

LEXSTAT CAL PEN CODE § 211

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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE
Part 1. Of Crimes and Punishments
Title 8. Of Crimes Against the Person
Chapter 4. Robbery

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Cal Pen Code § 211 (2008)

§ 211. Robbery defined

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

HISTORY:

Enacted 1872.

NOTES:

Historical Derivation:

(a) Crimes and Punishment Act § 59 (Stats 1850 ch 99 § 59 p 235), as amended by Stats 1851 ch 95 § 1 p 406, Stats 1856 ch 139 § 6 p 220.

(b) Field's Draft NY Pen C § 280.

(c) NY Pen C § 224.

Cross References:

"Personal property": *Pen C* § 7 subd 12.

What fear may be element in robbery: *Pen C* § 212.

Train robbery: *Pen C* § 214.

Interaction of this section and carjacking section: *Pen C § 215*.

Soliciting commission of robbery: *Pen C § 653f*.

Collateral References:

10 Witkin Summary (10th ed) Parent and Child § 774.

Cal Jur 3d (Rev) Assault and Other Wilful Torts § 331, Criminal Law §§ 477 et seq., Government Tort Liability § 21.

1 Witkin Cal. Evidence (4th ed) Circumstantial Evidence § 33.

California Judges Benchguide S216: Mandatory criminal jury instructions. Cal Center Jud Edu & Research No. 11.

Cal Criminal Defense Prac., ch 142, "Crimes Against the Person".

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1203, Kidnapping: For Robbery, Rape, or Other Sex Offenses

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1600, Robbery

Forms:

Suggested form is set out below, following notes of decisions.

Law Review Articles:

Retaking of property lost in illegal gambling game as robbery. *27 CLR 211*.

Separate nature of "kidnapping for purposes of robbery" and robbery. *24 SCLR 310*.

Annotations:

Admissibility, in robbery prosecution, of evidence of other robberies. 42 ALR2d 854.

Robbery or assault to commit robbery as affected by intent to collect or secure debt or claim. 46 ALR2d 1227.

Gambling or lottery paraphernalia as subject of larceny, burglary, or robbery. 51 ALR2d 1396.

Effect of failure or refusal of court, in robbery prosecution, to instruct on assault and battery. 58 ALR2d 808.

Validity and construction of Federal Bank Robbery Act. 59 ALR2d 946.

Stolen money or property as subject of larceny or robbery. 89 ALR2d 1435.

Evidence of acquisition or possession of money, source of which is not traced, as admissible against defendant in criminal case. 91 ALR2d 1046.

Prosecution for robbery of one person as bar to subsequent prosecution for robbery committed of another person at the same time. 51 ALR3d 693.

What amounts to "exclusive" possession of stolen goods to support inference of burglary or other felonious taking. 51 ALR3d 727.

Retaking of money at gambling as robbery or larceny. 77 ALR3d 1363.

Robbery by means of toy or simulated gun or pistol. 81 ALR3d 1006.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime. 1 ALR4th 481.

"Intimidation" as element of bank robbery under *18 U.S.C.A. § 2113(a)*. 163 ALR Fed 225.

Hierarchy Notes:

Pt. 1, Tit. 8, Ch. 4 Note

NOTES OF DECISIONS 1. In General 2. Definitions and Distinctions 3. -Included Offenses 4. Completion of Robbery 5. Motive, Knowledge, and Intent 6. Aiding and Abetting 7. Possession, Ownership, and Value of Property 8. Force or Fear 9. Asportation 9.5. Jury Selection 9.8. Instructions 10. Evidence 10.5. Prosecutorial Misconduct 11. Judgment and Sentencing 12. Double Jeopardy; Multiple Prosecution 13. Felony Murder

Editor's Notes

(See also Cal Digest of Official Reports 3d Series, Robbery.)

1. In General

A conspiracy to compel a third person to sign a check and then to take it from him by force is a conspiracy to rob. *People v. Richards (1885) 67 Cal 412, 7 P 828, 1885 Cal LEXIS 658.*

In an information for robbery an averment of value of the property taken is immaterial. *People v. Stevens (1903) 141 Cal 488, 75 P 62, 1903 Cal LEXIS 544.*

Robbery does not depend upon the value of the property taken. *People v. Hewitt (1926, Cal App) 78 Cal App 426, 248 P 1021, 1926 Cal App LEXIS 194; People v. Thomas (1941, Cal App) 45 Cal App 2d 128, 113 P2d 706, 1941 Cal App LEXIS 899; People v. Simmons (1946) 28 Cal 2d 699, 172 P2d 18, 1946 Cal LEXIS 255; People v. Leyvas (1946, Cal App) 73 Cal App 2d 863, 167 P2d 770, 1946 Cal App LEXIS 916.*

One charged with robbery in words of enactment describing offense is charged with taking property from another's person as defined by subd 2, and can be properly convicted when evidence supports charge. *People v. Chandler (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.*

There was a multiple prosecution within the meaning of, and prohibited by, *Pen Code, § 654* where: petitioner

robbed a gas station and was arrested by police officers several hours later; a complaint was filed charging him with armed robbery in violation of *Pen Code*, § 211 and for possession of a concealable firearm by an ex-felon in violation of *Pen Code*, § 12021; the prosecution at the trial dismissed the § 211 count in the information; petitioner pleaded guilty to the other charge and was sentenced to county jail; in a second prosecution arising out of the same arrest petitioner was found guilty of a violation of *Pen Code*, § 211. Though the record indicates that petitioner was in possession of the weapon at the time of the robbery and at the time of the arrest, thus allowing respondent to argue the two offenses were separate and distinct acts, where the record also indicates a single course of conduct the offenses are indivisible for purposes of the multiple provisions of *Pen Code*, § 654. *In re Grossi* (1967, *Cal App 2d Dist*) 248 *Cal App 2d* 315, 56 *Cal Rptr* 375, 1967 *Cal App LEXIS* 1635.

Defendants' conviction for escape from prison was not a bar under *Pen Code*, § 654 (prohibiting double punishment or prosecution) to prosecution on charges of robbery (*Pen Code*, § 211), burglary (*Pen Code*, § 459), and auto theft (*Veh Code*, § 10851), where those crimes took place over 48 hours after the escape and 20 miles from the prison, the authorities acted promptly in charging defendants as their offenses became known, there was no harassment involved, and the absence of witnesses prevented prosecution of all charges simultaneously. *People v. Schmittspan* (1967, *Cal App 1st Dist*) 250 *Cal App 2d* 951, 59 *Cal Rptr* 93, 1967 *Cal App LEXIS* 2187.

Where defendant murdered one man in a grocery store and robbed another at the point of a gun, there were two acts—the act of murder and the act of robbery constituted separate acts of violence against separate persons and constituted separate crimes, for each of which sentence was properly imposed. *People v. Clark* (1967, *Cal App 2d Dist*) 252 *Cal App 2d* 479, 60 *Cal Rptr* 569, 1967 *Cal App LEXIS* 1525, cert den (1968) 392 *US* 944, 20 *L Ed 2d* 1407, 88 *S Ct* 2301, 1968 *US LEXIS* 1328.

Robbery requires the felonious taking of personal property from a person or immediate presence of a person, and an attempted robbery was not established in an information where no person was identified as being present and in possession of a safe on the date on which the attempted robbery was charged. *Laurel v. Superior Court of Los Angeles County* (1967, *Cal App 2d Dist*) 255 *Cal App 2d* 292, 63 *Cal Rptr* 114, 1967 *Cal App LEXIS* 1274.

In the absence of a showing that defendant had already been convicted or acquitted in a federal court for the offense of robbery involving funds insured by the Federal Deposit Insurance Corporation, the state of California may prosecute and punish the offense, federal law not rendering invalid any state prosecution for a robbery involving such funds. *People v. Jackson* (1967, *Cal App 2d Dist*) 255 *Cal App 2d* 629, 63 *Cal Rptr* 301, 1967 *Cal App LEXIS* 1321.

The forcible taking of a wallet from the person of a victim against his will constituted a robbery even though it was promptly handed back. *People v. Pruitt* (1969, *Cal App 2d Dist*) 269 *Cal App 2d* 501, 75 *Cal Rptr* 125, 1969 *Cal App LEXIS* 1669.

Double jeopardy (*Pen Code*, § 1023) has reference to multiple prosecutions for the same offense precluded by *Pen Code*, § 654, and thus there was no double jeopardy where a defendant was prosecuted on two counts of robbery in a single prosecution. *People v. Wheeler* (1969, *Cal App 2d Dist*) 271 *Cal App 2d* 205, 76 *Cal Rptr* 842, 1969 *Cal App LEXIS* 2371.

While mere possession of stolen property standing alone is insufficient evidence of the possessor's guilt of robbery, its quality is of such high degree that any slight corroborative proof of other inculpatory circumstances would warrant a conviction. *People v. Blair* (1969, *Cal App 4th Dist*) 2 *Cal App 3d* 249, 82 *Cal Rptr* 673, 1969 *Cal App LEXIS* 1408.

In a robbery prosecution, defendant was improperly convicted of two counts of robbery on the basis of his taking of a pickup truck at gun point from its two occupants. Both victims were in possession of the same vehicle and were victims of a single taking, and defendant therefore could be convicted of robbery as to only one of them, and of assault with a deadly weapon as to the other. *People v. Childs* (1980, *Cal App 1st Dist*) 112 *Cal App 3d* 374, 169 *Cal Rptr* 183, 1980 *Cal App LEXIS* 2461, overruled *People v. Ramos* (1982) 30 *Cal 3d* 553, 180 *Cal Rptr* 266, 639 *P2d* 908, 1982 *Cal*

LEXIS 141, overruled *People v. Hernandez* (1981) 30 Cal 3d 462, 179 Cal Rptr 239, 637 P2d 706, 1981 Cal LEXIS 203.

In enacting the carjacking statute (*Penal C* § 215), the Legislature made clear its intention to permit multiple convictions of carjacking and robbery based on the same conduct. Indeed, § 215(c) states that § 215 shall not be construed to supersede or affect § 211 (robbery); a person may be charged with violation of § 215 and § 211, but no defendant may be punished under both sections for the same act that constitutes a violation of each section. Although § 215(c) does not explicitly address whether a defendant may be convicted of both carjacking and robbery based on the same conduct (only that he or she may be charged with both offenses), it does state that no defendant may be punished for both carjacking and robbery based on the same conduct. There would be no need for the Legislature to preclude multiple punishment for carjacking and robbery unless a defendant could be convicted of both offenses based on the same conduct. *People v. Ortega* (1998) 19 Cal 4th 686, 80 Cal Rptr 2d 489, 968 P2d 48, 1998 Cal LEXIS 7629.

Where defendant was convicted of second degree robbery and had personally used a firearm in the commission of the offense, the 10-year enhancement of defendant's sentence was permissible; although the trial court did not expressly find that the personal use of a firearm allegation was true, it impliedly did so because it imposed the 10-year prison term for the enhancement. *People v. Chambers* (2002, Cal App 2d Dist) 104 Cal App 4th 1047, 128 Cal Rptr 2d 679, 2002 Cal App LEXIS 5229, review denied (2003, Cal) 2003 Cal LEXIS 1827.

Death penalty was not a disproportionate penalty for defendant's conviction of first degree murder, burglary, and robbery in violation of *Cal. Penal Code* §§ 187, 459, 211 because (1) defendant formulated a plan to commit robbery and murder, (2) defendant killed the victim at close range, (3), the murder was premeditated and deliberate, and (4) defendant had possessed a shank in defendant's jail cell, which created doubt as to defendant's suitability for life imprisonment. *People v. Nakahara* (2003) 30 Cal 4th 705, 134 Cal Rptr 2d 223, 68 P3d 1190, 2003 Cal LEXIS 3354.

Purpose of enacting the carjacking statute, *Pen C* § 215(a), was to address perceived difficulties with obtaining convictions under the robbery statute, *Pen C* § 211. *People v. Lopez* (2003) 31 Cal 4th 1051, 6 Cal Rptr 3d 432, 79 P3d 548, 2003 Cal LEXIS 9112.

In civil rights action under 42 USCS § 1983 arising out of arrest of appellant's brother for alleged robbery, the arrest in question was supported by probable cause, where the brother forcibly took disputed land title documents from his sister, the family was angry and upset, and there were language barriers between the family members and the arresting officer when the officer responded to a domestic disturbance call. *Peng v. Hu* (2003, 9th Cir Cal) 335 F3d 970, 2003 US App LEXIS 13837, cert den (2004) 540 US 1218, 158 L Ed 2d 153, 124 S Ct 1506, 2004 US LEXIS 1653.

Court affirmed defendant's robbery conviction and held that it was not a late discovery disclosure jury instruction that made defendant's alibi defense implausible, but its inexplicable materialization a few weeks before trial; furthermore, the court found that (1) the instruction did not operate as a mandatory presumption of culpability per se under *Ev C* § 600 because it did not require jurors to find any fact if the prosecution proved other facts, nor did it direct a finding on defendant's alibi defense, (2) the jurors were fully instructed on the prosecution's burden of proof, (3) the instruction was not an improper judicial sanction on defendant's right to remain silent because (a) defendant never proposed clarifying language for the instruction, (b) the instruction did not address interrogation and did not suggest that defendant had a responsibility to respond to interrogation, and (c) the instruction could not have punished defendant for asserting the right to remain silent because defendant did not assert that right, and (4) the instruction's use was harmless because it was merely a vehicle for credibility challenges that would have been made even in the absence of the instruction. *People v. Saucedo* (2004, Cal App 2d Dist) 121 Cal App 4th 937, 17 Cal Rptr 3d 692, 2004 Cal App LEXIS 1357, review denied (2004) 2004 Cal. LEXIS 10286.

Defendant's claim that the trial court erred in denying defendant's motion for self-representation was cognizable on appeal, even from defendant's guilty plea to burglary, murder, kidnapping, robbery, and rape; however, the court found that defendant did not make an unequivocal request for self-representation, but instead only requested information, and

thus the court did not find error. *People v. Marlow* (2004) 34 Cal 4th 131, 17 Cal Rptr 3d 825, 96 P3d 126, 2004 Cal LEXIS 7591, cert den (2005) 544 U.S. 953, 125 S. Ct. 1706, 161 L. Ed. 2d 532, 2005 U.S. LEXIS 2860, 73 U.S.L.W. 3569.

2. Definitions and Distinctions

Robbery is not confined to any fixed locus but is frequently spread over a considerable distance and varying periods of time. *People v. Kristy* (1935) 4 Cal 2d 504, 50 P2d 798, 1935 Cal LEXIS 575, cert den (1936) 297 US 712, 56 S Ct 593, 80 L Ed 998, 1936 US LEXIS 630.

One who assaults another under the circumstances set forth in this section with intent to commit the consummated offense is guilty of an assault with attempt to commit robbery. *People v. Duane* (1942) 21 Cal 2d 71, 130 P2d 123, 1942 Cal LEXIS 427.

