applied pressure to Ayala's wound until help arrived. First responders soon arrived, and Ayala survived the stabbing.

B. The Defense Case at Trial

Defendant did not testify in his own defense. The only defense witness was Dr. Michael Burke, a

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revisit[s] it in [his] mind over and over, the incident was that the knife was already there and [he] saw the pan coming down."

psychiatry resident who examined defendant three days after the attack on Ayala and Thomas. Dr. Burke testified defendant was involuntarily held for mental evaluation pursuant to Welfare and Institutions Code section 5150 after his wife reported he was "acting bizarrely." Dr. Burke examined defendant and spoke with defendant's wife by phone.

According to Dr. Burke, defendant reported experiencing auditory hallucinations, including "angels and God talking," and believed he and his family were possessed by demons. He had attempted to "drag his wife and daughter to the car by their hair" to "cleanse them in the aqueduct." Defendant tested positive for amphetamines, despite telling his wife and Dr. Burke he had not used methamphetamine in six months.

Dr. Burke diagnosed defendant as having a "psychotic disorder, not otherwise specified" and testified defendant's behavior was consistent with "methamphetamine use disorder," which impairs cognition. Dr. Burke found defendant presented a danger to others and recommended defendant continue to be held pursuant to Welfare and Institutions Code section 5150. Defendant was held for 72 hours, determined not to present an ongoing danger, and released. The police arrested defendant for the knife attack on Ayala and Thomas soon thereafter.

C. Jury Verdict and Sentencing

The jury found defendant guilty on all five charged counts: two counts of willful, deliberate, and

premeditated attempted murder (Pen. Code,[55] §§ 664, 187, subd. (a)); two counts of assault with a deadly weapon (§ 245, subd. (a)(1)); and one count of criminal threats (§ 422, subd. (a)). The jury found true an allegation that, in the commission of the Ayala assault and attempted murder crimes, defendant inflicted great bodily injury on Ayala.

The court sentenced defendant to 17 years to life in prison: ten years to life for the attempted murder of Ayala, and seven years to life for the attempted murder of Thomas. The court stayed the sentences it imposed for the assault with a deadly weapon and criminal threats crimes.

II. DISCUSSION

Defendant contends insufficient evidence supports the attempted murder convictions because he believed (albeit unreasonably) it was necessary to stab Ayala to defend himself and because threatening to kill Thomas *if* he called 911 and slashing him in the clavicle do not demonstrate an intent to kill. Defendant also argues that even if there is sufficient evidence the crimes were attempted murder and not manslaughter, there is still no substantial evidence the attempt to murder Ayala was willful, deliberate, and premeditated. Finally, defendant contends the prosecution committed prejudicial error by misstating the law and evidence in closing argument.

We reject defendant's contentions. There was sufficient evidence to prove defendant did not stab Ayala in self-defense because—viewing, as we must, the evidence in the light most favorable to the

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55 Undesignated statutory references that follow are to the Penal Code.

verdict—there was substantial evidence on which the jury could have relied to find either that Ayala was not swinging the frying pan at defendant, or that defendant did not see Ayala holding the frying pan, before defendant stabbed him. There was also substantial evidence the stabbing was willful, deliberate, and premeditated because defendant threatened to "take care of" Ayala well before the attack and later returned to initiate a fight during which he stabbed Ayala in the abdomen and twisted the knife before removing it. Further, there is substantial evidence defendant intended to kill Thomas because the condition upon which defendant threatened to kill Thomas (if he called 911) was satisfied and Thomas suffered a relatively minor wound only because he managed a narrow escape. Finally, defendant's prosecutorial misconduct claims are in large part forfeited and uniformly meritless in any event.

A. Claim of Insufficient Evidence that Defendant's Stabbing of Ayala Was Not Imperfect Self-Defense

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] Our review must presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] . . . . [T]he relevant inquiry on appeal is whether, in light of all the evidence, '*any* reasonable trier of fact could have

found the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Zaragoza* (2016) 1 Cal.5th 21, 44.)

The defense at trial was self-defense—specifically, "imperfect" self-defense—which would negate malice, an element of attempted murder.[56] To prove attempted murder, the People were obligated to prove beyond a reasonable doubt that defendant did not act in imperfect self-defense. (*People v. Rios* (2000) 23 Cal.4th 450, 454 [where murder liability at issue, the People must prove absence of a belief in the need for self-defense]; *People v. Rodarte* (2014) 223 Cal.App.4th 1158, 1168; CALCRIM Nos. 505, 571.)

Defendant contends there were inconsistencies in Ayala and Thomas's testimony that made both witnesses unworthy of belief and precluded the jury from rejecting the defense's position that the prosecution failed to prove defendant stabbed Ayala in the sincere but unreasonable belief in the need to

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56 "The doctrine of self-defense embraces two types: perfect and imperfect. [Citation.] Perfect self-defense requires that a defendant have an honest and reasonable belief in the need to defend himself or herself." (*People v. Rodarte* (2014) 223 Cal.App.4th 1158, 1168.) By contrast, "[a]n instance of imperfect self-defense occurs when a defendant acts in the actual but unreasonable belief that he or she is in imminent danger of great bodily injury or death. [Citation.] Imperfect self-defense differs from complete self-defense, which requires not only an honest but also a reasonable belief of the need to defend oneself. [Citation.] It is well established that imperfect self-defense is not an affirmative defense. [Citation.] It is instead a shorthand way of describing one form of voluntary manslaughter. [Citation.] Because imperfect self-defense reduces an intentional, unlawful killing from murder to voluntary manslaughter by negating the element of malice, this form of voluntary manslaughter is considered a lesser and necessarily included offense of murder. [Citation.]" (*People v. Simon* (2016) 1 Cal.5th 98, 132.)

defend against a potentially fatal blow to the head with a frying pan. Specifically, defendant argues the victims' testimony is contradictory regarding (1) the relative positions and orientations of defendant and Ayala in the kitchen,[57] and (2) the sequence of the stabbing and Ayala's actions with the frying pan.[58]

Despite the variation in some of the details of the victims' account of the stabbing, the victims' testimony was sufficient to permit the jury to reasonably conclude defendant was not aware that Ayala intended to hit him (defendant) with the pan before defendant stabbed Ayala. "It is well settled

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[57] At trial, Ayala testified that he stood directly behind defendant in the kitchen, that defendant did not see him with the pan, and that defendant turned only after stabbing him. At the preliminary hearing, Ayala had testified defendant was looking at him when defendant stabbed him. When asked to explain this discrepancy on cross-examination, Ayala testified: "[Defendant]'s back was facing towards me. He grabbed the knife like this. Swung it around. Okay? That is what exactly he did." Thomas's initial testimony at trial was that Ayala stood directly behind defendant in the kitchen. At the preliminary hearing, however, Thomas had testified defendant stabbed Ayala in a "forward" motion. Thomas explained the apparent discrepancy on cross-examination, stating he had used "forward" to describe the "straight" trajectory of the knife as opposed to the direction in which defendant's arm moved relative to defendant's body. But Thomas acknowledged defendant "was probably to the right of [Ayala] a little, I'm guessing. I don't recall."

[58] At trial, Ayala testified he had the frying pan "up in the air" to hit defendant when defendant stabbed him. Ayala's testimony at the preliminary hearing was consistent with this account. Thomas, on the other hand, testified at trial that Ayala did not "grab" the pan until after he was stabbed. At the preliminary hearing, Thomas had testified Ayala was "bringing the pan down" when defendant stabbed him. He reconciled these accounts by explaining that the discrepancy was "a matter of semantics," "it was all simultaneous," and "as [he] saw the pan coming down, [he] had also seen the knife already in [Ayala]."

that, under the prevailing standard of review for a sufficiency claim, we defer to the trier of fact's evaluation of credibility." (*People v. Richardson* (2008) 43 Cal.4th 959, 1030.) "[I]t is the jury, not the reviewing court, that must weigh the evidence, resolve conflicting inferences, and determine whether the prosecution established guilt beyond a reasonable doubt." (*People v. Hubbard* (2016) 63 Cal.4th 378, 392; see also *People v. Lee* (2011) 51 Cal.4th 620, 625, fn. 5 [setting forth the facts in the light most favorable to the judgment where the evidence was conflicting].)

Ayala's trial testimony was unequivocal and emphatic: he hit defendant with the pan only after defendant stabbed him and defendant could not have seen him swinging the pan. To be sure, Ayala was impeached with his preliminary hearing testimony, but that merely left the jurors with a binary choice: they could believe the testimony as they heard it at trial, or they could believe Ayala was instead truthful at a prior hearing. The jury apparently chose to believe Ayala's testimony at trial, and under the governing standard of review that requires us to view the evidence in the light most favorable to the jury's verdicts, that choice is factually dispositive on appeal.

Indeed, the only remotely contradictory evidence the jury heard throughout trial was Thomas's "guess" that defendant might have had a peripheral view of Ayala. We see no reason not to defer to the jury's decision to credit Ayala's account over Thomas's speculation. Furthermore, Thomas's testimony in this narrow respect does not establish defendant saw Ayala threatening to hit him with the frying pan *before* defendant stabbed Ayala—and Thomas testified at trial that the stabbing came first. The victims' testimony accordingly constitutes

substantial evidence supporting the jury's finding that defendant did not believe stabbing Ayala was necessary to defend himself against a blow with the frying pan.[59]

In addition, even if we viewed the evidence in the light most favorable to *defendant*, the prosecution still carried its burden to prove attempted murder (rather than manslaughter) because defendant instigated the fight and Ayala responded lawfully. Defendant resists this view, arguing Ayala unlawfully escalated the confrontation by introducing what he views as a deadly weapon, the frying pan, into a struggle that was only a fistfight at that point. The argument does not square with the record. There was no dispute at trial that defendant reached (from Ayala's perspective at that moment) for an unidentified object in the kitchen before Ayala held the pan aloft to hit defendant with it. Thus, in the midst of the fight defendant started in Ayala's home (and Ayala appeared to be losing, see *post* at footnote 9), defendant was the first to grab an object. Ayala, under the circumstances, was within his rights to resort to his own object (the pan) in response. (See *People v. Enraca* (2012) 53 Cal.4th 735, 761; *People v. Watie* (2002) 100 Cal.App.4th 866, 876-877 [quoting CALJIC Nos. 5.40, 5.42: the lawful occupant of a

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[59] Defendant also suggests inappropriate remarks by the prosecution prevented the jury from properly considering how evidence of his impaired mental state affected his ability to understand the confrontation in the kitchen. Defendant's claims of prosecutorial misconduct are addressed *post*. In any event, because there was substantial evidence that would support a finding defendant was not aware that Ayala was going to hit him with the pan before the stabbing, we need not address his ability to process such information in determining whether the conviction should be affirmed.

residence "may resist force with force, increasing it in proportion to the intruder's persistence and violence"].) Because grabbing and using the pan was lawful under the circumstances, defendant can find no refuge in the doctrine of imperfect self-defense. (*People v. Seaton* (2001) 26 Cal.4th 598, 664; *People v. Frandsen* (2011) 196 Cal.App.4th 266, 272 ["as the initial aggressor and with [the victim] having acted lawfully, appellant may not rely on imperfect self-defense"].)

B. Claim of Insufficient Evidence That the Attempted Murder of Ayala Was Willful, Deliberate, and Premeditated

Defendant contends there was insufficient evidence for the jury to find his attempted murder of Ayala was willful, deliberate, and premeditated.

To support a finding that an attempted murder was willful, deliberate, and premeditated, there must be sufficient evidence that a defendant carefully weighed considerations in choosing a course of action and thought about his conduct in advance. (*People v. Cage* (2015) 62 Cal.4th 256, 276 (*Cage*).) Drawing on *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*), courts look to three types of evidence in evaluating whether the defendant premeditated and deliberated: planning activity, motive, and the manner of killing. (*Cage*, *supra*, at p. 276.) But ""'these factors are not exclusive, nor are they invariably determinative." [Citation.] "'*Anderson* was simply intended to guide an appellate court's assessment whether the evidence supports an inference that the killing occurred as the result of preexisting reflection rather than unconsidered rash impulse."'" [Citation.]" (*Ibid.*)

Defendant contends there was only "weak" evidence of motive and no evidence he planned to stab Ayala or that his manner of attack suggested premeditation. We conclude there is substantial evidence defendant planned to kill Ayala, that he had a motive to do so, and that the manner in which he stabbed Ayala and twisted the knife is consistent with a premeditated intent to kill.

1. Planning

The jury could reasonably find defendant planned to kill Ayala. Defendant agrees the evidence may show he was angry that Ayala would not "smoke [him] out" on July 21, 2015, but defendant suggests he returned that evening, unarmed, planning only a nonlethal fistfight with Ayala. According to defendant, the fight suddenly escalated when Ayala swung a frying pan.

Defendant's account, however, is not the only reasonable view of the evidence. For reasons we have already discussed, the jury was entitled to conclude on the evidence presented that the fight escalated as a result of defendant's grabbing the kitchen knife, switching it to his left hand, and stabbing Ayala—all of which occurred (or so the jury could reasonably find) before Ayala hit defendant with the pan. The space of time necessary to select the largest knife in the block and transfer it from one hand to the other is sufficient to form a preconceived plan to kill. (*People v. Salazar* (2016) 63 Cal.4th 214, 245 [observing the process of premeditation and deliberation does not require any extended period of time and citing with approval the result in *People v. Mayfield* (1997) 14 Cal.4th 668: "'[W]here defendant wrested the gun from and fatally shot an officer during a brief altercation, the jury

could reasonably conclude that "before shooting [the officer] defendant had made a cold and calculated decision to take [the officer's] life after weighing considerations for and against""]; *Cage*, *supra*, 62 Cal.4th at p. 276 [""""Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . ."""].) Regardless, there was also evidence defendant was determined to kill Ayala before defendant returned to Ayala's home.

When Ayala refused to smoke with defendant, defendant threatened to "take care of" Ayala and drove off for up to several hours (long enough, in any case, to change from pajamas into street clothes). When he returned to Ayala's home, he pounded on the door and started beating Ayala without any discussion or provocation once Ayala opened the interior door. After stabbing Ayala, defendant's only concern was to attack the sole witness and flee. A jury could reasonably infer that defendant initiated the fight intending to kill Ayala by whatever most opportune means, and that stabbing Ayala was merely a more expedient alteration of a plan to beat him to death.

Defendant counters that the CALJIC No. 8.67 instruction on premeditation given in this case "fails to distinguish the extent of time requisite for careful consideration and mature deliberation from the length of time it takes to form an intent to kill and/or the length of time between forming that intent and the actual killing." In other words, defendant takes the position that a premeditated killing necessarily requires a longer period of reflection than the period associated with a rash or impulsive killing. Our Supreme Court has rejected this argument, explaining it "completely misses the mark" because "a killing resulting from preexisting reflection, of any

duration, is readily distinguishable from a killing based on unconsidered or rash impulse." (*People v. Solomon* (2010) 49 Cal.4th 792, 812-813.) We reject the argument too.

2. *Motive*

Applying *Anderson*, we consider not simply whether defendant had *any* motive to attack Ayala, but whether there was evidence of motive that would "support an inference that the killing was the result of 'a pre-existing reflection' and 'careful thought and weighing of considerations' rather than 'mere unconsidered or rash impulse hastily executed' [Citation] . . . ." (*Anderson*, *supra*, 70 Cal.2d at p. 27.)

Here, the jury heard evidence that Ayala, who had reliably shared drugs with defendant on friendly terms over the course of a year, refused to "smoke [defendant] out" for the first time on the day of the attack. Defendant responded that he would "take care of" Ayala and drove off. When defendant returned, Thomas answered the door. When Ayala eventually opened the security door to let defendant inside, defendant immediately attacked him. From these facts, the jury could reasonably infer defendant was upset Ayala refused him drugs on the day of the attack. This motive supports an inference that defendant reflected upon and decided to kill Ayala before he returned to Ayala's home, and certainly supports a conclusion that defendant committed a premeditated stabbing when fighting with Ayala.

Defendant nonetheless argues there was no evidence that he decided to kill Ayala until the fight reached the kitchen, and that any motive for this decision must be distinct from his motive in initiating the fistfight with Ayala. We have already explained

why we reject the premise that the jury could not reasonably have found that defendant planned to kill Ayala with his fists before the fight reached the kitchen.[60] However, even if the evidence showed defendant had given no thought to killing Ayala until the moment he decided to reach for the knife, defendant's suggestion that his motive for escalating the fight must be distinct from his motive for initiating the fight is baseless. Defendant cites no authority for this proposition, and it has no basis in experience. The jury could reasonably find the intensity of defendant's anger, which motivated a deliberate decision to kill Ayala, reached its climax in the kitchen even if there was no new reason for that anger.

3. *Manner*

The jury could also reasonably conclude "the *manner* of [attempted] killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take his victim's life in a particular way for a 'reason' which the jury can reasonably infer from facts [relating to planning or motive]." (*Anderson*, *supra*, 70 Cal.2d at p. 27.) Defendant argues he did not attack Ayala in a "particular and exacting" manner because he stabbed Ayala only once and, because Ayala stood behind him, defendant "did not see precisely where [the knife] would strike." Neither of these assertions undermines the jury's premeditation finding, and defendant

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[60] Although Ayala put up a fight, the record suggests defendant had the upper hand during the encounter. Ayala testified that defendant was "taller" and "stockier," and the fight proceeded from the front door into the kitchen with defendant advancing and Ayala moving backward.

ignores additional facts that do support a conclusion that the attempted killing was premeditated.

First, even if defendant could not see Ayala when he thrust the knife backward, his thrust was aimed in a direction and carried such force that he could anticipate its effect. Second, the jury could reasonably find defendant stabbed Ayala only once because it is undisputed defendant turned to face Ayala after impact and saw he had inflicted a devastating wound. Third, and perhaps most importantly, defendant does not account for Ayala's testimony that, after stabbing him, defendant turned to look at him, twisted the knife, and "just stood there with a smirk on his face like it was funny . . . ." The jury could reasonably find such conduct was not rash or impulsive and was instead consistent with the then-apparent success of a preconceived intent to kill.