The jury is sufficiently informed of the nature and element of the charge against the defendant, where the court instructs the jury as to the definition of robbery as set forth in this section. *People v. Perhab* (1949, Cal App) 92 Cal App 2d 430, 206 P2d 1133, 1949 Cal App LEXIS 1710.

Robbery is combination of assault and larceny. *People v. Blue* (1958, Cal App 2d Dist) 161 Cal App 2d 1, 326 P2d 183, 1958 Cal App LEXIS 1694, overruled *People v. Tideman* (1962) 57 Cal 2d 574, 21 Cal Rptr 207, 370 P2d 1007, 1962 Cal LEXIS 202.

Robbery is committed by one of two alternative acts-felonious taking of personal property in another's possession from his "immediate presence" or "from his person." *People v. Chandler* (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.

Though robbery consisting solely of taking property from person's immediate presence may not include all elements of grand theft from person, it appears from statute that robbery consisting of felonious taking of personal property in another's possession from his person includes all elements of offense of taking property from person of another. *People v. Chandler* (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.

Robbery is but larceny aggravated by the use of force or fear to accomplish the taking of property from the possessor's person or presence, and the felonious intent requisite to robbery is the same intent common to those offenses that, like larceny, are grouped in the Penal Code designation of theft. *People v. Butler* (1967) 65 Cal 2d 569, 55 Cal Rptr 511, 421 P2d 703, 1967 Cal LEXIS 366, overruled in part as stated *People v. Demetrulias* (2006) 39 Cal 4th 1, 45 Cal Rptr 3d 407, 137 P3d 229, 2006 Cal LEXIS 8352, overruled in part *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782, overruled in part as stated *Jones v. McGrath* (2007, ED Cal) 2007 US Dist LEXIS 65428.

Robbery is the felonious taking of personal property in the possession of another from his person or immediate presence and against his will, accomplished by force or fear (*Pen Code*, § 211). *People v. Nichols* (1967, Cal App 5th Dist) 255 Cal App 2d 217, 62 Cal Rptr 854, 1967 Cal App LEXIS 1263.

Robbery includes the robbers' attempt to escape with the loot, which is just as important in the commission of the crime as gaining possession of the money in the first instance. *People v. Hawkins* (1967, Cal App 2d Dist) 257 Cal App 2d 408, 64 Cal Rptr 726, 1967 Cal App LEXIS 1797.

In *Pen Code*, § 211, defining robbery as the "felonious taking of personal property in the possession of another, from his person or immediate presence ...," "presence" depends upon the circumstances of each case and implies an area with no metes and bounds, and "immediate" may be construed as being near at hand, or not far apart or distant. *People v. Risenhoover* (1968) 70 Cal 2d 39, 73 Cal Rptr 533, 447 P2d 925, 1968 Cal LEXIS 217, cert den (1969) 396 US 857, 24 L Ed 2d 108, 90 S Ct 123, 1969 US LEXIS 1055.

Robbery is not confined to a fixed locus, but is frequently spread over considerable distance and varying periods of time, and the escape of the robbers with the loot, by means of arms, necessarily is as important in the execution of the plan as gaining possession of the property. *People v. Jackson* (1969, Cal App 2d Dist) 273 Cal App 2d 248, 78 Cal Rptr 20, 1969 Cal App LEXIS 2162.

Robbery does not necessarily entail manual possession of the loot by the robber. It is sufficient if he acquires dominion over it, though the distance of movement is very small and the property is moved by a person acting under the robber's control, including the victim. *People v. Martinez* (1969, Cal App 3d Dist) 274 Cal App 2d 170, 79 Cal Rptr 18, 1969 Cal App LEXIS 2036.

The elements necessary to sustain a conviction of conspiracy to commit robbery are not identical with those involved in an attempted robbery, a conspiracy requiring proof of some type of criminal agreement, which is not required in either robbery or attempted robbery. *People v. Calpito* (1970, Cal App 4th Dist) 9 Cal App 3d 212, 88 Cal Rptr 64, 1970 Cal App LEXIS 1939.

The act of robbery can be said to have occurred in the victim's presence as long as the victim perceived any overt act connected with the commission of the offense. Thus, there was substantial evidence to support defendant's conviction of robbery of a five dollar bill, where the victim testified that defendant removed her pants and instructed his brother to look through the pockets during which she was forced to engage in sexual intercourse with defendant, that she was frightened by defendant's threats throughout the entire encounter, and that defendant said, "We don't fuck for nothing," in response to her demand for the return of the money, and where the arresting police officer testified that he found a five dollar bill when he searched defendant. *People v. Wiley* (1976, Cal App 1st Dist) 57 Cal App 3d 149, 129 Cal Rptr 13, 1976 Cal App LEXIS 1439, overruled *People v. Hayes* (1990) 52 Cal 3d 577, 276 Cal Rptr 874, 802 P2d 376, 1990 Cal LEXIS 5661, overruled *People v. Wheeler* (1978) 22 Cal 3d 258, 148 Cal Rptr 890, 583 P2d 748, 1978 Cal LEXIS 287.

The crime of extortion (*Pen C § 518*) is distinguished from the crime of robbery (*Pen C § 211*) by the fact that in committing extortion defendant takes property with the victim's consent, but in committing robbery defendant takes property against the victim's will. *In re Stanley E.* (1978, Cal App 1st Dist) 81 Cal App 3d 415, 146 Cal Rptr 232, 1978 Cal App LEXIS 1589.

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will accomplished by means of force or fear. Thus, in a prosecution for robbery (*Pen C § 211*) while armed (*Pen C § 12022*, subd. (a)), substantial evidence supported the jury's finding of the elements of "immediate presence" and "possession," where it showed that defendant displayed a pistol to the victims in their house, ordered them to lie on the floor, bound them, entered their son's bedroom, and left the house with personal property belonging to their son removed from his bedroom. Although there was no evidence that the victims physically possessed the items taken, the victims owned and lived in the residence. *People v. Gordon* (1982, Cal App 4th Dist) 136 Cal App 3d 519, 186 Cal Rptr 373, 1982 Cal App LEXIS 2036.

The taking of property from the robbery victim's immediate presence and possession is not necessarily completed the moment the thief places his hands upon the property. The offense of robbery also includes the element of asportation and appropriation of another's property. "Presence" depends on the circumstances of each case; it implies an area with no metes and bounds. "Immediate" has been defined as being near at hand, not far apart or distant. Thus, the act of robbery is deemed to have occurred in the victim's presence as long as the victim perceived any overt act connected with the commission of the offense. *People v. Miramon* (1983, Cal App 2d Dist) 140 Cal App 3d 118, 189 Cal Rptr 432, 1983 Cal App LEXIS 1421, overruled *People v. Hayes* (1990) 52 Cal 3d 577, 276 Cal Rptr 874, 802 P2d 376, 1990 Cal LEXIS 5661, superseded by statute as stated in (1988, Cal App 3d Dist) 205 Cal App 3d 335, 252 Cal Rptr 378, 1988 Cal App LEXIS 982.

In a prosecution arising out of a robbery of a drugstore, evidence of the bookkeeper's fear for her own safety or that

of her company's was sufficient to sustain a conviction, since robbery is but larceny aggravated by the use of force or fear to accomplish the taking of property from the person or presence of the possessor (*Pen C § 211*). There is no need to prove both force and fear. *People v. Hays (1983, Cal App 4th Dist) 147 Cal App 3d 534, 195 Cal Rptr 252, 1983 Cal App LEXIS 2217*.

Defendant was properly convicted of robbing a drugstore (*Pen C § 211*), where there was more than substantial evidence to convict a reasonable trier of fact beyond a reasonable doubt that defendant was the person who descended through the roof into the bookkeeper's immediate presence, that he was armed with a rifle, that his purpose was robbery, and that money from a safe was carried away. This showing of force was sufficient to cause the intended victim to flee in fear, although such fact did not mean that the money was not taken from the bookkeeper's immediate presence, since she was constructively present during the taking. The term "immediate presence" is to be liberally construed to include any and all sensory perceptions. The actual corporeal presence of the victim is not required. *People v. Hays (1983, Cal App 4th Dist) 147 Cal App 3d 534, 195 Cal Rptr 252, 1983 Cal App LEXIS 2217*.

The possession or use of a weapon is not an element of the crime of robbery (*Pen C § 211*). Thus, a defendant who was armed with a firearm during the commission of a robbery, but who did not use it, was subject to a *Pen C § 12022*, subd. (a), sentence enhancement (providing additional term for armed felonies unless being armed is an element of the offense). Moreover, pursuant to the authority of *Pen C § 1181*, subd. 6 (providing for modification of finding or judgment without new trial when evidence supports a lesser degree or finding but is insufficient to support a finding as to a greater degree of guilt), the reviewing court was entitled to modify the judgment to impose such enhancement, where the evidence, while not supporting the erroneous finding that defendant had used a weapon in the commission of the offense, overwhelmingly proved that he was armed with a firearm. *People v. Hays (1983, Cal App 4th Dist) 147 Cal App 3d 534, 195 Cal Rptr 252, 1983 Cal App LEXIS 2217*.

In order to establish that personal property was taken from a victim's immediate presence, as required by the robbery statute (*Pen C § 211*), the victim need not perceive the actual taking as long as he perceives any overt act in the commission of the robbery and is subjected to the requisite force or fear. Accordingly, property taken from a bedroom was taken from the victim's immediate presence, even though he was in the living room at the time, where the robbers could not have taken the property without contending with him. *People v. Martinez (1984, Cal App 2d Dist) 150 Cal App 3d 579, 198 Cal Rptr 565, 1984 Cal App LEXIS 1482*, overruled *People v. Hayes (1990) 52 Cal 3d 577, 276 Cal Rptr 874, 802 P2d 376, 1990 Cal LEXIS 5661*.

The crime of extortion is related to and sometimes difficult to distinguish from the crime of robbery. Both crimes have their roots in the common law crime of larceny. Both crimes share the element of an acquisition by means of force or fear. One distinction between robbery and extortion is that with robbery, property is taken from another by force or fear against the victim's will, while with extortion, property is taken from another by force or fear with the victim's consent. The two crimes, however, have other distinctions. Robbery requires a "felonious taking," which means a specific intent to permanently deprive the victim of the property. Robbery also requires the property to be taken from the victim's "person or immediate presence" (*Pen C § 211*). Extortion does not require proof of either of these elements. Extortion does, however, require the specific intent of inducing the victim to consent to part with his or her property. *People v. Torres (1995, Cal App 2d Dist) 33 Cal App 4th 37, 39 Cal Rptr 2d 103, 1995 Cal App LEXIS 233*, review denied (1995, Cal) *1995 Cal LEXIS 3925*.

A jury properly convicted the defendant on three counts of robbery on the same victim, where the the defendant first robbed the victim in her house, then twice visited ATM machines with the victim to remove money from bank accounts. The conduct described and proscribed by *Pen C § 211* is a forcible taking of property from a person. This is also a "single act." It would be an irrational legal fiction to pretend that the three separate forcible takings from the victim at different times and places were but a single robbery. *People v. Van Nguyen (1998, Cal App 6th Dist) 65 Cal App 4th 222, 76 Cal Rptr 2d 402, 1998 Cal App LEXIS 585*, review gr, republished *Supreme Court Minute 10-14-1998 (1998, Cal) 79 Cal Rptr 2d 71, 964 P2d 1276, 1998 Cal LEXIS 6642*, aff'd, superseded (2000) *22 Cal 4th 872, 95 Cal Rptr 2d 178, 997 P2d 493, 2000 Cal LEXIS 3715*.

The record did not support defendant's conviction of one count of second-degree robbery and one count of grand theft where defendant had placed more expensive merchandise in a box for cheaper merchandise, paid the lower price, was briefly detained on leaving the store by a store employee (who took possession of the merchandise briefly before returning it to defendant), and then assaulted a store employee in the store parking lot when the employee tried to detain defendant. All these acts were part of a single crime, which changed from grand larceny to robbery due to the incident in the parking lot. *People v. La Stelley* (1999, Cal App 2d Dist) 72 Cal App 4th 1396, 85 Cal Rptr 2d 835, 1999 Cal App LEXIS 597, review denied (1999, Cal) 1999 Cal LEXIS 6488.

Robbery is defined as the taking of personal property from another's person, or in his immediate presence, against his will, and accomplished by force or fear under *Pen C § 211*; theft is a lesser included offense of robbery that does not include the additional element of force or fear. *People v. Reeves* (2001, Cal App 1st Dist) 91 Cal App 4th 14, 109 Cal Rptr 2d 728, 2001 Cal App LEXIS 589, rehearing denied (2001, Cal App 1st Dist) 2001 Cal App LEXIS 682, review denied (2001, Cal) 2001 Cal LEXIS 7856, sup'd by statute as stated in questionable precedent *People v. Oates* (2002, Cal App 4th Dist) 97 Cal App 4th 1172, 119 Cal Rptr 2d 140, 2002 Cal App LEXIS 4019.

Term "felonious taking" is used in the carjacking statute, *Pen C § 215(a)* and the robbery statute, *Pen C § 211*. The taking element of robbery includes asportation or carrying away the loot and the same applies to the carjacking statute. *People v. Lopez* (2003) 31 Cal 4th 1051, 6 Cal Rptr 3d 432, 79 P3d 548, 2003 Cal LEXIS 9112.

There are significant differences between the crimes of carjacking, *Pen C § 215(a)*, and robbery, *Pen C § 211*: 1) carjacking requires either an intent to permanently or temporarily deprive, while robbery requires an intent to permanently deprive; 2) robbery requires a taking from the person or immediate presence of the possessor, while carjacking was expanded to include the taking from the person or immediate presence of either the possessor or any passenger; 3) robbery can involve any type of personal property, while carjacking involves only vehicles. Nevertheless, the carjacking statute's language and legislative history demonstrate that carjacking is a direct offshoot of robbery and that the Legislature modeled the carjacking statute on the robbery statute, including the use of the term "felonious taking." *People v. Lopez* (2003) 31 Cal 4th 1051, 6 Cal Rptr 3d 432, 79 P3d 548, 2003 Cal LEXIS 9112.

Petitioner was not entitled to habeas relief on his claim that the Three Strikes law was improperly applied to his sentencing, as the State pled and proved that petitioner previously had committed two prior felonies, both in Illinois, that qualified as "serious felonies" in California for sentencing purposes; in particular, his conviction in Illinois for robbery qualified as a predicate "serious felony" under California law, as both states' laws either required that a permanent intent to deprive be prove or presumed that intent. *Hughes v. Galaza* (2004, ND Cal) 2004 US Dist LEXIS 2975, aff'd (2005, 9th Cir Cal) 129 Fed Appx 340, 2005 US App LEXIS 3990.

Inmate was improperly granted habeas relief on a claim that the state court's interpretation of the "immediate presence" element of robbery under *Pen C § 211* and the jury instruction setting forth that interpretation violated due process where the state courts' judicial precedents sufficiently demonstrated that the term included situations in which the taking was outside the victim's sensory perception and as a result, the state court's construction and jury instruction was not unforeseen or unexpected. *Webster v. Woodford* (2004, 9th Cir Cal) 369 F3d 1062, 2004 US App LEXIS 10224, cert den (2004) 543 US 1007, 160 L Ed 2, 125 S Ct 626, 2004 US LEXIS 7804.