In light of the *Anderson* framework, there was sufficient evidence for the jury to find that defendant, angry that Ayala refused to share drugs with him, formed a preconceived plan to "take care of" Ayala and acted in a manner consistent with that motive and plan.[61]

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[61] Defendant's extended comparison to the "weak evidence of motive and no evidence of planning or an exacting method of killing to ensure death" in *People v. Boatman* (2013) 221 Cal.App.4th 1253 is not helpful. The defendant in *Boatman* took a gun from his girlfriend's hands, spontaneously (and perhaps accidentally) shot her in the face from 12 inches away, and immediately directed his brother to call the police while trying to resuscitate her. (*Id.* at pp. 1258-1261.) Unlike defendant, Boatman did not threaten to "take care of" his girlfriend, did not arrive at the site of the shooting and immediately attack his girlfriend, and did not attempt to exacerbate his girlfriend's wound. Nor did Boatman threaten or attack witnesses; in fact,

C. Claim of Insufficient Evidence for the Attempted Murder of Thomas

As the court instructed the jury, attempted murder requires a finding that defendant harbored a specific intent to kill another human being unlawfully. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890; *People v. Sanchez* (2016) 63 Cal.4th 411, 457.) Defendant maintains his conviction for attempting to murder Thomas must be reversed because there is insufficient evidence he (defendant) had the specific intent to kill Thomas rather than to "scare and/or injure" him. Defendant suggests that a finding of an intent to kill is precluded by the "conditional" threat to Thomas (i.e., "if you call the cops, I'm gonna kill you, too") and the fact that the wound to Thomas's clavicle was "not remotely life-threatening." In our view, the facts established at trial amount to well more than substantial evidence that defendant specifically intended to kill Thomas.

Although defendant is correct that both Ayala and Thomas testified that defendant threatened to kill Thomas only "if" he called the police, defendant does not reckon with the key fact: this condition was satisfied. Thomas's testimony leaves no doubt that defendant attacked because he was calling the police: "I said I'm calling. And I just started dialing, and then he came at me." The jury was of course entitled to conclude Thomas intended to make good on his threat.

Defendant's suggestion that he attacked Thomas because he merely wanted to *delay* Thomas's calling the police is implausible. Defendant had every reason to believe that Thomas would call the police as

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unlike defendant, Boatman invited them to call the police while he attempted to render aid to his girlfriend.

soon as defendant left the house. Defendant does not articulate what sort of nonlethal injury he purportedly hoped to inflict with a knife that would have merely prevented Thomas from calling 911 immediately upon his departure. But even assuming this account were plausible, we would still uphold the jury's finding because the jury could reasonably conclude defendant intended to kill Thomas to prevent him from calling the police or testifying against him.[62] (*People v. Bean* (1988) 46 Cal.3d 919, 933 [""If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment""].)

Finally, defendant's emphasis on the relatively minor wound he inflicted on Thomas wholly ignores the circumstances of Thomas's escape—but for which the jury could reasonably conclude defendant would have killed Thomas. Defendant, blocked by a sofa that he ultimately hurdled, chased Thomas out of the house. As Thomas struggled to open a gate, he saw defendant closing in with the knife raised. Defendant's knife "c[a]me down right at the same time the gate opened" and Thomas "fell basically forward through the gate and just kept running." The jury could reasonably find that, far from exercising

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62 Defendant's suggestion that this motive is unreasonable because defendant "did not know if [Ayala's] injury was fatal" and Thomas "presumably would not have been able [to] provide adequate identifying information to the police" is not persuasive. First, defendant evidently believed that he had fatally wounded Ayala when he threatened to "kill Thomas, *too*." Second, the jury could reasonably find defendant feared Thomas would be able to describe him to police (particularly after Ayala said "Oh, it's Fred, Mark" after seeing defendant at the front door).

restraint in slashing Thomas's clavicle, defendant intended to kill Thomas and was only thwarted because Thomas made it out of the house slightly faster than defendant did.

D. Prosecutorial Misconduct Claims

During closing argument, "'it is improper for the prosecutor to misstate the law generally [citation], and particularly to attempt to absolve the prosecution from its prima facie obligation to overcome reasonable doubt on all elements [citation].' [Citation.] Improper comments violate the federal Constitution when they constitute a pattern of conduct so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process. [Citation.] Improper comments falling short of this test nevertheless constitute misconduct under state law if they involve use of deceptive or reprehensible methods to attempt to persuade either the court or the jury. [Citation.] To establish misconduct, defendant need not show that the prosecutor acted in bad faith. [Citation.] However, she does need to 'show that, "[i]n the context of the whole argument and the instructions" [citation], there was "a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner."]' [Citation.] If the challenged comments, viewed in context, 'would have been taken by a juror to state or imply nothing harmful, [then] they obviously cannot be deemed objectionable.' [Citation.]" (*People v. Cortez* (2016) 63 Cal.4th 101, 130 (*Cortez*).)

The general rule is that "'[i]n order to preserve a claim of misconduct, a defendant must make a timely objection and request an admonition.'" (*People*

v. Williams (2013) 56 Cal.4th 630, 671; accord, *People v. Forrest* (2017) 7 Cal.App.5th 1074, 1081 [purpose of the requirement is to encourage defendants to bring errors to the attention of the trial court so they may be corrected].) This forfeiture rule does not apply where an objection would have been futile or if an admonition would have been ineffective. (*People v. Arias* (1996) 13 Cal.4th 92, 159.)

Here, defendant argues three aspects of the prosecution's closing argument were improper and prejudicial: (1) examples used by the prosecution to illustrate the meaning of deliberate and premeditated for purposes of the attempted murder charges, (2) comments regarding the evidence offered to show mental impairment and its consistency with a self-defense theory, and (3) remarks about defendant's character based on facts not in evidence. For the reasons discussed below, we hold defendant forfeited his arguments regarding the first two aspects. However, we address and reject all three arguments on the merits to avoid any need to analyze whether defense counsel's failure to object at trial was ineffective assistance of counsel.

1. Deliberate and premeditated

a. background

During closing argument, the prosecution attempted to illustrate "how things that we do in everyday life are willful, deliberate and premeditated":

"So before we even talk about actions, let me just talk to you about conversations. So a lot of times we see people and we talk to people and we read them and we adjust the way we talk in an instant. So in my job I talk to all kinds of people, and when I talk to

people, if it's a victim, I talk to the person in a different way. If that person is just a witness or a doctor, we adjust our ways.

"So let me give you an example of a child. You have all been in the situation where a child comes up to you and asks you a hard question. Maybe it's about death or sex or something; right? And that moment you adjust how you think and you change the way that you answer that question based on who the kid is, what the context is. You might sugar coat something. You might, if it's appropriate, tell them the truth about the matter. But that action, that instant thought of recognizing the consequences of what I tell this person is willful, deliberate and premeditated.

"Why is it willful? Because you do it on purpose. You do it on purpose.

"Why is it deliberate? Because you do it for a reason. You do it for a reason. You do it so that you can either, you know, keep the child away from the hard thoughts of the world or you maybe put that for another day. Put it over for another day when the child grows older and more able to understand stuff.

"And it's premeditated because at that moment you make that decision to do that for a purpose. You know, so that you don't have to go over this conversation right now or some other reason. Those decisions happen at an instant.

"Now, I will just take that example to actions. We do it all the time when we are driving. For example, when we are changing lanes or whatever. We are driving and we see a pedestrian across the street. We can swerve. We can stop. We make these decisions as people in—quick. In a quick way. And we do these things every day while we drive that impacts other people's lives. We impact the safety of

others. We impact the safety of ourselves and our family and our car.

"So I know these are legal terms but in the context of real life, we do all kinds of things that are willful, deliberate and premeditated."

b. analysis

Defendant did not object to these statements at trial, and there is no reason to believe an objection would have been futile or ineffective.[63] The issue is therefore forfeited.

Regardless, the challenged remarks by the prosecution do not constitute misconduct. Defendant posits the prosecution's illustration "mis[led] the jury to believe that merely deciding to do an act was the same as deliberating and premeditating . . . ." We acknowledge that the prosecution's driving example—and particularly his reference to a "swerve," with its possible connotation of thoughtless reflex—is an imprecise illustration of premeditated conduct. But the example must be understood in the overall context of the prosecution's argument concerning premeditation. (*People v. Cowan* (2017) 8 Cal.App.5th 1152, 1159 ["The court must consider the challenged statements in the context of the argument as a whole to make its determination"].) In context, the prosecution repeatedly returned to the point that both examples were meant to emphasize consideration of reasons and consequences: We might tell white lies to children to avoid upsetting them, and in stopping or

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63 We specifically see no basis to conclude, as defendant does, that the above-quoted remarks by the prosecutor, either alone or in tandem with the other challenged remarks, "fell into the category of flagrant misconduct" that no admonition could possibly ameliorate.

swerving to avoid a pedestrian, we balance concerns for the safety of others against the safety of ourselves and our families. Before presenting these examples, the prosecution explained "willful, deliberate, premeditated . . . means . . . you actually know what it means to kill somebody. So you can, for example, find someone guilty of attempted murder but it wasn't done in a fashion where you know the consequences of that death."[64]

In this context, we do not agree with defendant's claim that the prosecution suggested or the jury believed that every decision is necessarily deliberate and premeditated. In determining how jurors likely understood the prosecution's arguments, we do "'"not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations."' [Citations.]" (*Cortez*, *supra*, 63 Cal.4th at p. 131.)

Moreover, "it is significant that the trial court properly defined the [relevant standard] in both its oral jury instructions and the written instructions it gave the jury to consult during deliberations." (*Cortez*, *supra*, 63 Cal.4th at p. 131.) The court recited and gave to the jury CALJIC No. 8.67, which correctly distinguishes deliberate and premeditated action from unconsidered and rash impulse. Both the prosecution and the defense invoked the jury instructions. (See *id.* at p. 132 [noting significance of

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64 The prosecution also acknowledged that "[t]his allegation, it's a harder argument for [Ayala] because [defendant] didn't go there with a knife. . . . The argument is easier for [Thomas] because after doing all that to [Ayala], [defendant] wanted to do the same thing to [Thomas]."

defense counsel and prosecution referring to jury instructions in closing arguments].) Defense counsel specifically urged the jury to "look at those . . . instructions very carefully" and warned that "willful and premeditated murder . . . [is] not as simple as counsel would have you believe." Thus, even if the prosecution's explanation of the premeditation concept was at the margins inartful, we see "no reasonable likelihood the jury construed or applied the prosecution's challenged remarks in an objectionable fashion." (*Id.* at pp. 133-134.)

2. Mental impairment and self-defense

a. background

The prosecution also argued defendant's theory that he stabbed Ayala to defend himself from a blow with the frying pan was not consistent with the theory that he was suffering a psychotic episode:

"[Ayala] was already stabbed by the time he was reaching for the pan. But for the sake of argument let's say that is an issue. He grabs the pan and the defendant, . . . sees that pan and reacts in a certain way that's reasonable. Well, if you are saying that [defendant] was insane, crazy, whatever, couldn't evaluate the whole entire situation that day in a reasonable manner, then what does it matter what he saw that day; right? Because the whole situation is something that he can't evaluate. You can't have it both ways.

"If you want to argue self-defense, then you have to argue that the person there was fighting and then reacted in a reasonable way. That's why both of those arguments doesn't hold water because—that self-defense argument doesn't hold water because

[defendant] was already in the act of stabbing before that threat arose.

"And, second, a knife—a knife is not a reasonable response for a fist fight or even a pan. He can run away, turn around and push him. He can get his own pan. That is not a reasonable action."

The prosecution also argued that defendant's conduct after the stabbing was inconsistent with the theory that he was suffering a psychotic episode:

"But I do need to talk to you about the demon defense; right? The demon defense; right? What the demon defense does is it hurts the specific intent crimes. The specific intent crimes requires me to show through the argument that I just made that he knew what he was doing. . . . When he's seen this doctor for a little bit, that means he could not—he can't take responsibility for any of the specific intent crimes. He still could be guilty of the general criminal intent crimes no matter what the assault with a deadly weapon. Let's embrace this. If you believe this, you will let him walk on this and that is why I need to embrace it.

"So here are the possible things when you could—when you really believe in demons. Let's put aside the fact this doctor saw him four days later and didn't give him treatment.

"And what he was telling the doctor was lies. Right? Let's put that to the side. If you really believe in demons, if you really believe in demons and you just killed two demons, you just fought two demons, what would you do? You would go home and tell, hey, wife, I just fought two demons. I just killed them; right? Because this is what a demon is; right? [¶] . . . [¶]

"If you really believe you fought a demon, you are telling people I have just killed a demon that day,

the next day, and you know what? This guy is crazy. We have to take him to the hospital on that specific day. No. He doesn't do that. He doesn't say on that day or even inside of that house. He is not acting like he is fighting demons.

"What is the next thing that happened? What is the next thing that happened? You are crazy. You think that you fought a demon and then you come to. Right? You come to; right? You become cognizant and come back to reality and you are driving your Prius on this long drive. Wait. Why do I have a knife with me? Why do I have a bloody knife with me? Right? What would a normal person do who has had a history of maybe going to a psychiatrist once? Something must have happened. I should report myself. I should go seek help. I should go check myself into the hospital; right? If that was the situation, instead of getting rid of the knife. Right?

"What's the third possible thing that could happen? You are crazy and you just do crazy things. You are just crazy. You are stabbing the house—inside the house. You don't know which direction to run when you run out of that home. You are yelling. You are screaming. You don't know how to drive. You don't know where to park. Where did the police find him? In his house. Where is his car? Parked in front of his house."

b. analysis

Defendant did not object to these statements at trial, and there is no evidence that an objection would have been futile or ineffective. Again, the issue is forfeited, but we additionally hold there was no misconduct.

Defendant contends the prosecution's remarks suggested he maintained he was utterly delusional, as opposed merely to having disorganized, impulsive, and paranoid thoughts. In essence, defendant argues the prosecution reduced the many and complicated possibilities about defendant's mental faculties on July 21, 2015, to a strawman dichotomy between a delusional belief in demons and perfect rationality. We are not persuaded that the prosecution's attempt to refute the notion that defendant was delusional was inappropriate given the emphasis on defendant's delusional beliefs in Dr. Burke's testimony. The jury was instructed, pursuant to CALJIC No. 3.32, regarding evidence of mental disease received for limited purpose. The prosecution acknowledged the distinction between this and an insanity defense, explaining that "[t]he defense in this case is something very specific. The law gives defendants abilities to plead not guilty by reason of insanity . . . . That is not the situation here. They are not using that." The prosecution stayed within the bounds of permissible argument. (*Berger v. United States* (1935) 295 U.S. 78, 88 [a prosecutor "may strike hard blows . . . [but] is not at liberty to strike foul ones"].)

3. Facts not in evidence

The prosecution also cast doubt on defendant's wife's comments to Dr. Burke by suggesting that defendant had reason to deceive his wife: "The other thing that [defense counsel] brought up is the wife. Right? The wife. And the way—excuse me. . . . But the way he gets in those statements from the wife is this: The doctor a year ago called the wife on the phone. They didn't even see each other face to face. And that wife—whoever it was on the other line—told

the doctor some information and that doctor wrote it down on a piece of record—on a piece of paper. And today in court he comes up to the stand and he reads that explanation to you. That's not the truth. That's an explanation that was made up three or four days on that day. Maybe the wife was being lied to because [defendant] wasn't telling his wife that he was using meth during that time frame. Maybe [defendant] was avoiding some difficult conversations. Right? He was avoiding explaining why, as a person working as a refrigerator repairman, that has a family, isn't spending more time to find a job. Isn't spending more time taking care of his kids or doing work at home. But instead visiting . . . Ayala every 2 weeks, 20 times over 8 months. Right?

"Maybe there is some hard conversations there. More complexity. Why the wife on that day, back when she was talking to the doctor, didn't have a full picture about what's going on. . . ."

Defense counsel objected. The court overruled the objection, but admonished the jury: "Folks, just so you know, whatever the attorneys say on either side is not evidence. It is argument."

"It is well settled that it is misconduct for a prosecutor to base argument on facts not in evidence. [Citation.]" (*People v. Mendoza* (2016) 62 Cal.4th 856, 906.) However, a prosecutor may make "remarks . . . not phrased as assertions" that amount to "mere[ ] reasonable possibilities." (*People v. Winbush* (2017) 2 Cal.5th 402, 481 (*Winbush*).) Here, the prosecution should have avoided the general "that's not the truth" observation which was susceptible to being misunderstood by the jury, but in context of the specific observations that followed, the prosecution was merely raising reasonable possibilities about

defendant's motives for lying to his wife—as evidenced by the three prefatory *maybes*. In context, this was not misconduct.[65]

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:
KRIEGLER, Acting P.J. DUNNING, J.*

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65 Defendant contends that even if each asserted instance of misconduct by the prosecution is not prejudicial when considered individually, the cumulative effect of those statements requires reversal. We have rejected all of defendant's misconduct arguments and the cumulative prejudice argument necessarily fails. (*Winbush*, *supra*, 2 Cal.5th at p. 486.)

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX B CALIFORNIA CODES: CIVIL, CIVIL PROCEDURE AND PENAL; AND RULES OF COURT

Table of Contents

CIVIL CODE

Division – Definitions and Sources of Law

Civ. Code, § 22
Law is a solemn expression of the will of the supreme power of the State.

Civ. Code, § 22.1
The will of the supreme power is expressed:
(a) By the Constitution.
(b) By statutes.

Civ. Code, § 22.2
The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.

Division – Effect of the 1872 Codes

Civ. Code, § 23.3
If the provisions of any title conflict with or contravene the provisions of another title, the provisions of each title shall prevail as to all matters and questions arising out of the subject matter of the title.

Civ. Code, § 23.4
If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same title, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of the chapter.

Civ. Code, § 23.5
If the provisions of any article conflict with or contravene the provisions of another article of the same chapter, the provisions of each article shall

prevail as to all matters and questions arising out of the subject matter of the article.

Civ. Code, § 23.6
If conflicting provisions are found in different sections of the same chapter or article, the provisions of the sections last in numerical order shall prevail, unless such construction is inconsistent with the meaning of the chapter or article.

CODE OF CIVIL PROCEDURE

Division – Preliminary Provisions

Code Civ. Proc. § 20 *Judicial remedies*
Judicial remedies are such as are administered by the Courts of justice, or by judicial officers **empowered for that purpose** by the Constitution and statutes of this State.

Code Civ. Proc. § 21 *Classes of remedies*
These **remedies** are divided into two classes: 1. Actions; and, 2. Special proceedings.

Code Civ. Proc. § 22 *Action*
An action is an **ordinary *proceeding*** in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

Code Civ. Proc. § 23 *Special proceeding*
Every other remedy is a special proceeding.

Code Civ. Proc. § 30 *Remedies in civil action*
A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong.