Conviction on second robbery count was reversed where the assailants took the first victim's property from the first victim's room, where the first victim was present but the second victim was not. Although the assailants confronted the second victim as they were leaving the first victim's room, the second victim was not aware that the assailants had taken the first victim's property, and he made no attempt to reacquire the property. *People v. George* (2004, Cal App 4th Dist) 122 Cal App 4th 419, 18 Cal Rptr 3d 651, 2004 Cal App LEXIS 1532, review gr, depublished (2004) 22 Cal. Rptr. 3d 515, 102 P.3d 902, 2004 Cal. LEXIS 11903, 2004 Cal. Daily Op. Service 11078, 2004 D.A.R. 14919, transferred (2005, Cal) 34 Cal Rptr 3d 193, 119 P3d 959, 2005 Cal LEXIS 10015.

In a prosecution of defendant for second degree robbery, the trial court's failure to give a requested instruction on

the elements of the uncharged offense of receiving stolen property, which was not a defense to robbery, did not impinge on defendant's right to present a defense. It simply reflected the fact that the prosecutor chose not to charge defendant with receiving stolen property. *People v. Valentine* (2006, Cal App 2d Dist) 143 Cal App 4th 1383, 49 Cal Rptr 3d 948, 2006 Cal App LEXIS 1615, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 1906, review denied (2007, Cal) 2007 Cal LEXIS 617.

Failure of *Pen C § 211* to define bank robbery does not render the statute vague because the language of the statute is sufficiently clear and settled to provide notice of the proscribed conduct and enable those charged with its violation to properly prepare a defense. Accordingly, in a case in which defendant was not charged in the information with robbery of banks, but rather with robbery of persons who happened to be bank employees, his challenge of to the constitutionality of § 211 failed. *People v. Sullivan* (2007, Cal App 1st Dist) 151 Cal App 4th 524, 59 Cal Rptr 3d 876, 2007 Cal App LEXIS 860, modified, rehearing denied (2007, Cal App 1st Dist) 2007 Cal App LEXIS 1021, review denied (2007, Cal) 2007 Cal LEXIS 9575.

Carjacking was not committed within the meaning of *Pen C § 215* because the victim was not within any physical proximity to the vehicle, the keys she relinquished were not her own, and there was no evidence that she had ever been or would be a driver of or passenger in the vehicle. To find that defendant's actions amounted to a carjacking would have been to disregard the language of § 215 cautioning that the statute not be construed to supersede the offense of robbery under *Pen C § 211*. *People v. Coleman* (2007, Cal App 2d Dist) 146 Cal App 4th 1363, 53 Cal Rptr 3d 505, 2007 Cal App LEXIS 77, review denied (2007, Cal) 2007 Cal LEXIS 4700.

3. -Included Offenses

The offense of robbery includes larceny and under an indictment for the former a defendant may be found guilty of larceny; and upon an information charging grand larceny, petit larceny may be found. *People v. Jones* (1878) 53 Cal 58, 1878 Cal LEXIS 70; *People v. Nelson* (1880) 56 Cal 77, 1880 Cal LEXIS 354; *People v. Covington* (1934) 1 Cal 2d 316, 34 P2d 1019, 1934 Cal LEXIS 371.

The court should of its own motion instruct the jury that the offense of grand larceny is included in robbery, where the evidence justifies it. *People v. Church* (1897) 116 Cal 300, 48 P 125, 1897 Cal LEXIS 543.

The crime of robbery does not include as a lesser offense the misdemeanor prohibited by § 499b. *People v. O'Neal* (1934, Cal App) 2 Cal App 2d 551, 38 P2d 430, 1934 Cal App LEXIS 1461, cert den (1935) 295 US 731, 55 S Ct 646, 79 L Ed 1680, 1935 US LEXIS 392, overruled *People v. Marshall* (1957) 48 Cal 2d 394, 309 P2d 456, 1957 Cal LEXIS 193.

Crime of robbery or attempted robbery does not include crime of violating former Veh C § 503, and on trial of defendant charged with both, jury finding him guilty of one is not thereby precluded from finding him guilty of other also. *People v. Pearson* (1940, Cal App) 41 Cal App 2d 614, 107 P2d 463, 1940 Cal App LEXIS 288, cert den (1941) 313 US 587, 61 S Ct 1119, 85 L Ed 1542, 1941 US LEXIS 560, overruled *In re Wright* (1967) 65 Cal 2d 650, 56 Cal Rptr 110, 422 P2d 998, 1967 Cal LEXIS 375.

Offense of assault with intent to commit robbery is necessarily included in offense of robbery. *People v. Blue* (1958, Cal App 2d Dist) 161 Cal App 2d 1, 326 P2d 183, 1958 Cal App LEXIS 1694, overruled *People v. Tideman* (1962) 57 Cal 2d 574, 21 Cal Rptr 207, 370 P2d 1007, 1962 Cal LEXIS 202.

Statutory definition of robbery is not exclusive measure of included offenses; lesser offense of grand theft from person is necessarily included when specifically charged in accusatory pleading. *People v. Chandler* (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.

A charge of robbery by force or fear may include all the elements of grand theft; if the evidence is clear that the defendant is guilty of the greater offense or nothing, the instruction is both unnecessary and erroneous; and in a robbery

prosecution an instruction on the lesser included offense of grand theft would have been error where the evidence called for a finding of guilt or innocence of robbery, without intermediate possibilities. *People v. Crawford* (1968, Cal App 3d Dist) 259 Cal App 2d 874, 66 Cal Rptr 527, 1968 Cal App LEXIS 2033.

An attempt to commit robbery is for all intents and purposes treated as a lesser included offense in the crime of robbery; where there is evidence which would absolve the defendant from guilt of the greater offense, but would support a finding of guilt of the lesser offense, an instruction on the lesser offense is mandatory and must be given sua sponte. *People v. Calpito* (1970, Cal App 4th Dist) 9 Cal App 3d 212, 88 Cal Rptr 64, 1970 Cal App LEXIS 1939.

Assault with a deadly weapon is a lesser offense necessarily included within the crime of robbery in the first degree. Hence, where robbery in the first degree had been charged and proven against a defendant, a conviction of assault with a deadly weapon is proper. *People v. Guerin* (1972, Cal App 2d Dist) 22 Cal App 3d 775, 99 Cal Rptr 573, 1972 Cal App LEXIS 1295, cert den (1972) 409 US 859, 34 L Ed 2d 105, 93 S Ct 145, 1972 US LEXIS 1443, overruled *People v. Ramos* (1982) 30 Cal 3d 553, 180 Cal Rptr 266, 639 P2d 908, 1982 Cal LEXIS 141.

Even though a special statute defines a theft of a particular kind of property as a felony, such a theft remains a lesser included offense so as to bar a double conviction if accomplished by means of a robbery. Consequently, the mere fact robbery can be committed without stealing a firearm does not prevent application of the rule prohibiting conviction for both the greater and a lesser included offense to a prosecution under *Pen C* §§ 211, and 487, subd. 3, for robbery and grand theft of a firearm. *People v. Sutton* (1973, Cal App 4th Dist) 35 Cal App 3d 264, 110 Cal Rptr 635, 1973 Cal App LEXIS 707.

In a robbery prosecution, the trial court erred in failing to instruct the jury, sua sponte, that it could find defendant guilty of the lesser included offense of theft, where, according to the defense evidence, defendant and an accomplice had taken the victim's money by means of a confidence game known as the Jamaican switch, rather than at gunpoint as testified to by the victim. *People v. Miller* (1974, Cal App 2d Dist) 43 Cal App 3d 77, 117 Cal Rptr 491, 1974 Cal App LEXIS 1300.

On appeal from a conviction of robbery and other offenses, the record did not establish that defendant's conviction of assault by means of force likely to produce great bodily injury was of an offense lesser than, and necessarily included in, the robbery charge with its allegation of accompanying infliction of great bodily injury, so as to preclude his conviction of both offenses, where there was evidence that the victim was struck by a salami after defendant and his companion had completed their objective of robbery. Considering that the victim was an 89-year-old woman, already badly beaten and with a broken shoulder, and presuming, in the absence of any showing to the contrary, that the striking was with a closely packaged club-shaped salami, it could not be said, as a matter of law, that the blow was not by means of force likely to produce great bodily injury. *People v. Hopkins* (1975, Cal App 1st Dist) 44 Cal App 3d 669, 119 Cal Rptr 61, 1975 Cal App LEXIS 965.

A defendant may be charged with robbery as well as receiving stolen property. As a practical matter, the prohibition against multiple prosecution contained in *Pen C* § 654, forces prosecutors to charge defendants with both crimes if the same circumstantial evidence permits a trier of fact to decide which crime, if any, was committed. *People v. Donnell* (1976, Cal App 2d Dist) 65 Cal App 3d 227, 135 Cal Rptr 217, 1976 Cal App LEXIS 2205.

The offense of extortion (*Pen C* § 518) is not a necessarily included offense within the offense of robbery (*Pen C* § 211). The offense of robbery may be committed without the consent of the victim, which consent is a necessary legal ingredient of the corpus delicti of the offense of extortion. *In re Stanley E.* (1978, Cal App 1st Dist) 81 Cal App 3d 415, 146 Cal Rptr 232, 1978 Cal App LEXIS 1589.

In a prosecution for robbery and other offenses, the trial court erred in failing to instruct the jury, sua sponte, on assault with a deadly weapon as a lesser included offense of robbery, where the robbery count contained an allegation of personal use of a firearm in violation of *Pen C* § 12022.5, and where defendant relied solely on the defense of

diminished capacity, there being no question as to his commission of the acts charged in the information. Though assault with a deadly weapon was not, as a matter of law, a lesser included offense of robbery, former Pen C § 969d (see now Pen C § 12022.5), made a firearm use allegation under Pen C § 12022.5, a part of the substantive criminal charge pleaded. Thus, the allegation of firearm use became a part of the robbery charge, and if defendant, because of diminished capacity, was not capable of forming the specific intent necessary to commit the crime of robbery, he was guilty of assault with a deadly weapon. *People v. McGreen* (1980, Cal App 1st Dist) 107 Cal App 3d 504, 166 Cal Rptr 360, 1980 Cal App LEXIS 1982, overruled *People v. Wolcott* (1983) 34 Cal 3d 92, 192 Cal Rptr 748, 665 P2d 520, 1983 Cal LEXIS 204.

In a prosecution for robbery and other offenses, the trial court erred in failing to instruct the jury, sua sponte, on assault with a deadly weapon as a lesser included offense of robbery, where the robbery count contained an allegation of personal use of a firearm in violation of Pen C § 12022.5, and where defendant relied solely on the defense of diminished capacity, there being no question as to his commission of the acts charged in the information. Though assault with a deadly weapon was not, as a matter of law, a lesser included offense of robbery, former Pen C § 969d, made a firearm use allegation under Pen C § 12022.5, a part of the substantive criminal charge pleaded. Thus, the allegation of firearm use became a part of the robbery charge, and if defendant, because of diminished capacity, was not capable of forming the specific intent necessary to commit the crime of robbery, he was guilty of assault with a deadly weapon. *People v. McGreen* (1980, Cal App 1st Dist) 107 Cal App 3d 504, 166 Cal Rptr 360, 1980 Cal App LEXIS 1982, overruled *People v. Wolcott* (1983) 34 Cal 3d 92, 192 Cal Rptr 748, 665 P2d 520, 1983 Cal LEXIS 204.

In a prosecution for robbery and other offenses, the trial court did not err in failing to instruct the jury, sua sponte, on assault with a deadly weapon as a lesser included offense under a charge of attempted robbery with an allegation of personal use of a firearm in violation of Pen C § 12022.5. Even though a gun is used in an attempt to commit a robbery, the attempt may be frustrated before there has been an assault. *People v. McGreen* (1980, Cal App 1st Dist) 107 Cal App 3d 504, 166 Cal Rptr 360, 1980 Cal App LEXIS 1982, overruled *People v. Wolcott* (1983) 34 Cal 3d 92, 192 Cal Rptr 748, 665 P2d 520, 1983 Cal LEXIS 204.

In a prosecution for robbery (Pen C § 211), with use of a handgun alleged (Pen C § 12022.5 and 1203.06, subd. (a)(1)), the trial court, having instructed the jury on diminished capacity, did not err in failing to instruct sua sponte that assault with a deadly weapon is a lesser included offense of robbery. The only evidence on the issue of defendant's purported defense of diminished capacity was a summary of a psychiatric examination of defendant. The only clinical impression that could be gleaned from the report was that defendant was a sociopath, lacking in conscience. That did not justify an instruction on diminished capacity, let alone an instruction on the lesser included offense. Thus, any error was favorable to defendant, not detrimental or prejudicial. *People v. Masters* (1982, Cal App 2d Dist) 134 Cal App 3d 509, 185 Cal Rptr 134, 1982 Cal App LEXIS 1790.

In a prosecution for two counts of robbery (Pen C § 211) while armed (Pen C § 12022, subd. (a)), possessing concentrated cannabis (Health & Saf. Code, § 11357 subd. (a)), and cultivating marijuana (Health & Saf. Code, § 11358), the trial court did not err in failing to give instructions sua sponte on lesser included offenses as to the robbery counts, where defense counsel argued that the victims mistakenly identified defendant at trial and did not present evidence or argue that defendant was present but not involved in the crime. Counsel's tactics indicated a decision not to pursue a theory which could support a conviction of a lesser included offense. Further, the trial court was under no duty to instruct the jury sua sponte concerning a theory of debt collection as a defense where defendant did not rely on that defense at trial and such an instruction would have been inconsistent with defendant's theory of the case. *People v. Gordon* (1982, Cal App 4th Dist) 136 Cal App 3d 519, 186 Cal Rptr 373, 1982 Cal App LEXIS 2036.

In a prosecution for robbery (Pen C § 211) committed against a drugstore cashier, in which the trial court failed to properly instruct the jury sua sponte on the lesser included offense of grand theft by larceny (Pen C § 487, subd. 1), the error was not harmless, notwithstanding that the jury received a written instruction on the offense of grand theft by larceny during its deliberations, and was verbally instructed on the offense of grand theft from the person (Pen C § 487, subd. 2) as a lesser included offense. The jury was never told that grand theft by larceny could be considered in terms of

a lesser included offense, and the instructions regarding grand theft from the person were only given to the jury in error, and contained entirely different elements from those of grand theft by larceny. *People v. Brew* (1991, Cal App 1st Dist) 2 Cal App 4th 99, 2 Cal Rptr 2d 851, 1991 Cal App LEXIS 1475.

In a capital homicide prosecution, the trial court erred when it gave the jury standard instructions on robbery (*Pen C* § 211) and the special circumstance of murder in the commission of a robbery (*Pen C* § 190.2, (a)(17)(i) (see now subd (a)(17)(A)), but failed to instruct the jury on any lesser included offenses of robbery. Although there was sufficient evidence to support a verdict that defendant formed the intent to steal the victim's rings before he killed her, it was not overwhelming, and there was contrary evidence that would have supported a finding that defendant was guilty only of theft rather than robbery. Thus, the trial court had a sua sponte duty to instruct the jury on theft as a lesser included offense. The error was reversible as to the robbery conviction and robbery special circumstance finding, since the trial court's instructions did not focus on the after-formed intent issue, or on whether the jury, having found defendant guilty of robbery, could find the robbery special circumstance not true. Thus, it could not be said that the jury considered the theft theory and rejected it on its merits. *People v. Kelly* (1992) 1 Cal 4th 495, 3 Cal Rptr 2d 677, 822 P2d 385, 1992 Cal LEXIS 1, rehearing denied (1992, Cal) 1992 Cal LEXIS 977, cert den (1992) 506 US 881, 113 S Ct 232, 121 L Ed 2d 168, 1992 US LEXIS 5969.

In a criminal prosecution, it was erroneous to convict defendant of both second degree robbery under *Pen C* § 211, and grand theft of an automobile under *Pen C* § 487, subd. 3 (former *Pen C* § 487h, subd. (a), at time of offense). Defendant had ordered the victim at gunpoint to leave the victim's automobile, defendant took the victim's wallet and keys, and defendant and a companion drove the automobile away. Count 1 of the information alleged the robbery of the victim and count 2 alleged grand theft of a motor vehicle of the same victim, both of which occurred on the same date. The pleading contained no further recitation of a connection between the offenses; however, the evidence at the preliminary hearing and at trial unequivocally established that the automobile was part of the loot stolen in the robbery. The specific language of the pleading alleged the automobile theft as a lesser, necessarily included offense within the charged robbery, since the offenses involved the same victim on the same date. A defendant commits only one robbery no matter how many items he or she steals from a single victim pursuant to a single plan or intent. *People v. Rush* (1993, Cal App 2d Dist) 16 Cal App 4th 20, 20 Cal Rptr 2d 15, 1993 Cal App LEXIS 563, review denied (1993, Cal) 1993 Cal LEXIS 4430, overruled *People v. Montoya* (2004) 33 Cal 4th 1031, 16 Cal Rptr 3d 902, 94 P3d 1098, 2004 Cal LEXIS 7234.

A defendant charged with robbery (*Pen C* § 211) and grand theft of an automobile (former *Pen C* § 487h, subd. (a)) could not be convicted of the lesser included offense of grand theft of an automobile in addition to being convicted of the robbery offense, since the offenses arose out of the same incident, during which defendant, using a gun, stole car keys, a wallet, and a diamond bracelet from the victim, and then stole the victim's car. Robbery was a form of theft, and the taking of multiple items, including the car, in a continuous theft transaction constituted only one offense. *People v. Gamble* (1994, Cal App 2d Dist) 22 Cal App 4th 446, 27 Cal Rptr 2d 451, 1994 Cal App LEXIS 115, review denied (1994, Cal) 1994 Cal LEXIS 2558.

In a prosecution of defendant for a robbery (*Pen C* § 211) committed at an automated teller machine, the trial court properly denied defendant's requested instructions on the lesser offenses of theft and assault. The crime of robbery may be accomplished by means of either force or fear, and even if the element of fear was totally lacking (which it was not) there was undisputed evidence defendant used force to accomplish the taking. The entire episode took only a few minutes, the threats and use of force were integral parts of the overall crime of robbery, and there was no rational way to view the evidence in the case as constituting discrete criminal acts as opposed to a single act of robbery. Consequently, there was no basis, other than an unexplainable rejection of the prosecution evidence, on which the jury could have found the offense to be something other than robbery. *People v. Harris* (1994, Cal App 2d Dist) 22 Cal App 4th 1575, 28 Cal Rptr 2d 317, 1994 Cal App LEXIS 179, review denied (1994, Cal) 1994 Cal LEXIS 2903.

In a prosecution for a robbery (*Pen C* § 211) committed in a vehicle, the trial court did not err in failing to instruct sua sponte on the lesser included offense of theft. A trial court must instruct on a lesser included offense when the

evidence raises a question as to whether all of the elements of the charged offense are present and there is evidence that would justify a conviction of the lesser offense. However, there was no contradictory evidence concerning the circumstances of the robbery that would have justified a conviction of theft, where the victim grabbed defendant's arm to stop him from taking a car stereo and defendant swung a screwdriver at the victim while holding the stereo and attempting to keep possession of it. *People v. Torres* (1996, Cal App 2d Dist) 43 Cal App 4th 1073, 51 Cal Rptr 2d 77, 1996 Cal App LEXIS 250, review denied (1996, Cal) 1996 Cal LEXIS 2791, overruled in part *People v. Mosby* (2004) 33 Cal 4th 353, 15 Cal Rptr 3d 262, 92 P3d 841, 2004 Cal LEXIS 6234.

The trial court erred in imposing a concurrent term for grand theft of personal property, in addition to concurrent terms for first degree burglary and second degree robbery, since grand theft, although not a lesser included offense to burglary, is a lesser included offense to robbery. *People v. Guzman* (1996, Cal App 2d Dist) 45 Cal App 4th 1023, 53 Cal Rptr 2d 67, 1996 Cal App LEXIS 473, review denied (1996, Cal) 1996 Cal LEXIS 4733.

Defendant was properly convicted of both carjacking (*Pen C § 215*) and robbery (*Pen C § 211*), based on the same incident, as neither was a lesser included offense of the other. The test of a necessarily included offense is that, where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense. Robbery occurs when any type of personal property is removed from the victim by force or fear with the intent to permanently deprive the victim of possession of the property. Carjacking requires the taking of a motor vehicle by force or fear with the intent to temporarily or permanently deprive the victim of possession of the vehicle. Thus, even where the subject of a robbery is a motor vehicle, the intent element of carjacking is less inclusive than the specific intent required for robbery. *People v. Green* (1996, Cal App 2d Dist) 50 Cal App 4th 1076, 58 Cal Rptr 2d 259, 1996 Cal App LEXIS 1053, review denied (1997, Cal) 1997 Cal LEXIS 1131.

In a prosecution for multiple offenses, including murder with special circumstances of murder in the commission of robbery, the trial court was not required to instruct sua sponte on theft as a lesser included offense of robbery (*Pen C § 211*), despite the claim the jury could have believed that defendant's intent to take property from the victim's person arose only after the killing, where the evidence of after-formed intent did not rise to the level of substantial evidence justifying an instruction on theft. Speculation is an insufficient basis upon which to require an instruction on a lesser included offense. *People v. Sakarias* (2000) 22 Cal 4th 596, 94 Cal Rptr 2d 17, 995 P2d 152, 2000 Cal LEXIS 2060, rehearing denied (2000) *Supreme Court Minute 05-24-2000*, 2000 Cal. LEXIS 4427, cert den (2000) 531 U.S. 947, 121 S. Ct. 347, 148 L. Ed. 2d 279, 2000 U.S. LEXIS 6959, 69 U.S.L.W. 3268.

In a prosecution for multiple offenses, including murder, robbery and theft, the trial court was not required to instruct sua sponte on assault as a lesser included offense of robbery (*Pen C § 211*) and trespass as a lesser included offense of burglary (*Pen C § 459*), despite the claim the jury could have found defendant lacked the necessary intent to steal in that he intended only to take a sports car to which he had a good faith claim of right. The claim-of-right defense was unavailable, since the record disclosed no substantial evidence that defendant's intent, on entering the house or attacking the victim, was limited to taking the car, its title slip, or even property of equivalent value. The evidence showed only a generalized intent to steal, a felonious intent that was not negated by even a good faith belief that defendant was owed a particular automobile. *People v. Sakarias* (2000) 22 Cal 4th 596, 94 Cal Rptr 2d 17, 995 P2d 152, 2000 Cal LEXIS 2060, rehearing denied (2000) *Supreme Court Minute 05-24-2000*, 2000 Cal. LEXIS 4427, cert den (2000) 531 U.S. 947, 121 S. Ct. 347, 148 L. Ed. 2d 279, 2000 U.S. LEXIS 6959, 69 U.S.L.W. 3268.

Trial court did not err in failing to instruct the jury on the lesser included offense of theft, nor was counsel ineffective for failing to request a theft instruction. Deadly force was applied to the victim, easily satisfying the force or fear requirement for robbery, and ample evidence showed the intruder had taken the victim's property. *People v. Gray* (2005) 37 Cal 4th 168, 33 Cal Rptr 3d 451, 118 P3d 496, 2005 Cal LEXIS 9351, rehearing denied (2005) 2005 Cal. LEXIS 12015, cert den (2006) 127 S. Ct. 38, 166 L. Ed. 2d 45, 2006 U.S. LEXIS 5917, 75 U.S.L.W. 3165.

The evidence was sufficient to support convictions for robbery (*Pen C § 211*) and felony false imprisonment (*Pen C §§ 236, 237*), even though both offenses were committed simultaneously, since false imprisonment is not a lesser

included offense of robbery and since false imprisonment, unlike kidnapping, can occur with any movement of the victim or no movement at all. Accordingly, there was no need to engage in an analysis of whether the movement was incidental to the commission of the robbery. *People v. Reed* (2000, Cal App 5th Dist) 78 Cal App 4th 274, 92 Cal Rptr 2d 781, 2000 Cal App LEXIS 99, review denied (2000, Cal) 2000 Cal LEXIS 4800.

In a prosecution for robbery (*Pen C § 211*) based on a purse snatching, the trial court properly refused to instruct on grand theft from the person (*Pen C § 487*), where the evidence established all of the elements of robbery, including force, and there was no evidence which would support a finding that only the crime of grand theft from the person was committed. The record showed, in part, that defendant physically grabbed the victim, that they physically struggled for two minutes before he ran off with her purse, and that the victim screamed and cried. This constituted the crime of robbery with the attendant elements of force and fear. *People v. Cooksey* (2002, Cal App 2d Dist) 95 Cal App 4th 1407, 116 Cal Rptr 2d 1, 2002 Cal App LEXIS 1353, rehearing denied (2002, Cal App 2d Dist) 2002 Cal App LEXIS 2369, review denied (2002, Cal) 2002 Cal LEXIS 3311.

Trial court should have instructed the jury on the lesser included offense of battery under *Pen C § 242* in connection with defendant's trial for robbery in violation of *Pen C § 211* because the victim's statement that nothing was stolen supported a finding of no taking, and thus the jury should have been given the option to choose battery over robbery; however, there was no reversible error because the evidence supported the jury's finding that a taking did occur given the victim's statement that defendant stole money from the victim, which the police recovered from defendant, despite the victim's contradictory statement. *People v. Fuentes* (2004, Cal App 4th Dist) 116 Cal App 4th 226, 10 Cal Rptr 3d 167, 2004 Cal App LEXIS 233, review denied and ordered not published (2004, Cal) 2004 Cal LEXIS 4428.

Because the force needed to commit a robbery under *Pen C § 211* is more than the "least touching" required for a battery under *Pen C § 242*, and thus is always going to be enough to commit that lesser crime, battery is a lesser included offense of robbery in a case in which the charging document alleges "force or fear." *People v. Fuentes* (2004, Cal App 4th Dist) 116 Cal App 4th 226, 10 Cal Rptr 3d 167, 2004 Cal App LEXIS 233, review denied and ordered not published (2004, Cal) 2004 Cal LEXIS 4428.

Statutory elements of street terrorism do not include all elements of attempted murder, robbery, vehicle theft, receiving stolen property and mayhem, and thus, utilizing the statutory elements, defendant could be convicted of street terrorism without ever committing an attempted murder, a robbery, a vehicle theft, receiving stolen property, or mayhem, as promoting or furthering any felonious criminal conduct would do. Because the elements of the purportedly included offenses are not common to street terrorism, they are not necessarily included offenses under the statutory test. *People v. Burnell* (2005, Cal App 4th Dist) 132 Cal App 4th 938, 34 Cal Rptr 3d 40, 2005 Cal App LEXIS 1453, review denied (2005, Cal) 2005 Cal LEXIS 14282.

In a trial for murder and robbery, the jury should have been instructed on theft as a lesser included offense of robbery because there was substantial evidence that defendant's intent to steal from the victim was not formed until after the murder; although the State alleged that defendant stole the victim's boots and money shortly before or after the killing, the evidence overwhelmingly supported the conclusion that the primary motive for the killing was to prevent the victim from testifying that defendant committed a prior robbery. The trial court's error in failing to give the lesser-included-offense instruction required reversal of the robbery conviction and a robbery special circumstance finding. *People v. Ledesma* (2006) 39 Cal 4th 641, 47 Cal Rptr 3d 326, 140 P3d 657, 2006 Cal LEXIS 9521, rehearing denied (2006) 2006 Cal. LEXIS 13100, 2006 D.A.R. 14245, cert den (2007) 2007 U.S. LEXIS 3834.

In a trial for capital murder involving a robbery, there was no error in denying defendant's requested instruction on grand theft, under *Pen C § 487*, as a lesser included offense of robbery because no substantial evidence established that defendant committed only grand theft and not robbery. Defendant was identified as the assailant by strong circumstantial evidence, and viewed charitably, defense evidence merely established that defendant and an unidentified third person were in the victim's car together after the victim was sexually assaulted, robbed, and shot in the head; nothing indicated that such third person committed the capital crime or that defendant was not involved in the attack.

People v. DePriest (2007, Cal) 2007 Cal LEXIS 8291.