Code Civ. Proc. § 31 *Prosecution of criminal action*
The Penal Code defines and **provides** for the **prosecution** of **a criminal action.**

Part 3 – Of Special Proceedings of a Civil Nature
Chapter 2- Writ of Mandate

Code Civ. Proc. § 1084
The writ of mandamus may be denominated a writ of mandate.

Code Civ. Proc., § 1085
(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

Code Civ. Proc., § 1086
The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.

From: Haymond, C., Burch, J. C. (1872). *The Code of Civil Procedure of the State of California.* United States: H.S. Crocker. Vol. 2

[p.] 20 CODE OF CIVIL PROCEDURE.

Writ, when and upon what to issue.

1086. (§ 468.) The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued

upon affidavit, on the application of the party beneficially interested.

NOTE—1. PLAIN, SPEEDY, AND ADEQUATE REMEDY—See Subd. 3 of the note to Sec. 1085, ante. The remedy exists unless the party has not only a specific adequate legal remedy, but one competent to afford relief upon the very subject matter of his application. Fremont vs. Crippen, 10 Cal., p. 211; 7 id., p. 216. A remedy by criminal prosecution, or by action on the case for neglect of duty, will not supersede that by mandate, since it cannot compel a specific act to be done, and is, therefore, not equally convenient, beneficial, and effectual.—Fremont vs. Crippen, 10 Cal., p. 211

Code Civ. Proc., § 1087

The writ may be either alternative or peremptory. The alternative writ must command the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by court order why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted.

Code Civ. Proc., § 1088

When the application to the court is made without notice to the adverse party, and the writ is allowed, the alternative must be first issued; but if the application is upon due notice and the writ is allowed, the peremptory may be issued in the first instance. With the alternative writ and also with any notice of an intention to apply for the writ, there must be

served on each person against whom the writ is sought a copy of the petition. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appears or not.

Code Civ. Proc. § 1090
If a return be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

Chapter 4 – Writs of Review, Mandate, and Prohibition May Issue and Be Heard at Chambers

Code Civ. Proc., § 1107
When an application is filed for the issuance of any prerogative writ, the application shall be accompanied by proof of service of a copy thereof upon the respondent and the real party in interest named in such application. The provisions of Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 shall apply to the service of the application. However, when a writ of mandate is sought pursuant to the provisions of Section 1088.5, the action may be filed and served in the same manner as an ordinary action

under Part 2 (commencing with Section 307). Where the real party in respondent's interest is a board or commission, the service shall be made upon the presiding officer, or upon the secretary, or upon a majority of the members, of the board or commission. Within five days after service and filing of the application, the real party in interest or the respondent or both may serve upon the applicant and file with the court points and authorities in opposition to the granting of the writ.

The court in which the application is filed, in its discretion and for good cause, may grant the application ex parte, without notice or service of the application as herein provided.

The provisions of this *section* shall not be applicable to applications for the writ of habeas corpus, or to applications for writs of review of the Industrial Accident or Public Utilities Commissions.

Code Civ. Proc., § 1108

Writs of review, mandate, and prohibition issued by the Supreme Court, a court of appeal, or a superior court, may, in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time.

CALIFORNIA PENAL CODE

Preliminary Provisions

Pen. Code, § 6 *Criminality of act or omission*

No act or omission, commenced after twelve o'clock noon of the day on which this Code takes effect as a law, **is criminal or punishable, except as prescribed or authorized by this Code**, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some

ordinance, municipal, county, or township regulation, passed or adopted, under such statutes and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this Code had not been passed.

Pen. Code, § 15 *Crime or public offense defined*
A crime or public offense is an act committed or omitted **in violation of a law forbidding** or commanding it, **and to which is annexed**, upon conviction, either of the following **punishments**:
1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

Pen. Code, § 18
(a) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony is punishable by imprisonment for 16 months, or two or three years in the state prison unless the offense is punishable pursuant to subdivision (h) of Section 1170.

PART 1 OF CRIMES AND PUNISHMENT

Title 1 – Of Persons Liable to Punishment for Crime

Pen. Code, § 27
(a) The following persons are liable to punishment under the laws of this state:
(1) All persons who commit, in whole or in part, any crime within this state.

Pen. Code, § 29.2

(a) The intent or intention is manifested by the circumstances connected with the offense.

Title 7 – Of Crimes Against Public Justice

Pen. Code, § 118

(a) Every person who, having taken an oath that he or she will testify, ... truly before any competent tribunal, ... in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, d... certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

...

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

Pen. Code, § 123

It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Pen. Code § 124

The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the

accused to any other person, with the intent that it be uttered or published as true.

Pen. Code, § 125
An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.
Pen. Code, § 126
Perjury is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three or four years.

Pen. Code, § 127
Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Pen. Code § 128
Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4.

Pen. Code, § 132
Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

Pen. Code, § 134
Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or

other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

Pen. Code § 141
(c) A prosecuting attorney who intentionally and in bad faith ... withholds any ... relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the ... relevant exculpatory material or information will be concealed ... upon a ... proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(*Amended by Stats. 2016, Ch. 879, Sec. 1. (AB 1909) Effective January 1, 2017.*) [Referencing subd.(c)]

Pen. Code, § 182
(a) If two or more persons conspire:
(1) To commit any crime.
(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
(3) Falsely to move or maintain any suit, action, or proceeding.
(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

They are punishable as follows:

[state prison]

Title 8 – Of Crimes Against the Person

Chapter 1 – Homicide

Pen. Code, § 187
(a) Murder is the unlawful **killing** of a human being, or a fetus, with malice aforethought.

Chapter 5 – Attempts to Kill

Pen. Code, § 217.1
(a) Except as provided in subdivision (b), every person who commits any assault upon the President or Vice President of the United States, the Governor of any state or territory, any justice, judge, or former judge of any local, state, or federal court of record, any commissioner, referee, or other subordinate judicial officer of any court of record, the secretary or director of any executive agency or department of the United States or any state or territory, or any other official of the United States or any state or territory holding elective office, any mayor, city council member, county supervisor, sheriff, district attorney, prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, public defender or assistant public defender of any local, state, or federal public defender's office, a former public defender or assistant public defender of any local, state, or federal public defender's office, the chief of police of any municipal police department, any peace officer, any juror in any local, state, or federal court of record, or the immediate family of any of these officials, in retaliation for or to prevent the performance of the victim's official duties, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding subdivision (a), **every person who attempts to commit murder against any person listed in subdivision (a)** in retaliation for or to prevent the performance of the victim's official duties, shall be confined in the state prison for a term of 15 years to life. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15 years in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.

(c) For the purposes of this section, the following words have the following meanings:

(1) "Immediate family" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) "Peace officer" means any person specified in subdivision (a) of Section 830.1 or Section 830.5.

The remainder of the Chapter 5 Attempts to Kill by title:

Section 218 - Unlawful acts upon or near track of railroad with intent of wrecking train

Section 218.1 - Placement of obstruction upon or near track of railroad

Section 219 - Unlawful acts with intention to derail train

Section 219.1 - Unlawful acts related to wrecking of common carrier

Section 219.2 - Unlawful throwing of stone at train, etc.

Section 219.3 - Unlawful dropping or throwing object from toll bridge

Chapter 8 – False Imprisonment and Human Trafficking

Pen. Code, § 236
False imprisonment is the unlawful violation of the personal liberty of another.

Pen. Code, § 237
(a) False imprisonment is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170.

Chapter 9 – Assault and Battery

Pen. Code, § 240
An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Pen. Code, § 245
(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

Title 11.5 – Criminal Threats

Pen. Code, § 422
(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as

a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Title 16 – General Provisions

Pen. Code, § 663 *Attempt to commit crime*

Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the Court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Pen. Code, § 664 *Punishment for attempt to commit crime*

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, or by imprisonment pursuant to subdivision (h) of Section 1170, the person guilty of the attempt shall be punished by imprisonment in the state prison or in a county jail, respectively, for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, **if the crime attempted is willful, deliberate, and premeditated murder, as**

defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

PART 2 OF CRIMINAL PROCEDURE

Pen. Code, § 681

No person can be punished for a public offense, except upon a legal conviction in a Court having jurisdiction thereof.

Pen. Code, § 684

A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense.

Pen. Code, § 685

The party prosecuted in a criminal action is designated in this Code as the defendant.

Pen. Code, § 686

In a criminal action the defendant is entitled:

1. To a speedy and public trial.

2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel, except that in a capital case he shall be represented in court by counsel at all stages of the preliminary and trial proceedings.

3. To produce witnesses on his behalf and to be confronted with the witnesses against him, in the presence of the court, ...

Pen. Code, § 689
No person can be convicted of a public offense unless by verdict of a jury, accepted and recorded by the court, by a finding of the court in a case where a jury has been waived, or by a plea of guilty.

Pen. Code, § 690
The provisions of Part 2 (commencing with Section 681) shall apply to all criminal actions and proceedings in all courts, except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings.

Pen. Code, § 691
(d) The words "prosecuting attorney" include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, on behalf of the people, any charge of a public offense.

Pen. Code, § 1019
The plea of not guilty puts in issue every material allegation of the accusatory pleading, ...

Pen. Code, § 1020
All matters of fact tending to establish a defense ...may be given in evidence under the plea of not guilty.

Pen. Code, § 1022
Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any

defect in form or substance in the accusatory pleading on which the trial was had.