Trial court erred in refusing to strike defendant's *Pen C* § 666 conviction for petty theft with a prior theft-related conviction; because the prior conviction was a sentencing factor and not an element, defendant's petty theft of merchandise from a store was a lesser included offense of his *Pen C* § 211 robbery of a store employee, and the petty theft conviction had to be stricken pursuant to *Pen C* § 654. *People v. Villa (2007, 2d Dist) 2007 Cal App LEXIS 2043.*

4. Completion of Robbery

Robber's confederate, who helped plan robbery, kept car running while robber was in store, and afterwards received share of merchandise and of money, was accordingly properly convicted of two separate counts of armed robbery, despite his contention that there was but one taking, at one time from one place, and that all taking was from owner, presence of clerk being merely incidental. *People v. Plumlee (1960, Cal App 3d Dist) 177 Cal App 2d 224, 2 Cal Rptr 84, 1960 Cal App LEXIS 2453.*

Robbery, being combination of assault and larceny, also includes asportation, and appropriation of another's property is transaction that continues after thief's departure from place where property was seized; thus, robbery is not completed at moment stolen property is in robber's possession. *People v. Reade (1961, Cal App 2d Dist) 197 Cal App 2d 509, 17 Cal Rptr 328, 1961 Cal App LEXIS 1370.*

That police officers arrived at scene of two robberies before one of robbers had left building, did not show that only attempts, rather than completed offenses, were committed where personal property was taken from victims, or from their immediate presence, against their will, by means of force and violence; offenses were complete when robbers took possession of property. *People v. Johnson (1963, Cal App 2d Dist) 219 Cal App 2d 631, 33 Cal Rptr 359, 1963 Cal App LEXIS 2417.*

Crime of robbery is not confined to very act of taking property from victim and is not complete until robber has won his way to place of temporary safety. *People v. Masters (1963, Cal App 1st Dist) 219 Cal App 2d 672, 33 Cal Rptr 383, 1963 Cal App LEXIS 2422.*

Where there was conflicting evidence as to whether defendant had made attempt to rob or had completed robbery, it was for trial court to decide whether or not to draw inference of completed theft and appellate court will not review its conclusion. *People v. Shawver (1965, Cal App 2d Dist) 235 Cal App 2d 859, 45 Cal Rptr 767, 1965 Cal App LEXIS 984.*

Robbery includes, as does larceny, the element of asportation, and the appropriation of another's property at the scene of the holdup is a transaction that continues after the perpetrator's departure from the place where the property was seized. *People v. Rostamo (1967, Cal App 2d Dist) 249 Cal App 2d 983, 58 Cal Rptr 74, 1967 Cal App LEXIS 2309.*

To constitute a robbery, the interference with the owner's possession need be only for an appreciable interval of time, be it ever so short; and asportation may be fulfilled by wrongfully removing property from the control of the owner even though the property may be retained by the thief but a moment. *People v. Pruitt (1969, Cal App 2d Dist) 269 Cal App 2d 501, 75 Cal Rptr 125, 1969 Cal App LEXIS 1669.*

The crime of robbery is not confined to the act of taking property from victims; the nature of the crime is such that a robber's escape with his loot is just as important to the execution of the crime as obtaining possession of the loot in the first place. Thus, the crime of robbery is not complete until the robber has won his way to a place of temporary safety. *People v. Carroll (1970) 1 Cal 3d 581, 83 Cal Rptr 176, 463 P2d 400, 1970 Cal LEXIS 333.*

In a prosecution for robbery, arising out of the breaking and entering of the victim's apartment, in which the victim surprised defendant in the apartment, at which point defendant pulled a knife, causing the victim to flee, the trial court

did not err in using a standard jury instruction as to elements of the crime of robbery, modified as to the elements of taking by force or fear. The instruction required that such occurred either in the taking, the retention of the property, or in the attempt to escape with such property from the scene of commission. Such modification was proper, since a robbery is not completed at the moment a robber obtains possession of the stolen property; the crime of robbery includes the element of asportation, the robber's escape with the loot being considered as important in the commission of the crime as gaining possession of the property. Thus, if one who has stolen property from the person of another uses force or fear in removing, or attempting to remove, the property from the owner's immediate presence, the crime of robbery has been committed. *People v. Miramon* (1983, Cal App 2d Dist) 140 Cal App 3d 118, 189 Cal Rptr 432, 1983 Cal App LEXIS 1421, overruled *People v. Hayes* (1990) 52 Cal 3d 577, 276 Cal Rptr 874, 802 P2d 376, 1990 Cal LEXIS 5661, superseded by statute as stated in (1988, Cal App 3d Dist) 205 Cal App 3d 335, 252 Cal Rptr 378, 1988 Cal App LEXIS 982.

For purposes of the crime of robbery, the act of "taking" begins when the separation of the victim from his or her property occurs, and it continues through forcible consummation. *People v. Harris* (1994) 9 Cal 4th 407, 37 Cal Rptr 2d 200, 886 P2d 1193, 1994 Cal LEXIS 6587.

5. Motive, Knowledge, and Intent

Owner of property is not guilty of robbery in taking it from person of possessor, though he may be guilty thereby of another public offense. *People v. Vice* (1863) 21 Cal 344, 1863 Cal LEXIS 131.

Person who receives money obtained by robbery with knowledge of manner in which it was obtained cannot be convicted of crime of robbery. *People v. Shepardson* (1874) 48 Cal 189, 1874 Cal LEXIS 124.

The intent to steal is an essential element of larceny, and larceny is an essential part of robbery. *People v. Sheasbey* (1927, Cal App) 82 Cal App 459, 255 P 836, 1927 Cal App LEXIS 654.

When a party seeks to recover money lost by him at an illegal game, the intent to steal is lacking, for the law recognizes no right or title of possession in the winner. *People v. Rosen* (1938) 11 Cal 2d 147, 78 P2d 727, 1938 Cal LEXIS 283, 116 ALR 991.

In robbery cases there can exist no felonious intent when the owner takes his own property from the possession of another though the taking is under such circumstances as would constitute robbery if the possessor were the owner thereof. *People v. Rosen* (1938) 11 Cal 2d 147, 78 P2d 727, 1938 Cal LEXIS 283, 116 ALR 991.

Proof of motive or a conspiracy to commit the robbery is not essential. *People v. Thomas* (1941, Cal App) 45 Cal App 2d 128, 113 P2d 706, 1941 Cal App LEXIS 899.

Where a specific intent is an essential element of the particular crime such as the intent to steal in robbery and the intent to deprive an owner of title or possession of a vehicle taken under former Veh C § 503, the fact of the accused's intoxication at the time may be considered by the jury to enable them to determine the intent with which the accused committed the act. *People v. Sanchez* (1950) 35 Cal 2d 522, 219 P2d 9, 1950 Cal LEXIS 359.

Motive constitutes no element of robbery, but where circumstantial evidence is largely relied on, motive may be inquired into. *People v. Gorgol* (1953, Cal App) 122 Cal App 2d 281, 265 P2d 69, 1953 Cal App LEXIS 1483.

Specific intent to steal is essential element of robbery, as distinguished from burglary where crime is complete when the one accused has entered house of another with intent to commit any felony. *People v. Morlock* (1956) 46 Cal 2d 141, 292 P2d 897, 1956 Cal LEXIS 162.

In armed robbery of pharmacy store there was separate act and separate intent, first, when clerk was forced to give robber money from cash register, and secondly, when owner was forced to give him hypnotics. *People v. Plumlee*

(1960, Cal App 3d Dist) 177 Cal App 2d 224, 2 Cal Rptr 84, 1960 Cal App LEXIS 2453.

Court's failure to instruct jury in robbery case that specific intent is essential element of crime was erroneous, but did not result in prejudice where under evidence no verdict other than guilty was probable had jury been properly instructed on specific intent. *People v. Seay* (1960, Cal App 3d Dist) 179 Cal App 2d 362, 3 Cal Rptr 769, 1960 Cal App LEXIS 2242.

Information charging defendant with robbery is not defective because intent to commit robbery is not alleged where it is alleged that defendant did feloniously, and by means of force and fear, take money from person and possession of named person, since such allegation implies that defendant's attempt was to steal. *People v. Baker* (1960, Cal App 2d Dist) 183 Cal App 2d 615, 7 Cal Rptr 22, 1960 Cal App LEXIS 1799.

Instruction in robbery case that where person voluntarily commits act punishable as crime the law implies that act knowingly done was committed with criminal intent, though court also told jury that necessary element of robbery is existence in perpetrator's mind of specific intent to steal personal property of another, was error, but was not prejudicial where case was not one where it was probable different result would have been arrived at by jury had general intent instruction not been given, evidence of defendant's guilt being strong and convincing. *People v. Waldron* (1960, Cal App 3d Dist) 185 Cal App 2d 43, 7 Cal Rptr 916, 1960 Cal App LEXIS 1474.

Intent with which act is done is question of fact and may be gathered from all circumstances shown in evidence. Evidence that defendant's confederate entered liquor store in early morning hours, gun in hand, and stated to employee, "Pass it over, all of it," is sufficient to establish specific intent to rob. *People v. Demes* (1963, Cal App 2d Dist) 220 Cal App 2d 423, 33 Cal Rptr 896, 1963 Cal App LEXIS 2275, cert den (1964) 377 US 946, 84 S Ct 1354, 12 L Ed 2d 308, 1964 US LEXIS 1245, overruled *People v. Collie* (1981) 30 Cal 3d 43, 177 Cal Rptr 458, 634 P2d 534, 1981 Cal LEXIS 176, 23 ALR4th 776.

Court's error in failing to give on its own motion instruction that conviction of crime of robbery requires proof of specific intent to steal was not prejudicial where victim's testimony as to circumstances of robbery, believed by jury, permitted of no other interpretation than that defendant entertained specific intent to steal when he demanded victim's money at gunpoint. *People v. Ford* (1964) 60 Cal 2d 772, 36 Cal Rptr 620, 388 P2d 892, 1964 Cal LEXIS 288, cert den (1964) 377 US 940, 12 L Ed 2d 303, 84 S Ct 1342, 1964 US LEXIS 1359.

Though court should have given separate instruction on specific intent required for robbery, failure to give such instruction was not prejudicial error where jury was given statutory definition of robbery, defense was that defendants were not persons who committed crimes, and no defense raised issues of intent. *People v. Zurica* (1964, Cal App 2d Dist) 225 Cal App 2d 25, 37 Cal Rptr 118, 1964 Cal App LEXIS 1339, cert den *Rizzitello v. California* (1964) 379 US 863, 85 S Ct 126, 13 L Ed 2d 66, 1964 US LEXIS 742.

Intent to steal required as element of robbery may be proved by inference from all circumstances of the case. *People v. Ross* (1964, Cal App 2d Dist) 229 Cal App 2d 344, 40 Cal Rptr 296, 1964 Cal App LEXIS 992.

Where there was conflicting evidence as to ability of defendant to form specific intent required for robbery, it was for trial court to resolve conflict and its conclusion will not be reviewed on appeal. *People v. Shawver* (1965, Cal App 2d Dist) 235 Cal App 2d 859, 45 Cal Rptr 767, 1965 Cal App LEXIS 984.

In robbery prosecution, where evidence of defendant's conduct leaves no doubt that he possessed requisite intent to steal, error in failing to instruct on such intent is not prejudicial. *People v. Dugas* (1966, Cal App 1st Dist) 242 Cal App 2d 244, 51 Cal Rptr 478, 1966 Cal App LEXIS 1119.

Court's failure to instruct that robbery requires specific intent to steal constitutes error in any case where defendant's intent to steal is not beyond question, even absent request for such instruction. *People v. Dugas* (1966, Cal App 1st Dist) 242 Cal App 2d 244, 51 Cal Rptr 478, 1966 Cal App LEXIS 1119.

Ordinarily an intent to steal may be inferred when one takes another's property, particularly when it is taken by force; but proof of the existence of a state of mind incompatible with an intent to steal precludes a finding of either theft or robbery. *People v. Butler* (1967) 65 Cal 2d 569, 55 Cal Rptr 511, 421 P2d 703, 1967 Cal LEXIS 366, overruled in part as stated *People v. Demetrulias* (2006) 39 Cal 4th 1, 45 Cal Rptr 3d 407, 137 P3d 229, 2006 Cal LEXIS 8352, overruled in part *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782, overruled in part as stated *Jones v. McGrath* (2007, ED Cal) 2007 US Dist LEXIS 65428.

An essential element of robbery is the felonious intent or animus furandi that accompanies the taking. *People v. Butler* (1967) 65 Cal 2d 569, 55 Cal Rptr 511, 421 P2d 703, 1967 Cal LEXIS 366, overruled in part as stated *People v. Demetrulias* (2006) 39 Cal 4th 1, 45 Cal Rptr 3d 407, 137 P3d 229, 2006 Cal LEXIS 8352, overruled in part *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782, overruled in part as stated *Jones v. McGrath* (2007, ED Cal) 2007 US Dist LEXIS 65428.

Absent an intent to steal, the taking of another's property is not theft; a specific intent to steal, that is, the intent to permanently deprive an owner of his property is an essential element of robbery. *People v. Butler* (1967) 65 Cal 2d 569, 55 Cal Rptr 511, 421 P2d 703, 1967 Cal LEXIS 366, overruled in part as stated *People v. Demetrulias* (2006) 39 Cal 4th 1, 45 Cal Rptr 3d 407, 137 P3d 229, 2006 Cal LEXIS 8352, overruled in part *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782, overruled in part as stated *Jones v. McGrath* (2007, ED Cal) 2007 US Dist LEXIS 65428.

CALJIC No. 78-A, dealing generally with the effect of voluntary intoxication as a defense, is intended to be and should be used only where the crime charged does not require specific intent, and is inapplicable to a crime such as robbery, in which a necessary element is the existence in the mind of the perpetrator of the specific intent permanently to deprive an owner of his property. *People v. Deatherage* (1967, Cal App 2d Dist) 249 Cal App 2d 363, 57 Cal Rptr 501, 1967 Cal App LEXIS 2229.

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear; and while a specific intent to steal such property is a necessary element of the crime, this intent need not be directly proved but may be inferred from all of the circumstances of the case. *People v. Hall* (1967, Cal App 2d Dist) 253 Cal App 2d 1051, 61 Cal Rptr 676, 1967 Cal App LEXIS 2439.

In a prosecution for attempted robbery in the first degree, while it was error for the court to fail to instruct the jury that a specific intent to steal was an essential element of the crime of robbery, the error was not prejudicial so as to require a reversal of a conviction where the crucial decision for the jury was whether defendant intended to rob, rape or kidnap his victim, the jury found that defendant intended robbery, the court had instructed them that robbery involved the taking of property, and once the jury found that defendant intended a taking it would have been irrational under the circumstances for them to find that he did not intend to keep whatever he took. *People v. Nichols* (1967, Cal App 5th Dist) 255 Cal App 2d 217, 62 Cal Rptr 854, 1967 Cal App LEXIS 1263.

The specific intent to steal, an essential element of the crime of robbery, may be established by circumstantial evidence. *People v. Nichols* (1967, Cal App 5th Dist) 255 Cal App 2d 217, 62 Cal Rptr 854, 1967 Cal App LEXIS 1263.

In a prosecution for robbery, the jury were adequately apprised of the specific intent to steal where the court instructed the jury that the essential element of the crimes charged is the criminal intent which must unite with the criminal conduct; that as to each count, defendants had to have the specific intent to commit robbery; that robbery is the felonious taking of personal property of any value in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. *People v. Henderson* (1967, Cal App 2d Dist) 255 Cal App 2d 513, 63 Cal Rptr 164, 1967 Cal App LEXIS 1303.

In a robbery case, the state has the burden of proving felonious intent, and that intent may be inferred when one

takes property from another by force or fear. *People v. Poindexter* (1967, Cal App 2d Dist) 255 Cal App 2d 566, 63 Cal Rptr 332, 1967 Cal App LEXIS 1311.

One element of robbery is taking from another that which belongs to the other, or that to which the other has a right of possession, as distinguished from that which is honestly believed to belong to the taker and is believed to be wrongfully in the possession of the other. *People v. Poindexter* (1967, Cal App 2d Dist) 255 Cal App 2d 566, 63 Cal Rptr 332, 1967 Cal App LEXIS 1311.