Pen. Code, § 1023
When the defendant is convicted or acquitted or has been once placed in jeopardy upon an accusatory pleading, the conviction, acquittal, or jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that accusatory pleading.

Chapter 10 – Discovery

Pen. Code, § 1054
This chapter shall be interpreted to give effect to all of the following purposes:
(a) To **promote the ascertainment of truth in trials** by requiring timely pretrial discovery.
(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.
(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.
(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.
(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

Pen. Code, § 1054.1
The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney

knows it to be in the possession of the investigating agencies:
(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
(b) Statements of all defendants.
(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
(e) ***Any* exculpatory evidence.**
(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

Pen. Code, § 1054.7
The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, *unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.*

Pen. Code, § 1054.9

(a) In a case in which a defendant is or has ever been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, and **on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall,** except as provided in subdivision (b) or (d), **order that the defendant be provided reasonable access to any of the materials described in subdivision (c).**

(b) Notwithstanding subdivision (a), in a case in which a sentence other than death or life in prison without the possibility of parole is or has ever been imposed, if a court has entered a previous order granting discovery pursuant to this section, a subsequent order granting discovery pursuant to subdivision (a) may be made in the court's discretion. A request for discovery subject to this subdivision shall include a statement by the person requesting discovery as to whether that person has previously been granted an order for discovery pursuant to this section.

(c) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

[Remaining subdivisions omitted.]

Title 7 – Of Proceedings After the Commencement of the Trial and Before Judgment

Pen. Code, § 1096

A defendant in a criminal action is presumed to be innocent **until the contrary is proved**, and in case of a reasonable doubt whether his or her guilt

is satisfactorily shown, he or she **is entitled to an acquittal**, but the effect of this presumption is only **to place upon the state the burden of proving** him or her guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: 'It is not a mere possible doubt; because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they **cannot say they feel an abiding conviction of the truth** of the charge.'

Pen. Code, § 1096a
In charging a jury, the court may read to the jury Section 1096, and no further instruction on the subject of the presumption of innocence or defining reasonable doubt need be given.

Pen. Code § 1126
In a trial for any offense, questions of law are to be decided by the court, and questions of fact by the jury. Although the jury has the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Pen. Code, § 1165
Where a **general verdict is rendered** or a finding by the court is made **in favor of the defendant**, except on a plea of not guilty by reason of insanity, **a judgment of acquittal must be forthwith given**. If such judgment is given, or a judgment imposing a fine only, without imprisonment for nonpayment is given, and the defendant is not detained for any other legal cause, **he must be discharged, if in custody, as soon as the**

judgment is given, except that where the acquittal is because of a variance between the pleading and the proof which may be obviated by a new accusatory pleading, the court may order his detention, to the end that a new accusatory pleading may be preferred, in the same manner and with like effect as provided in Section 1117.

TITLE 8. OF JUDGMENT AND EXECUTION
CHAPTER 1. The Judgment

Pen. Code § 1192.6

(a) In each felony case in which the charges contained in the original accusatory pleading are amended or dismissed, the record shall contain a statement explaining the reason for the amendment or dismissal.

(b) In each felony case in which the prosecuting attorney seeks a dismissal of a charge in the complaint, indictment, or information, he or she shall state the specific reasons for the dismissal in open court, on the record.")

TITLE 9. APPEALS IN FELONY CASES
CHAPTER 4. Judgment Upon Appeal

Pen. Code § 1265

(a) After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted. However, if a judgment has been affirmed on appeal no motion shall be made or proceeding in the nature of a petition for a writ of error coram nobis shall be brought to procure the vacation of that judgment, except in the court which affirmed the judgment on

appeal. When a judgment is affirmed by a court of appeal and a hearing is not granted by the Supreme Court, the application for the writ shall be made to the court of appeal.

TITLE 10. MISCELLANEOUS PROCEEDINGS CHAPTER 8. Dismissal of the Action for Want of Prosecution or Otherwise

Pen. Code § 1384

If the judge or magistrate directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him or to the person or persons found by the court to have deposited said money on behalf of said defendant.

Pen. Code § 1385

(a) The judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

CHAPTER 15. Disqualification of Prosecuting Attorneys

Pen. Code § 1424.5

(a)(1) Upon receiving information that a prosecuting attorney may have deliberately and intentionally withheld relevant, material exculpatory evidence or

information in violation of law, a court may make a finding, supported by clear and convincing evidence, that a violation occurred. If the court finds such a violation, the court shall inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(2) A court may hold a hearing to consider whether a violation occurred pursuant to paragraph (1).

(b)(1) If a court finds, pursuant to subdivision (a), that a violation occurred in bad faith, the court may disqualify an individual prosecuting attorney from a case.

(2) Upon a determination by a court to disqualify an individual prosecuting attorney pursuant to paragraph (1), the defendant or his or her counsel may file and serve a notice of a motion pursuant to Section 1424 to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly and in bad faith participated in or sanctioned the intentional withholding of the relevant, material exculpatory evidence or information and that withholding is part of a pattern and practice of violations.

(c) This section does not limit the authority or discretion of, or any requirement placed upon, the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, requirements, remedies, or actions.

Title 12 – Of Special Proceedings of a Criminal Nature

Pen. Code, § 1473 *Writ of habeas corpus to inquire into cause of imprisonment or restraint*

(a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section **does not** limit the grounds for which a writ of habeas corpus may be prosecuted or **preclude the use of any other remedies.**

[Remaining subdivisions omitted.]

Pen. Code § 1477
The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the Court or Judge before whom the writ is returnable, at a time and place therein specified.

Part 4, Title 1, Chapter 2,

Article 2. Reports of Injuries

Pen. Code, § 11160
(a) A health practitioner ... in the health practitioner's professional capacity or within the scope of the health practitioner's employment, provides medical services for a physical condition to a patient whom the health practitioner **knows or reasonably suspects is a person described as follows, shall immediately make a report** in accordance with subdivision (b):

(1) ... means of a firearm.

(2) A person **suffering from a wound** or other physical injury **inflicted upon the person where the injury is the result of assaultive** or abusive **conduct.**

(b) A health practitioner, ... **shall make a report regarding persons described in subdivision (a) to a local law enforcement agency** as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) **A written report shall be prepared on the standard form** .... The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local **law enforcement agency shall be notified and a written report shall be**

prepared and sent pursuant to paragraphs (1) and (2) ...

(4) The **report shall include**, but shall not be limited to, the following:

(A) The **name of the injured person**, if known.

(B) The injured person's whereabouts.

(C) The **character and extent of the person's injuries.**

(D) The **identity of any person the injured person alleges inflicted the wound**, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" includes any of the following offenses:

(1) **Murder**, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(8) Battery, in violation of Section 242.

(13) **Assault with a deadly weapon**, firearm, assault weapon, or machinegun, or by **means likely to produce great bodily injury, in violation of Section 245.**

(23) An **attempt to commit** any crime specified in paragraphs (1) to (22), inclusive.

(e) **When two or more persons who are required to report** are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to

report as a team, the team may select by mutual agreement **a member of the team to make a report** by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. **Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.**

(f) The **reporting duties under this section are individual**, except as provided in subdivision (e).

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

(Amended by Stats. 2021, Ch. 626, Sec. 63. (AB 1171) Effective January 1, 2022.)

NOTE: the only amendment that effected the emphasized language was in (a) (2) "~~Any~~ A person suffering from ~~any~~ a wound"

Pen. Code, § 11161

Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

(a) The **physician or surgeon shall make a report in accordance with subdivision** (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to subdivision (a) include the following:

(1) **Any comments by the injured person regarding** past domestic violence, as defined in Section 13700, **or regarding the name of any person suspected of inflicting the wound,**

other physical injury, or assaultive or abusive conduct upon the person.
(2) **A map of the injured person's body** showing and **identifying injuries and bruises** at the time of the health care.
(3) **A copy** of the law enforcement **reporting form.**

Pen. Code, § 11161.9
(a) A health practitioner who makes a report in accordance with this article **shall not incur civil or criminal liability as a result of any report required or authorized by this article.**
(c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse **shall not incur civil or criminal liability as a result of providing that access.**
Pen. Code, § 11162.
A violation of this article is **a misdemeanor**, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.
Pen. Code, § 11162.5.
As used in this article, the following definitions shall apply:
(a) "Health practitioner" has the same meaning as provided in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7.[66]

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[66] § 11165.7 (21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, ... etc.
(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(d) "Reasonably suspects" means that **it is objectively reasonable for a person to entertain a suspicion**, based upon facts that could **cause a reasonable person** in a like position, **drawing**, when appropriate, on his or her **training and experience, to suspect.**

Pen. Code, § 11163

(b) (1)

(b) (1) Therefore, a **health practitioner may present** a claim to the Department of General Services for **reasonable attorney's fees incurred in any action against that person** on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The Department of General Services shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. **Attorney's fees awarded** pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed **an aggregate amount of fifty thousand dollars ($50,000).**

(Amended by Stats. 2016, Ch. 31, Sec. 256. (SB 836) Effective June 27, 2016.)

NOTE: Amendment pertained to new name of Department of General Services.

Article 2.5 – Child Abuse and Neglect Reporting Act

Pen. Code, § 11164

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case **shall consider the needs of the child** victim and shall do whatever is necessary **to prevent psychological harm to the child** victim.