Robbery requires proof of a specific intent to steal. *People v. Crawford* (1968, Cal App 3d Dist) 259 Cal App 2d 874, 66 Cal Rptr 527, 1968 Cal App LEXIS 2033.

In prosecutions for murder and robbery by a defendant claiming voluntary intoxication, the jury was properly instructed that the crimes required a specific intent or mental state, that the jury must consider all evidence and determine if defendant suffered from some abnormal mental or physical condition, however caused, preventing formation of the essential intent or mental state, together with further instructions on the concurrence of act and specific intent and diminished capacity. *People v. De Priest* (1969, Cal App 3d Dist) 2 Cal App 3d 423, 82 Cal Rptr 526, 1969 Cal App LEXIS 1425.

Where defendant, pointing a gun, demanded and received another's wallet, it could reasonably be inferred that it was his intent, at the time, to deprive the owner of his wallet permanently. The taking of the wallet constituted robbery even though defendant discarded it as soon as he discovered the wallet was empty. *People v. Carroll* (1970) 1 Cal 3d 581, 83 Cal Rptr 176, 463 P2d 400, 1970 Cal LEXIS 333.

In robbery prosecutions, the specific intent to steal need not be directly proved, but may be inferred from all the circumstances of the case. *People v. Gibbs* (1970, Cal App 4th Dist) 12 Cal App 3d 526, 90 Cal Rptr 866, 1970 Cal App LEXIS 1644.

The act of force or intimidation by which a taking is accomplished in robbery must be motivated by the intent to steal in order to satisfy the requirement of *Pen C* § 20, that in every crime there must exist a union, or joint operation of act and intent. If the larcenous purpose does not arise until after the force has been used against the victim, there is no joint operation of act and intent necessary to constitute robbery. *People v. Green* (1980) 27 Cal 3d 1, 164 Cal Rptr 1, 609 P2d 468, 1980 Cal LEXIS 165, overruled in part as stated *People v. Dominguez* (2006) 39 Cal 4th 1141, 47 Cal Rptr 3d 575, 140 P3d 866, 2006 Cal LEXIS 9977, overruled *People v. Martinez* (1999) 20 Cal 4th 225, 83 Cal Rptr 2d 533, 973 P2d 512, 1999 Cal LEXIS 1657, superseded by statute as stated in *People v. Alcalá* (1984) 36 Cal 3d 604, 205 Cal Rptr 775, 685 P2d 1126, 1984 Cal LEXIS 206, superseded by statute as stated in *Ainsworth v. Calderon* (1998, 9th Cir Cal) 138 F3d 787, 1998 US App LEXIS 4118.

In a prosecution for robbery with use of a firearm (*Pen C* §§ 211, 12022.5) and possession of a sawed-off shotgun (*Pen C* § 12020), the trial court, in the absence of a request by defendant for the pattern jury instruction concerning diminished capacity to form a specific intent or other clarifying instructions, properly gave the pattern jury instruction concerning voluntary intoxication as relevant to specific intent, where defendant presented a diminished capacity defense that he was too drunk to form the intent to rob. *People v. Reza* (1981, Cal App 2d Dist) 121 Cal App 3d 129, 175 Cal Rptr 126, 1981 Cal App LEXIS 1920.

The specific intent which must be proved in a robbery is the intent to permanently deprive the owner of his property. Thus, in a prosecution for robbery in which the victim testified that defendant told him to lie on the floor and said "This is a holdup," the evidence supported only the inference that defendant was at the scene of the crime to steal. Under such circumstances, it was unnecessary for the trial court to instruct *sua sponte* as to the sufficiency of circumstantial evidence to prove specific intent. *People v. Gordon* (1982, Cal App 4th Dist) 136 Cal App 3d 519, 186 Cal Rptr 373, 1982 Cal App LEXIS 2036.

Substantial evidence supported defendants' convictions of robbery of the victim's car (*Pen C* § 211), despite the fact

that defendants abandoned the car within about one hour after taking it. That fact did not compel the conclusion that defendants intended to deprive the victim of his car only temporarily. Defendants' intent was to be inferred from circumstances and was a question of fact for the jury to decide. *People v. DeLeon* (1982, Cal App 2d Dist) 138 Cal App 3d 602, 188 Cal Rptr 63, 1982 Cal App LEXIS 2266.

In a prosecution for robbery and burglary, the trial court properly used a prior federal conviction for bank robbery, 18 USCS § 2113(a) (18 USCS § 2113(a)), to enhance defendant's sentence to state prison under Pen C § 667.5, subd. (b), even though the paragraph of the federal bank robbery statute under which defendant was convicted, proscribing the taking by force and violence, does not specifically refer to an intent to permanently deprive the victim (the bank) of the property taken (required as an element in California robbery). The portion of the federal statute in question is a robbery statute, and the robbery thus defined is robbery with its traditional and still present elements as known at common law and recognized as such by the United States Supreme Court, including a larcenous intent. Thus, the federal crime of robbery contains all of the same elements as the California crime of robbery. *People v. Miramon* (1983, Cal App 2d Dist) 140 Cal App 3d 118, 189 Cal Rptr 432, 1983 Cal App LEXIS 1421, overruled *People v. Hayes* (1990) 52 Cal 3d 577, 276 Cal Rptr 874, 802 P2d 376, 1990 Cal LEXIS 5661, superseded by statute as stated in (1988, Cal App 3d Dist) 205 Cal App 3d 335, 252 Cal Rptr 378, 1988 Cal App LEXIS 982.

Knowledge of owner identity is not an element of robbery. Thus, in the prosecution of a man who snatched two purses from the lap of a woman who was being pushed in a wheelchair by a companion, the element of intent to permanently deprive the companion of her purse was shown even though defendant did not know one of the purses belonged to her, where he conceded he intended to steal both purses. *People v. Prieto* (1993, Cal App 2d Dist) 15 Cal App 4th 210, 18 Cal Rptr 2d 761, 1993 Cal App LEXIS 465, review denied (1993, Cal) 1993 Cal LEXIS 4167.

The intent to deprive an owner permanently of his or her property is an element of the crime of robbery. *People v. Hamilton* (1995, Cal App 4th Dist) 40 Cal App 4th 1137, 47 Cal Rptr 2d 343, 1995 Cal App LEXIS 1184, review denied (1996, Cal) 1996 Cal LEXIS 782.

Defendant was found guilty of first degree murder (Penal C §§ 187, 189), first degree robbery (Penal C §§ 211, 212.5), attempted rape (Penal C §§ 261, 664), and first degree burglary (Penal C § 459). Defendant contended that an instruction permitted the jury to convict him of burglary, robbery, and felony murder, and to find burglary and robbery special circumstances, without ever considering whether he had the mental states required for the crimes of burglary and robbery. The court held that ample evidence permitted the jury to find beyond a reasonable doubt possession of stolen property and intent to steal. The corroborating evidence was far more extensive than necessary for the instruction. Other instructions cautioned the jurors that they should disregard any instruction that applied to or suggested facts they determined did not exist. *People v. Smithy* (1999) 20 Cal 4th 936, 86 Cal Rptr 2d 243, 978 P2d 1171, 1999 Cal LEXIS 3907, rehearing denied (1999) 21 Cal 4th 845a, 1999 Cal LEXIS 6251.

The "felonious taking" required for robbery under Penal C § 211, as well as that for theft under Penal C § 484, is a taking accomplished with felonious intent, that is, the intent to steal, a state of mind that is inconsistent with a good-faith belief that the specific property taken is one's own. When the Legislature incorporated this mental state element into the definition of robbery upon codifying the offense in 1872, it effectively recognized claim of right as a defense to that crime. The question whether that doctrine continues to reflect sound public policy must be addressed to the Legislature and not to the California Supreme Court (Cal Const Art III § 3). Nonetheless, there is nothing in the language of § 211 to suggest that the Legislature intended to incorporate into the robbery statute the Butler (*People v. Butler* (1967) 65 Cal 2d 569, 55 Cal Rptr 511, 421 P2d 703, 1967 Cal LEXIS 366, overruled in part as stated *People v. Demetrulias* (2006) 39 Cal 4th 1, 45 Cal Rptr 3d 407, 137 P3d 229, 2006 Cal LEXIS 8352, overruled in part *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782, overruled in part as stated *Jones v. McGrath* (2007, ED Cal) 2007 US Dist LEXIS 65428) broad extension of the claim-of-right defense to forcible takings perpetrated to satisfy, settle, or otherwise collect on a debt, liquidated or unliquidated. Thus, in the present prosecution for robbery and other crimes, the trial court erred when it refused to give the claim-of-right instruction where the property in question was \$200 that defendant claimed to have taken to his ex-wife's residence to give her for

paying debts, and which he had forcibly taken back when it appeared to him that she planned to use the money for other purposes. *People v. Tufunga* (1999) 21 Cal 4th 935, 90 Cal Rptr 2d 143, 987 P 2d 168, 1999 Cal LEXIS 7782.

In a prosecution for robbery and attempted robbery, the evidence was sufficient to show that defendant formed the criminal intent to take the victims' property by means of force or fear even though he was intoxicated. Defendant broke into the apartments of two neighbors; he killed the first and took her property, the second he killed while attempting to take her property. *People v. Navarette* (2003) 30 Cal 4th 458, 133 Cal Rptr 2d 89, 66 P3d 1182, 2003 Cal LEXIS 2638, rehearing denied (2003) 2003 Cal. LEXIS 4513, cert den (2004) 540 U.S. 1151, 124 S. Ct. 1149, 157 L. Ed. 2d 1045, 2004 U.S. LEXIS 710, 72 U.S.L.W. 3463.

In a capital murder trial, the evidence was sufficient to find that defendant formed the intent to steal before or during, rather than after, the fatal shootings and thus to support a robbery conviction under *Pen C* §§ 211 and 212.5 and related findings; the evidence included that defendant needed money for delinquent truck payments, that defendant brought a loaded gun, that defendant shot each victim twice, one at close range, and that defendant was calm and smiling when leaving the scene of the shootings. Imposition of the death penalty was not disproportionate under these facts. *People v. Tafoya* (2007, Cal) 2007 Cal LEXIS 8907.

6. Aiding and Abetting

One indicted for crime of robbery as principal cannot be convicted of offense charged in indictment if evidence shows that he was only accessory after the fact. *People v. Gassaway* (1865) 28 Cal 404, 1865 Cal LEXIS 146.

Where two defendants are not jointly charged, but are separately charged with crime of robbery, and each defendant's defense rests upon different state of facts and circumstances than that presented by codefendant, and it is possible for one to be guilty and the other to be wholly innocent, it is prejudicial error to instruct jury in effect that if either defendant committed robbery, or if either of them aided or abetted any other person in its commission, then jury should find both defendants guilty. *People v. Quinn* (1931, Cal App) 111 Cal App 614, 295 P 1042, 1931 Cal App LEXIS 1161.

One who stayed in automobile and enabled another, who was robbing restaurant at point of gun, to get into car with gun still in his hand and make successful getaway was as much principal and aided and abetted crime as completely as though he were present and assisted in actual taking of property. *People v. Kamm* (1960, Cal App 2d Dist) 178 Cal App 2d 863, 3 Cal Rptr 387, 1960 Cal App LEXIS 2668.

Defendant's conviction of robbery was supported by evidence showing that, while his codefendant was holding up cashier of beauty salon at point of gun, defendant was waiting for him in automobile parked across street and after robbery immediately drove him away from scene, since defendant thereby became accessory and punishable as principal. *People v. Preston* (1961, Cal App 2d Dist) 192 Cal App 2d 86, 13 Cal Rptr 223, 1961 Cal App LEXIS 1909.

It was not error to refuse instruction offered by defendant in robbery case emphasizing that knowledge of criminality of proposed action is necessary to render one an aider and abettor is not error where elements of knowledge and intent were fully and fairly covered in instructions given. *People v. Wood* (1961, Cal App 1st Dist) 192 Cal App 2d 393, 13 Cal Rptr 339, 1961 Cal App LEXIS 1950.

Person who drives getaway automobile, knowing he is aiding in commission of robbery, is guilty as principal. *People v. King* (1962, Cal App 4th Dist) 199 Cal App 2d 333, 18 Cal Rptr 624, 1962 Cal App LEXIS 2836.

One who does act constituting crime of robbery is entitled to instruction on specific intent, but it is knowledge of wrongful purpose of actor plus encouragement provided by aider and abettor that makes latter equally guilty; though guilt of aider and abettor is dependent on actor's crime, criminal intent of aider and abettor is presumed from his actions with knowledge of actor's wrongful purpose. *People v. Ellhamer* (1962, Cal App 2d Dist) 199 Cal App 2d 777, 18 Cal Rptr 905, 1962 Cal App LEXIS 2894.

Where facts presented at robbery trial were sufficient for jury to reasonably infer that defendant aided and abetted armed robber and was therefore guilty of offense charged, fact that defendant was not shown to have any direct or personal interest in outcome of robbery, or whether he would gain in any way thereby, was immaterial. *People v. Ellhamer* (1962, Cal App 2d Dist) 199 Cal App 2d 777, 18 Cal Rptr 905, 1962 Cal App LEXIS 2894.

One who stays in automobile and enables persons who are committing robbery to make successful "getaway" is as much principal and aids and abets robbery as completely as if he were present and assisted in actual taking of property. *People v. Masters* (1963, Cal App 1st Dist) 219 Cal App 2d 672, 33 Cal Rptr 383, 1963 Cal App LEXIS 2422; *People v. Boulad* (1965, Cal App 2d Dist) 235 Cal App 2d 118, 45 Cal Rptr 104, 1965 Cal App LEXIS 911, cert den (1966) 383 US 915, 86 S Ct 905, 15 L Ed 2d 669, 1966 US LEXIS 2295.

Where evidence was sufficient to show that defendant had at least aided and abetted in crime of grand theft from person, he was equally guilty with person who actually took wallet out of victim's pocket, and such evidence was sufficient to sustain his conviction. *People v. Blanks* (1964, Cal App 2d Dist) 229 Cal App 2d 310, 40 Cal Rptr 223, 1964 Cal App LEXIS 988.

To hold a juvenile as an aider and abettor in the commission of the crime, it must be determined whether the juvenile, in any way, directly or indirectly, aided the perpetrator, with knowledge of the latter's wrongful purpose. Thus, it could not be said that a trial court erred in finding that a juvenile had aided and abetted a robbery where the evidence presented at a juvenile court hearing established that a woman was robbed on the street after having been struck with a heavy object until she bled, that the juvenile was one of three other young black girls huddled together approximately five feet away, and that all four girls ran away from the scene of the crime together and were later found together a short distance from the scene. *In re Lynette G.* (1976, Cal App 2d Dist) 54 Cal App 3d 1087, 126 Cal Rptr 898, 1976 Cal App LEXIS 1205.

In a prosecution for robbery, a jury instruction that a defendant could be convicted of either or both armed robbery and as an accessory to a codefendant in the commission of the same armed robbery is error since the requisite intent to be a principal in a robbery is a totally different and distinct state of mind from that of an accused accessory whose intent is to aid a robber to escape. These are mutually exclusive states of mind and give rise to mutually exclusive offenses. *People v. Prado* (1977, Cal App 4th Dist) 67 Cal App 3d 267, 136 Cal Rptr 521, 1977 Cal App LEXIS 1225.