Pen. Code, § 11165.3
As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Pen. Code, § 11165.7
(a) As used in this article, "mandated reporter" is defined as any of the following:

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

Pen. Code, § 11165.12
As used in this article, the following definitions shall control:
(a) "**Unfounded report**" means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.
(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect as defined in Section 11165.6.
(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.
Pen. Code, § 11167 [Any relevant amendment noted in text by italics or crossed out, other irrelevant aspects left unnoted.]
(a) Reports of *known or reasonably* suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the *knowledge or* reasonable suspicion of child abuse or neglect and

the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who ~~might~~ *the mandated reporter knows or reasonably suspects to* have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to them.
(b) Information relevant to the incident of child abuse or neglect and information relevant to a report made pursuant to Section 11166.05 may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.
(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, and information relevant to a report made pursuant to Section 11166.05 may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.
(d) (1) The identity of all persons who report under this article shall be confidential and disclosed **only among agencies** receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action **initiated** under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or

to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or **when those persons waive confidentiality, or by court order.** *(Amended by Stats. 2022, Ch. 770, Sec. 3. (AB 2085) Effective January 1, 2023.)*

Pen. Code, § 11167.5

(a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative **reports that result in a summary report being filed** with the Department of Justice pursuant to subdivision **(a) of Section 11169 shall be confidential** and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed **only** to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

Pen. Code, § 11169

(a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency **shall not forward** a report to the Department of Justice **unless** it has conducted an active investigation and determined that the **report is substantiated**, as defined in Section 11165.12. If a

report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

Part 6, Title 2, Division 5, Chapter 1, Article 1 – Prohibited Acts

Pen. Code, § 18745 *Unlawful explosion, ignition, or attempt to explode or ignite destructive device or explosive with intent to commit murder*

Every person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive **with intent to commit murder** is guilty of a felony, and shall be punished by imprisonment in the state prison for life with the possibility of parole.

CALIFORNIA RULES OF COURT

Rule 2.1040. Electronic recordings presented or offered into evidence

(a) Electronic recordings of deposition or other prior testimony

(1) [Omitted.]

(2) [Omitted.]

(3) [Omitted.]

(b) Other electronic recordings

(1) Except as provided in (2) and (3), before a party may present or offer into evidence any electronic sound or sound-and-video recording not covered under (a), the party must provide to the court and to opposing parties a transcript of the electronic recording and provide opposing parties with a duplicate of the electronic recording, as defined in Evidence Code section 260. The transcript may be prepared by the party presenting or offering the recording into evidence; a certified transcript is not required.

(2) For good cause, the trial judge may permit the party to provide the transcript or the duplicate recording at the time the presentation of evidence closes or within five days after the recording is presented or ...

(c) Clerk's duties

An electronic recording provided to the court under this rule must be marked for identification. A transcript provided under (a)(2) or (b)(1) must be filed by the clerk.

(d) Reporting by court reporter

Unless otherwise ordered by the trial judge, the court reporter need not take down the content of an

electronic recording that is presented or offered into evidence.

Advisory Committee Comment

This rule is designed to ensure that, in the event of an appeal, there is an appropriate record of any electronic sound or sound-and-video recording that was presented or offered into evidence in the trial court. The rules on felony, misdemeanor, and infraction appeals require that any transcript provided by a party under this rule be included in the clerk's transcript on appeal (see rules 8.320, 8.861, and 8.912). In civil appeals, the parties may designate such a transcript for inclusion in the clerk's transcript (see rules 8.122(b) and 8.832(a)). The transcripts required under this rule may also assist the court or jurors during the trial court proceedings. For this purpose, it may be helpful for the trial court to request that the party offering an electronic recording provide additional copies of such transcripts for jurors to follow while the recording is played.

...

Subdivision (b). Note that, with the exception of recordings covered by Code of Civil Procedure section 2025.510(g), the recording itself, not the transcript, is the evidence that was offered or presented (see *People v. Sims* (1993) 5 Cal.4th 405, 448). Sometimes, a party may present or offer into evidence only a portion of a longer electronic recording. In such circumstances, the transcript provided to the court and opposing parties should contain only a transcription of those portions of the electronic recording that are actually presented or offered into evidence. If a party believes that a transcript provided under this subdivision is inaccurate, the party can raise an objection in the trial court.

...

Subdivision (c). The requirement to file a transcript provided to the court under (a)(2) or (b)(1) is intended to ensure that the transcript is available for inclusion in a clerk's transcript in the event of an appeal.

Rule 4.576

(a) Notice of intent to dismiss

Before dismissing a successive petition under Penal Code section 1509(d), a superior court must provide notice to the petitioner and an opportunity to respond.

Rule 8.320. Normal record; exhibits

(a) Contents

If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

Rule 8.532

(b) Finality of decision

(2) The following Supreme Court decisions are final on filing:

(C) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause;[67]

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[67] Cal. Const. art. VI § 10

The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings.

Advisory Committee Comment

Subdivision (b)(2)(C) recognizes that an order denying a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The provision reflects the settled Supreme Court practice, since at least 1989, of declining to file petitions for rehearing in such matters. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989 ["The motion to vacate this court's order of May 18, 1989 [denying a petition for habeas corpus without opinion] is denied. Because the California Rules of Court do not authorize the filing of a petition for rehearing of such an order, the alternate request to consider the matter as a petition for rehearing is denied."].)

Rule 8.385

(c) Petition filed in an *inappropriate* court

(1) A Court of Appeal may deny without prejudice a petition for writ of habeas corpus that is based primarily on *facts occurring outside* the court's appellate district, including petitions that question:

(A) The validity of judgments or orders of trial courts located outside the district;

or

(B) The conditions of confinement or the conduct of correctional officials outside the district.

(2) A Court of Appeal should deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner's suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment.

Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.

(3) If the court denies a petition solely under (1), the order must state the basis of the denial and must identify the appropriate court in which to file the petition.

(d) Order to show cause

If the petitioner has made the required prima facie showing that he or she is entitled to relief, the court *must issue an order to show cause.* An order to show cause does not grant the relief sought in the petition.

(e) Return to the superior court

The reviewing court may order the respondent to file a return in the superior court. The order vests jurisdiction over the cause in the superior court, which must proceed under rule 4.551.

(f) Return to the reviewing court

If the return is ordered to be filed in the Supreme Court or the Court of Appeal, rule 8.386 applies and the court in which the return is ordered filed must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

APPENDIX C
ATTORNEY DISCIPLINE: BUSINESS AND PROFESSIONS CODE; RULES OF COURT AND PROFESSIONAL CONDUCT

Table of Contents

DIVISION 3 – PROFESSIONS AND VOCATIONS GENERALLY

Chapter 4 – Attorneys

Bus. & Prof. Code § 6067 *Oath of person upon admission*

Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license.

Bus. & Prof. Code, § 6068 *Duties of attorney*

It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

Bus. & Prof. Code § 6077 *Binding effect; discipline for willful breach*
The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all licensees of the State Bar.
For a willful breach of any of these rules, the State Bar Court has power to discipline attorneys by reproval, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of licensees of the State Bar.

Bus. & Prof. Code § 6087 *No limiting or altering powers of Supreme Court to disbar or discipline licensees of bar*
Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline licensees of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California.

California Rules of Court

Rule 9.0
(a) Title
The rules in this title may be referred to as the Rules on Law Practice, Attorneys, and Judges.
(b) Source
The rules in this title were adopted by the Supreme Court under its inherent authority over the admission and discipline of attorneys and under subdivisions (d)

and (f) of section 18 of article VI of the Constitution of the State of California.[68]

Rule 9.3

(b) Inherent jurisdiction over practice of law

Nothing in this chapter may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in this state.

RULES OF PROFESSIONAL CONDUCT

Rule 1.0 Purpose and Function of the Rules of Professional Conduct

(a) Purpose.

The following rules are intended to regulate professional conduct of lawyers through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all lawyers.

(b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Lawyers are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

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[68] Said subdivisions relate to discipline of judicial officers and subordinate officers, and are not relevant to this case, thus not included in the appendix.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.

(c) Purpose of Comments. The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the "California Rules of Professional Conduct."

Comment

[1] The Rules of Professional Conduct are intended to establish the standards for lawyers for purposes of discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [106 Cal.Rptr. 489].) Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768].) Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary context. (Ibid.; see also *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of a rule may have other non-disciplinary consequences. (See, e.g., *Fletcher v. Davis* (2004) 33 Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] [enforcement of attorney's lien]; *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] [enforcement of fee sharing agreement].) [2] While the

rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity. [3] A willful violation of a rule does not require that the lawyer intend to violate the rule. (*Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Bus. & Prof. Code, § 6077.)

Rule 3.1 Meritorious Claims and Contentions

(a) A lawyer shall not:

(1) bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;* or

(2) present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not:

(1) knowingly* make a false statement of fact or law to a tribunal* or fail to correct a false statement of material fact or law previously made to the tribunal* by the lawyer;

(2) fail to disclose to the tribunal* legal authority in the controlling jurisdiction known* to the lawyer to be directly adverse to the position of the client and not

disclosed by opposing counsel, or knowingly* misquote to a tribunal* the language of a book, statute, decision or other authority; or
(3) offer evidence that the lawyer knows* to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know* of its falsity, the lawyer shall take reasonable* remedial measures, including, if necessary, disclosure to the tribunal,* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes* is false.
(b) A lawyer who represents a client in a proceeding before a tribunal* and who knows* that a person* intends to engage, is engaging or has engaged in criminal or fraudulent* conduct related to the proceeding shall take reasonable* remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:
(a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person* to do any such act;
(b) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;

(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;")
(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:
(a) not institute or continue to prosecute a charge that the prosecutor knows* is not supported by probable cause;
(b) make reasonable* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable* opportunity to obtain counsel;
(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal* has approved the appearance of the accused in propria persona;
(d) make timely disclosure to the defense of all evidence or information known* to the prosecutor that the prosecutor knows* or reasonably should know* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;* and
(e) exercise reasonable* care to prevent persons* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.

(f) When a prosecutor knows* of new, credible and material evidence creating a reasonable* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(g) When a prosecutor knows* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.* This rule is intended to achieve those results. All lawyers in government service remain bound by rules 3.1 and 3.4.

[2] Paragraph (c) does not forbid the lawful questioning of an uncharged suspect who has knowingly* waived the right to counsel and the right

to remain silent. Paragraph (c) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable* waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] The disclosure obligations in paragraph (d) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194] and its progeny. For example, these obligations include, at a minimum, the duty to disclose impeachment evidence or information that a prosecutor knows* or reasonably should know* casts significant doubt on the accuracy or admissibility of witness testimony on which the prosecution intends to rely. Paragraph (d) does not require disclosure of information protected from disclosure by federal or California laws and rules, as interpreted by case law or court orders. Nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions governing discovery in California courts. A disclosure's timeliness will vary with the circumstances, and paragraph (d) is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.

[4] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal* if disclosure of information to the defense could result in substantial* harm to an individual or to the public interest.

[5] Paragraph (e) supplements rule 3.6, which prohibits extrajudicial statements that have a

substantial* likelihood of prejudicing an adjudicatory proceeding. Paragraph (e) is not intended to restrict the statements which a prosecutor may make which comply with rule 3.6(b) or 3.6(c).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or agents. (See rules 5.1 and 5.3.) Ordinarily, the reasonable* care standard of paragraph (e) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows* of new, credible and material evidence creating a reasonable* likelihood that a person* outside the prosecutor's jurisdiction was convicted of a crime that the person* did not commit, paragraph (f) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (f) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable* efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 4.2.) Statutes may require a prosecutor to preserve certain types of evidence in criminal matters.

(See Pen. Code, §§ 1417.1-1417.9.)[69] In addition, prosecutors must obey file preservation orders concerning rights of discovery guaranteed by the Constitution and statutory provisions. (See *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523 [213 Cal.Rptr.3d 581]; *Shorts v. Superior Court* (2018) 24 Cal.App.5th 709 [234 Cal.Rptr.3d 392].)

[8] Under paragraph (g), once the prosecutor knows* of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this rule.")

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;

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[69] While somewhat relevant, but not enough to include in the Appendix, (pertained to clerk's duties regarding exhibits and disposal, post-conviction defense counsel obtained copies of all exhibits.)

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;

APPENDIX D
CALIFORNIA EVIDENCE CODE

Table of Contents

EVIDENCE CODE

Division 2 – Words and Phrases Defined

Evid. Code, § 105
"Action" includes a civil action and a criminal action. [*See sections 120 and 130 below.*]

Evid. Code, § 110
"Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

Evid. Code, § 115
"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.
Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

Evid. Code, § 120
"Civil action" includes civil proceedings.

Evid. Code, § 130
"Criminal action" includes criminal proceedings.

Evid. Code, § 140
"Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

Evid. Code, § 165
"Oath" includes affirmation or declaration under penalty of perjury.

Evid. Code, § 170
"Perceive" means to acquire knowledge through one's senses.

Evid. Code, § 190
"Proof" is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

Evid. Code, § 210
"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Evid. Code, § 235
"Trier of fact" includes (a) the jury and (b) the court when the court is trying an issue of fact other than one relating to the admissibility of evidence.

Evid. Code, § 250
"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

DIVISION 3 – GENERAL PROVISIONS

Chapter 1 – Applicability of Code

Evid. Code, § 300

Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

Chapter 2 – Province of Court and Jury

Evid. Code, § 312

Except as otherwise provided by law, where the trial is by jury:

(a) All questions of fact are to be decided by the jury.

(b) Subject to the control of the court, the jury is to determine the effect and value of the evidence addressed to it, including the credibility of witnesses and hearsay declarants.

Chapter 4- Admitting and Excluding Evidence

Evid. Code, § 350

No evidence is admissible except relevant evidence.

Evid. Code, § 351

Except as otherwise provided by statute, all relevant evidence is admissible.

Evid. Code, § 352

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

Evid. Code, § 356
Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence.

Evid. Code, § 400
As used in this article, "preliminary fact" means a fact upon the existence or nonexistence of which depends the admissibility or inadmissibility of evidence. The phrase "the admissibility or inadmissibility of evidence" includes the qualification or disqualification of a person to be a witness and the existence or nonexistence of a privilege.

Evid. Code, § 401
As used in this article, "proffered evidence" means evidence, the admissibility or inadmissibility of which is dependent upon the existence or nonexistence of a preliminary fact.

Chapter 5 Weight of Evidence Generally

Evid. Code, § 410
As used in this chapter, "direct evidence" means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact.

Evid. Code, § 411
Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact.

Evid. Code, § 412
If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

Evid. Code, § 413
In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case.

DIVISION 5 BURDEN OF PROOF; BURDEN OF PRODUCING EVIDENCE; PRESUMPTIONS AND INFERENCES

Chapter 1 – Burden of Proof

Evid. Code, § 500
Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.
Evid. Code, § 501
Insofar as any statute, except Section 522, assigns the burden of proof in a criminal action, such statute is subject to Penal Code Section 1096.

Evid. Code, § 520
The party claiming that a person is guilty of crime or wrongdoing has the burden of proof on that issue.

Chapter 2 – Burden of Producing Evidence

Evid. Code, § 550
(a) The burden of producing evidence as to a particular fact is on the party against whom a finding

on that fact would be required in the absence of further evidence.
(b) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact.

Chapter 3 – Presumptions and Inferences

Evid. Code, § 604
The effect of a presumption affecting the burden of producing evidence is to *require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence*, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate.

Evid. Code, § 605
A presumption affecting the burden of proof is a presumption established to implement some public policy *other than to facilitate the determination of the particular action* in which the presumption is applied, such as the policy in favor of establishment of a parent and child relationship, the validity of marriage, the stability of titles to property, or the security of those who entrust themselves or their property to the administration of others.

Evid. Code, § 606
The effect of a presumption affecting the burden of proof is to impose upon the party *against whom it operates the burden of proof as to the nonexistence of the presumed fact.*

Evid. Code, § 660 The presumptions established by this article, and all other rebuttable presumptions established by law that fall within the criteria of Section 605, are presumptions affecting the burden of proof.

Evid. Code, § 664

It is presumed that official duty has been regularly performed. This presumption does not apply on an issue as to the lawfulness of an arrest if it is found or otherwise established that the arrest was made without a warrant.

Evid. Code, § 665

A person is presumed to intend the ordinary consequences of his voluntary act. This presumption is inapplicable in a criminal action to establish the specific intent of the defendant where specific intent is an element of the crime charged.

Evid. Code, § 668

An unlawful intent is presumed from the doing of an unlawful act. This presumption is inapplicable in a criminal action to establish the specific intent of the defendant where specific intent is an element of the crime charged.

DIVISION 6 – WITNESSES

Chapter 1 – Competency

Evid. Code, § 701

(a) A person is disqualified to be a witness if he or she is:

(2) Incapable of understanding the duty of a witness to tell the truth.

Chapter 2 – Oath and Conformation

Evid. Code, § 710

Every witness before testifying shall take an oath or make an affirmation or declaration in the form provided by law, except that a child under the age of 10 or a dependent person with a substantial cognitive impairment, in the court's discretion, may be required only to promise to tell the truth.

Evid. Code, § 711

At the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.

Chapter 6 Credibility of Witnesses
Article 1 – Credibility Generally

Evid. Code, § 780

Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

(a) His demeanor while testifying and the manner in which he testifies.

(b) The character of his testimony.

(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.

(d) The extent of his opportunity to perceive any matter about which he testifies.

(e) His character for honesty or veracity or their opposites.

(f) The existence or nonexistence of a bias, interest, or other motive.

(g) A statement previously made by him that is consistent with his testimony at the hearing.
(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
(i) The existence or nonexistence of any fact testified to by him.
(j) His attitude toward the action in which he testifies or toward the giving of testimony.
(k) His admission of untruthfulness.

Article 2 – Attacking or Supporting Credibility

Evid. Code, § 787
Subject to Section 788, evidence of specific instances of his conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness.

Evid. Code, § 788
For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony unless:
(a) A pardon based on his innocence has been granted to the witness by the jurisdiction in which he was convicted.
...
(c) The accusatory pleading against the witness has been dismissed under the provisions of Penal Code Section 1203.4, but this exception does not apply to any criminal trial where the witness is being prosecuted for a subsequent offense.
(d) The conviction was under the laws of another jurisdiction and the witness has been relieved of the penalties and disabilities arising from the conviction pursuant to a procedure substantially equivalent to that referred to in subdivision (b) or (c).

Additional material from this filing is available in the Clerk's Office.