In a prosecution for robbery (*Pen C § 211*), the trial court properly refused a proposed defense instruction defining the crime of being an accessory after the fact (*Pen C § 32*), even though defendant's participation was limited to driving his codefendants away from the scene of the crime and even assuming he had no prior knowledge of their purpose, where he knowingly aided them in carrying off the loot and in escaping to a place of safety. Since a robbery is a continuing crime which is not completed until the robbers reach a place of temporary safety, defendant's assistance in the escape rendered him a principal and not an accessory. Knowledge that a robbery is in progress is "prior knowledge" when a person joins in completing the offense by aiding the escape. *People v. Jardine* (1981, Cal App 2d Dist) 116 Cal App 3d 907, 172 Cal Rptr 408, 1981 Cal App LEXIS 1554, overruled *People v. Cooper* (1991) 53 Cal 3d 1158, 282 Cal Rptr 450, 811 P2d 742, 1991 Cal LEXIS 2742.

The evidence was overwhelming that defendant was a principal in robbing a woman of her diamond ring and necklace, even without evidence that he encouraged an associate to rob the woman or assisted in the taking of her ring or necklace, where he was a party to a compact of criminal conduct that embraced the looting of her residence and all its occupants. *People v. Phan* (1993, Cal App 2d Dist) 14 Cal App 4th 1453, 18 Cal Rptr 2d 364, 1993 Cal App LEXIS 388, review denied (1993, Cal) 1993 Cal LEXIS 3695.

For purposes of aider-abettor liability, the commission of a robbery continues so long as the property is being carried away to a place of temporary safety. *People v. Harris* (1994) 9 Cal 4th 407, 37 Cal Rptr 2d 200, 886 P2d 1193, 1994 Cal LEXIS 6587.

Evidence was sufficient for a robbery conviction where a juvenile was standing next to another minor who displayed a knife and took money from a victim, and where the juvenile afterwards ran away with the other minor. *In re Juan G.* (2003, Cal App 2d Dist) 112 Cal App 4th 1, 5 Cal Rptr 3d 34, 2003 Cal App LEXIS 1457.

Sufficient evidence supported a conviction for first degree murder and first degree robbery, with a special circumstance finding that murder was committed in furtherance of robbery, where defendant aided the killer's escape by holding open a gate; a witness saw defendant standing at the gate during the shooting, which gave rise to an inference that defendant had prior knowledge of the shooter's intent to commit the robbery and murder and had chosen to aid the shooter. *People v. Hodgson* (2003, Cal App 2d Dist) 111 Cal App 4th 566, 3 Cal Rptr 3d 575, 2003 Cal App LEXIS 1284, review denied (2003, Cal) 2003 Cal LEXIS 8746.

7. Possession, Ownership, and Value of Property

Indictment is not bad because it charges property was forcibly and violently taken from one person against his will, and that another person was owner of it, though it fails to aver it was taken without consent or against will of owner and also fails to aver character of possession of person from whom it was taken. *People v. Shuler* (1865) 28 Cal 490, 1865 Cal LEXIS 161.

Where information charges "that property taken was personal property in possession of person named and that it was taken from person against will of person named," this is sufficient averment that property belonged to person named and that it was taken from him by defendant. *People v. Hicks* (1884) 66 Cal 103, 4 P 1093, 1884 Cal LEXIS 700.

Felonious taking of personal property by defendants from person of another or from his immediate presence and against his will by means of force or fear is robbery if property belonged to any person other than defendants. *People v. Anderson* (1889) 80 Cal 205, 22 P 139, 1889 Cal LEXIS 889.

An information charging the defendant with robbery which describes the property taken as "personal property" to wit; "money, jewelry, and hair ornaments," although imperfect, is sufficient to support a verdict of conviction, where no objection was taken thereto before judgment. *People v. Chuey Ying Git* (1893) 100 Cal 437, 34 P 1080, 1893 Cal LEXIS 815.

Proof of possession of the stolen property by the person from whom it was taken is sufficient evidence of ownership. *People v. Oldham* (1896) 111 Cal 648, 44 P 312, 1896 Cal LEXIS 634.

To constitute robbery, the personal property involved must be that of someone other than the taker, although the statute does not, as in larceny, so specifically provide. *People v. Ammerman* (1897) 118 Cal 23, 50 P 15, 1897 Cal LEXIS 727.

An information charging robbery which omits to state the ownership of the property taken, is invalid. *People v. Ammerman* (1897) 118 Cal 23, 50 P 15, 1897 Cal LEXIS 727.

An information for robbery, which charges that money was forcibly and feloniously taken "from the person and immediate presence," of the person robbed, sufficiently shows that the money was in the possession of such person at the time of the taking. *People v. Walbridge* (1899) 123 Cal 273, 55 P 902, 1899 Cal LEXIS 1058.

The gravamen of robbery is the deprivation of possession and not of ownership. *People v. Wade* (1945, Cal App) 71 Cal App 2d 646, 163 P2d 59, 1945 Cal App LEXIS 939.

The taking of property was robbery, though it was not from the person of the complainant, where the complainant still had sufficient possession to satisfy this section and it was taken from his immediate presence and within his sight. *People v. Perhab* (1949, Cal App) 92 Cal App 2d 430, 206 P2d 1133, 1949 Cal App LEXIS 1710.

Robbery as defined by section does not include all elements of violation of former Veh C § 503; property taken in robbery may be any kind of property, whereas only the taking of "a vehicle" is denounced by former Veh C § 503. *People v. Marshall (1957) 48 Cal 2d 394, 309 P2d 456, 1957 Cal LEXIS 193.*

Where robbers took wallet of one of victims but other victim, owner of house in which crime took place, did not have his wallet with him, and where victims were then bound and house ransacked, proof of corpus delicti of crime of robbery of owner of house was shown by his testimony that his loss was \$600 and that none of property taken from him was taken with his permission. *People v. Diaz (1958, Cal App 2d Dist) 160 Cal App 2d 123, 324 P2d 887, 1958 Cal App LEXIS 2102.*

If evidence supports the elements of the offense of robbery, the lack of value of the asported matter cannot efface the crime; thus in a robbery prosecution, the jury's reasonable finding that defendants intended to take away the pocket of the victim's trousers would support their conviction even if the pocket were empty, where evidence in the case clearly supported the inference that defendants ripped off the victim's pants pocket and carried it 150 yards down the street. *People v. Graham (1969) 71 Cal 2d 303, 78 Cal Rptr 217, 455 P2d 153, 1969 Cal LEXIS 256.*

A visitor in a store was properly designated in a robbery information as the immediate victim of the robbery where she was forced, at gunpoint, to give defendant the money from the cash register and a money bag; once she exercised dominion over the money, whatever her motivation in so doing, she became, insofar as defendant was concerned, the person in possession thereof. *People v. Moore (1970, Cal App 2d Dist) 4 Cal App 3d 668, 84 Cal Rptr 771, 1970 Cal App LEXIS 1567.*

It is no defense to a robbery charge that the victim was not the true owner of the money taken. *People v. Moore (1970, Cal App 2d Dist) 4 Cal App 3d 668, 84 Cal Rptr 771, 1970 Cal App LEXIS 1567.*

An attendant in a service station was properly named in the information as a victim of the robbery charged, though another attendant had control of the cash that was stolen, where both attendants were employees of the station and both were threatened by the robbers, and where all acts specified in the information occurred in the named attendant's presence. *People v. Arline (1970, Cal App 5th Dist) 13 Cal App 3d 200, 91 Cal Rptr 520, 1970 Cal App LEXIS 1229.*

Pen C § 211, defining robbery, makes no distinction either as to value or kind of personal property taken, Thus, if other statutory requirements are met, robbery is completed when personal property of any value or character is taken from the victim. *People v. Sutton (1973, Cal App 4th Dist) 35 Cal App 3d 264, 110 Cal Rptr 635, 1973 Cal App LEXIS 707.*

For robbery purposes, more than one person may constructively possess personal property at the same time and be a victim of the same offender. Thus, in a robbery perpetrated in a jewelry store, a security guard shot by one of the robbers had constructive possession of the merchandise stolen by them, and could properly be alleged to have been a victim even though other store employees present also had constructive possession. *People v. Miller (1977) 18 Cal 3d 873, 135 Cal Rptr 654, 558 P2d 552, 1977 Cal LEXIS 107.*

Robbery is an offense against the person; thus, a store employee may be a victim of a robbery even though he is not its owner and not at the moment in immediate control of the property stolen. *People v. Miller (1977) 18 Cal 3d 873, 135 Cal Rptr 654, 558 P2d 552, 1977 Cal LEXIS 107.*

The central element of the crime of robbery is the force or fear applied to the individual victim in order to deprive him of his property. Thus, when force or fear is applied to two victims in joint possession of a single item of personal property, two convictions of robbery are proper (disapproving, to the extent they are inconsistent, *People v. Guerin (1972) 22 Cal App 3d 775, 99 Cal Rptr 573, 1972 Cal App LEXIS 1295, People v. Higgins (1972) 28 Cal App 3d 771, 104 Cal Rptr 925, 1972 Cal App LEXIS 792, and People v. Childs (1980) 112 Cal App 3d 374, 169 Cal Rptr 183, 1980 Cal App LEXIS 2461*). *People v. Ramos (1982) 30 Cal 3d 553, 180 Cal Rptr 266, 639 P2d 908, 1982 Cal LEXIS 141, rev'd (1983) 463 US 992, 77 L Ed 2d 1171, 103 S Ct 3446, 1983 US LEXIS 112.*

A robbery within the meaning of *Pen C § 211*, is committed when property affixed to realty, such as standing crops, is severed and taken therefrom in circumstances that would have subjected the perpetrator to liability for robbery had the property been severed by another person at some previous time. The Legislature has said as much with regard to the lesser included offense of larceny (*Pen C §§ 487b, 487c, 495*), and the common law rule to the contrary is a hypertechnical remnant of an archaic formalism that can no longer be seriously defended. *People v. Dillon (1983) 34 Cal 3d 441, 194 Cal Rptr 390, 668 P2d 697, 1983 Cal LEXIS 226*.

It is not necessary that the victim of a robbery also be the owner of the goods taken. Robbery is an offense against the person who has either actual or constructive possession over the goods. Thus, a store employee may be a victim of a robbery even though he does not own the property taken and is not in charge or in immediate control of the property at the time of the crime. Nor is it a defense that the victim was a visitor to a store and was not the true owner of money or property taken. Furthermore, a person may be convicted of robbing a janitor or night watchman by taking the employer's property. *People v. Estes (1983, Cal App 1st Dist) 147 Cal App 3d 23, 194 Cal Rptr 909, 1983 Cal App LEXIS 2160*.

Defendant was properly convicted of robbery (*Pen C § 211*), where he took a coat and vest from a department store, was observed by a security guard who followed him outside the store, and, after the guard attempted to detain him, pulled a knife, swung it at the guard, and threatened to kill him. The property was taken from a person, despite defendant's claim the security guard did not have authority or control over it. The guard was employed by the store to prevent thefts of merchandise. As agent of the owner and a person directly responsible for the security of the items the guard was in constructive possession of the merchandise to the same degree as a salesperson. Simply because there were other people present in the store who also had constructive possession of the personal property was not relevant, since more than one person may be constructively possessed of personal property at the same time and be a victim of the same offender. Furthermore the merchandise was taken from the "immediate presence" of the guard. By preventing him from regaining control over the merchandise, defendant is held to have taken the property as if the guard had actual possession of the goods in the first instance. Finally, defendant's assaultive behavior was sufficiently contemporaneous with the taking of the merchandise. The crime of robbery is a continual offense that begins from the time of the original taking until the robber reaches a place of relative safety. It was sufficient to support the conviction that defendant used force to prevent the guard from retaking the property and to facilitate his escape. *People v. Estes (1983, Cal App 1st Dist) 147 Cal App 3d 23, 194 Cal Rptr 909, 1983 Cal App LEXIS 2160*.

A thing is in the immediate presence of a person, in respect to robbery, that is so within his or her reach, inspection, observation, or control, that he or she could, if not overcome by violence or prevented by fear, retain possession of it. Under this definition, property may be found to be in the victim's immediate presence even though it is located in another room of the house, or in another building on the premises. Thus, in the prosecution of a man who snatched two purses from the lap of a woman who was being pushed in a wheelchair by a companion, the taking of the companion's purse, while she was four feet away from it and seeing it taken, was from her immediate presence. *People v. Prieto (1993, Cal App 2d Dist) 15 Cal App 4th 210, 18 Cal Rptr 2d 761, 1993 Cal App LEXIS 465, review denied (1993, Cal) 1993 Cal LEXIS 4167*.

In a prosecution resulting in convictions that included robbery and related kidnapping for robbery and first degree murder, the trial court erred in instructing that "[t]he act of robbery is deemed to have occurred within the immediate presence of the victim as long as the victim perceived any overt act connected with the commission of the offense." While defendant's appeal was pending, the California Supreme Court rejected this definition of immediate presence, and instead held that an object is in the immediate presence of a person when the object "is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it." The trial court's instruction permitted the jury to improperly view the robbery's forcible acts themselves as "overt acts" satisfying the "immediate presence" requirement. The trial court's definition thus rendered the immediate presence element devoid of all independent meaning, making it redundant of the "force or fear" element of robbery. Since the faulty instruction was disapproved while defendant's appeal was pending, he was entitled to the benefit of the Supreme Court's holding. *People v. Harris (1994) 9 Cal 4th 407, 37 Cal Rptr 2d 200, 886 P2d 1193, 1994 Cal LEXIS 6587*.

To say that an instructional error on a mandatory presumption or the elements of an offense did not contribute to the verdict, and was harmless beyond a reasonable doubt, is to find the error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. Thus, to say that an instruction to apply an unconstitutional presumption did not contribute to the verdict is to make a judgment about the significance of the presumption to reasonable jurors, when measured against other evidence considered by those jurors independently of the presumption. Before reaching such a judgment, a court first must ask what evidence the jury actually considered in reaching its verdict. The court must then weigh the probative force of that evidence against the probative force of the presumption standing alone. It is not enough that the jury considered evidence from which it could have come to the verdict without reliance on the presumption. Rather, the issue is whether the jury actually rested its verdict on evidence establishing the presumed fact beyond a reasonable doubt, independently of the presumption. Since that inquiry cannot be a subjective one into the jurors' minds, a court must ask whether the force of the evidence presumably considered by the jury in accordance with the instructions is so overwhelming as to leave it beyond a reasonable doubt that the verdict resting on that evidence would have been the same in the absence of the presumption. *People v. Harris* (1994) 9 Cal 4th 407, 37 Cal Rptr 2d 200, 886 P2d 1193, 1994 Cal LEXIS 6587.

The trial court erred in denying defendant's motion to dismiss a robbery charge (*Pen C § 211*) involving a saxophone burglarized from a store, where the alleged victim of the robbery was a security guard from another establishment who chased defendant and was allegedly threatened by defendant during the chase. The necessary element of constructive possession depends on a special relationship with the owner of the property, not on the motives of a person seeking to recover possession from a thief or burglar. The fact that the security guard was employed as a guard for another business did not make him an agent of the owner of the saxophone. Rather, his relationship to the owner was that of a neighbor and good citizen seeking to catch a criminal. Moreover, possession did not pass from defendant to the security guard merely because defendant may have momentarily dropped the saxophone. Accordingly, the stolen saxophone was not taken "from the person or immediate presence" of the security guard, and a necessary element of the crime was not shown. *Sykes v. Superior Court* (1994, Cal App 1st Dist) 30 Cal App 4th 479, 35 Cal Rptr 2d 571, 1994 Cal App LEXIS 1190, rehearing denied (1994, Cal App 1st Dist) 1994 Cal App LEXIS 1293, review denied (1995, Cal) 1995 Cal LEXIS 1978.

Defendant was improperly convicted of robbery (*Pen C § 211*) in a prosecution arising from an incident in which defendant left a convenience store without paying for some merchandise, the proprietor of video games in the store chased defendant outside and asked him to stop, defendant threatened the video game proprietor, defendant's companion hit the proprietor from behind, the proprietor retreated, and defendant and his companion left with the merchandise. For purposes of robbery, the victim's possession of the property may be either actual or constructive and it need not be exclusive; nor must the victim own the property, so long as he or she exercises actual control over it. However, the proprietor was not an employee or agent of the store, he was in no way responsible for the security of the items taken, and no one from the store instructed him to give chase. Also, even though the proprietor and the store mutually benefited from the video games, he did not have a sufficient interest in the property to be a robbery victim. The proprietor's good motives did not substitute for the special relationship necessary to create a possessory interest in the goods. Thus, no robbery occurred. *People v. Galoia* (1994, Cal App 4th Dist) 31 Cal App 4th 595, 37 Cal Rptr 2d 117, 1994 Cal App LEXIS 1323, review denied (1995, Cal) 1995 Cal LEXIS 1995.

There was sufficient evidence to support a conviction for attempted armed robbery, even though the victim's money was on a bar 30 feet from the victim. The generally accepted definition of "immediate presence" for purposes of establishing robbery is that a thing is in the immediate presence of a person, which is so within his or her reach, observation, or control, that he or she could, if not overcome by violence or prevented by fear, retain possession of it. Under this definition, property may be found to be in the victim's immediate presence even though it is located in another room of the house or in another building on premises. Although the victim was 30 feet from the bar, the record showed that the victim could see defendant had a gun and that defendant was at the bar. The victim stated he stayed behind the pool table because defendant had a gun, and thus, it appeared that if defendant had not had a gun and the victim had not been prevented from doing so by fear, he could have easily gone over to the bar where defendant was

standing. There was substantial evidence that defendant exhibited a threat of force against the victim as a patron in the bar, that the victim was in the general vicinity, and that the element of "immediate presence" was satisfied. *People v. Douglas* (1995, Cal App 2d Dist) 36 Cal App 4th 1681, 43 Cal Rptr 2d 129, 1995 Cal App LEXIS 694, review denied (1995, Cal) 1995 Cal LEXIS 6174.

Robbery may be committed against a person who is not the owner of property, indeed, it may be committed against a thief. There is no requirement that the victim have an absolute right to possession of the property. For the purposes of robbery, it is enough that the person presently has some loose custody over the property, is currently exercising dominion over it, or at least may be said to represent or stand in the shoes of the true owner. *People v. Hamilton* (1995, Cal App 4th Dist) 40 Cal App 4th 1137, 47 Cal Rptr 2d 343, 1995 Cal App LEXIS 1184, review denied (1996, Cal) 1996 Cal LEXIS 782.

In a robbery prosecution arising from a robbery in a store, the trial court's instructions concerning a store employee's status as a robbery victim were adequate. The evidence showed that the employee was a store truck driver, who was present in the cash register area during the robbery. He was ordered to the ground by the robbers and kicked and forced into the break room with the customers and store employees. There was no testimony the robbers removed any of his personal property from his possession during the robbery. The court instructed the jury with *CALJIC No. 9.40* (elements of robbery) and with a special instruction stating, "[a] store employee may be the victim of a robbery even though he or she is not its owner and not at the moment in immediate control of the stolen property." These instructions were not misleading. The jury was instructed as to the meaning of actual or constructive possession, and the special instruction simply clarified that store employees can be victims of robbery even if they have mere constructive possession of the stolen property, rather than actual possession of the property. Moreover, the evidence was sufficient to support a conviction, since employees such as a store truck driver have sufficient representative capacity with respect to the owner of the property to be the victim of robbery. *People v. Jones* (1996, Cal App 2d Dist) 42 Cal App 4th 1047, 50 Cal Rptr 2d 46, 1996 Cal App LEXIS 142, review denied (1996, Cal) 1996 Cal LEXIS 2491.

In robbery, the property taken must be in the possession of another. But the term "possession" is used in a colloquial rather than a strict legal sense. Thus, in larceny, an offense only against property, the owner of property is considered in legal possession where his or her employee has physical custody and control. If the same reasoning were applied to robbery, the crime would not be committed where property was forcibly taken from the custody of an employee, for the employee's possession would not be the legal possession. However, robbery is an offense against the person as well as the property; hence the physical custody and control of an employee or other custodian is all that is required. It is no undue extension of the robbery statute to hold it applicable to any servant or servants left in sole occupation of the premises or particular part thereof by the employer. *People v. Jones* (1996, Cal App 2d Dist) 42 Cal App 4th 1047, 50 Cal Rptr 2d 46, 1996 Cal App LEXIS 142, review denied (1996, Cal) 1996 Cal LEXIS 2491.

In a capital homicide prosecution, substantial evidence supported convictions of first degree robbery murder and robbery, as well as the robbery-murder special-circumstance finding, although the defendant contended that because the victims were dead at the time their property was taken, there was no evidence of a taking from the "person or immediate presence" of the victims (*Pen C § 211*). From the evidence the jury could have reasonably inferred that had the victims not been shot by defendant, they could have taken effective steps to retain control of their property. As for the proposition that a perpetrator who succeeds in killing his victim before taking the victim's personal property cannot be guilty of robbery, a defendant who forms the intent to take the victims' possessions before killing them is properly convicted of robbery. From the evidence, the jury could reasonably infer defendant intended to take the victims' money and property before he shot them. *People v. Frye* (1998) 18 Cal 4th 894, 77 Cal Rptr 2d 25, 959 P2d 183, 1998 Cal LEXIS 4688, rehearing denied (1998) 19 Cal 4th 253, 1998 Cal LEXIS 6224, cert den (1999) 526 US 1023, 119 S Ct 1262, 143 L Ed 2d 358, 1999 US LEXIS 1975.

In order to constitute robbery (*Pen C § 211*), property must be taken from the possession of the victim by means of force or fear. Accordingly, in a prosecution for multiple counts of robbery that took place in a company lunchroom, defendants were improperly convicted of robbing the husband of one of the employees, since he was a visitor to the

business and was not in actual or constructive possession of the property taken from the business. *People v. Nguyen* (2000) 24 Cal 4th 756, 102 Cal Rptr 2d 548, 14 P3d 221, 2000 Cal LEXIS 9408.

"Immediate presence" for robbery charge was met, even though the property was originally taken when the victim left his pants and wallet in a restroom stall. The immediate presence element could be supplied after defendant had initially gained possession of the victim's property; thus, defendant's use of force to retain the property after the victim confronted him while he was attempting to get away was sufficient to support a robbery charge. *Miller v. Superior Court* (2004, Cal App 4th Dist) 115 Cal App 4th 216, 8 Cal Rptr 3d 872, 2004 Cal App LEXIS 99, review denied (2004, Cal) 2004 Cal LEXIS 2237.

Although two janitors were not store employees, they were found to be in constructive possession of the store's property and money during the robbery, in which defendant and co-defendant bound the janitors and imprisoned them in a store room, along with store employees. *People v. Gilbeaux* (2003, Cal App 2d Dist) 111 Cal App 4th 515, 3 Cal Rptr 3d 835, 2003 Cal App LEXIS 1280, review denied (2003, Cal) 2003 Cal LEXIS 8717.

"Immediate presence" element of robbery included situation in which the taking was outside the victim's sensory perception, where perpetrator induced the victim to participate in a drug deal, then the victim followed the perpetrator to a campsite, and then perpetrator stabbed the victim to death in order to steal his vehicle; there was fair notice that actions in taking vehicle's keys alone would satisfy the immediate presence requirement, and California had long held that constructive possession of property by the victim was sufficient to meet the requirements of robbery. *Webster v. Woodford* (2004, 9th Cir Cal) 361 F3d 522, 2004 US App LEXIS 4268, amended, rehearing denied (2004, 9th Cir Cal) 369 F3d 1062, 2004 US App LEXIS 10216, reprinted as amended (2004, 9th Cir Cal) 369 F3d 1062, 2004 US App LEXIS 10224, cert den (2004) 543 US 1007, 160 L Ed 2, 125 S Ct 626, 2004 US LEXIS 7804.

8. Force or Fear

Where an information alleges that the robbery was "accomplished by means of force and fear" an allegation that it was accomplished "against the will" is unnecessary. *People v. Riley* (1888) 75 Cal 98, 16 P 544, 1888 Cal LEXIS 485.

Where no element of fear entered into the perpetration of the robbery, an instruction in the form of this section was sufficient and there was no need or propriety in instructing on the subject of fear. *People v. Modina* (1905) 146 Cal 142, 79 P 842, 1905 Cal LEXIS 498.

Where record is devoid of any showing that any force was used in taking property of complaining witness or that she was afraid to resist the taking of it, and no money was taken or any act committed which indicated that defendant intended to rob complaining witness, evidence would not sustain conviction of robbery. *People v. Welsh* (1936) 7 Cal 2d 209, 60 P2d 124, 1936 Cal LEXIS 619.

To constitute first degree robbery it is necessary only that accused be armed with deadly weapon and that he take property of another from his person against his will "by means of force or fear;" if after robbery is accomplished robber beats victim with weapon, he is guilty of separate crime of assault by means of force likely to produce great bodily injury. *In re Chapman* (1954) 43 Cal 2d 385, 273 P2d 817, 1954 Cal LEXIS 257.

Though a taking under definition of robbery may be accomplished by use of either force or fear, proof of one or the other must be made in order to sustain conviction. *People v. Reade* (1961, Cal App 2d Dist) 197 Cal App 2d 509, 17 Cal Rptr 328, 1961 Cal App LEXIS 1370.

Robbery need not be accomplished by means of both force and fear, and proof of either is sufficient to sustain conviction. *People v. James* (1963, Cal App 1st Dist) 218 Cal App 2d 166, 32 Cal Rptr 283, 1963 Cal App LEXIS 1762.

Conviction of robbery requires proof of force or fear. *People v. Clayton* (1963, Cal App 3d Dist) 218 Cal App 2d 364, 32 Cal Rptr 679, 1963 Cal App LEXIS 1787.

Terms "force" and "fear" used in defining robbery have no technical meaning peculiar to law and must be presumed to be within jurors' understanding, and where defendant did not request amplification or explanation of such terms, error could not be predicated on trial court's failure to give them on its own motion. *People v. Anderson* (1966) 64 Cal 2d 633, 51 Cal Rptr 238, 414 P2d 366, 1966 Cal LEXIS 294.

The larcenous aiming of a handgun at a victim accompanied by a demand (and receipt) of money amounts to "force" and inferably "fear," within the meaning of *Pen C § 211*, defining robbery as a "felonious taking" by "force or fear." *People v. Le Blanc* (1972, Cal App 3d Dist) 23 Cal App 3d 902, 100 Cal Rptr 493, 1972 Cal App LEXIS 1264.

Where the element of "force or fear," necessary to the crime of robbery as defined by *Pen C § 211*, is absent, a taking of property from the person is grand theft under *Pen C § 487*. *People v. Morales* (1975, Cal App 4th Dist) 49 Cal App 3d 134, 122 Cal Rptr 157, 1975 Cal App LEXIS 1191.

In a robbery prosecution arising out of a "purse snatch," the evidence was sufficient to support a finding of "force or fear" required for conviction of robbery under *Pen C § 211*, where there was evidence that the purse was grabbed from the victim's arm with such force that the handle broke. *People v. Roberts* (1976, Cal App 2d Dist) 57 Cal App 3d 782, 129 Cal Rptr 529, 1976 Cal App LEXIS 1490, overruled *People v. Rollo* (1977) 20 Cal 3d 109, 141 Cal Rptr 177, 569 P2d 771, 1977 Cal LEXIS 172.

In a prosecution for robbery, there was sufficient evidence to support the "force or fear" requisite to conviction for robbery where there was testimony that defendant was armed with a butcher-type knife used in plain view in opening a diamond display case, that defendant overcame the force exerted by a clerk to keep the glass on the case and that the clerk had to call a security guard in her attempts to prevent defendant from obtaining the diamonds. *People v. Harris* (1977, Cal App 2d Dist) 65 Cal App 3d 978, 135 Cal Rptr 668, 1977 Cal App LEXIS 1106.

While an element of force or fear must be proved in order to establish a conviction for robbery under *Pen C § 211*, it is not necessary for that element to be reflected in the overt act of an attempted robbery if the crime has not progressed to that point. Moreover, an attempt to commit the crime of robbery does not of itself necessarily amount to an assault and does not require assault as an essential element. *People v. Vizcarra* (1980, Cal App 2d Dist) 110 Cal App 3d 858, 168 Cal Rptr 257, 1980 Cal App LEXIS 2334.

In a robbery prosecution arising out of a bank holdup, the evidence was sufficient to sustain a jury finding of force or fear inherent to the crime of robbery with respect to two of the bank tellers involved who did not testify at trial, where both defendants were in possession of guns and the weapons were out and pointed in the direction of the tellers and customers alike, where one of the two tellers, though not at her window, was within visual sight of it, and where the other was right next to his cash box at the time of the taking. *People v. Childs* (1980, Cal App 1st Dist) 112 Cal App 3d 374, 169 Cal Rptr 183, 1980 Cal App LEXIS 2461, overruled *People v. Ramos* (1982) 30 Cal 3d 553, 180 Cal Rptr 266, 639 P2d 908, 1982 Cal LEXIS 141, overruled *People v. Hernandez* (1981) 30 Cal 3d 462, 179 Cal Rptr 239, 637 P2d 706, 1981 Cal LEXIS 203.

Where defendant displayed a gun to place two persons in joint possession of property in fear in order to unlawfully take the property, defendant's conviction of two counts of robbery was proper. *People v. Gordon* (1982, Cal App 4th Dist) 136 Cal App 3d 519, 186 Cal Rptr 373, 1982 Cal App LEXIS 2036.

The terms "force or fear," as used in the definition of the crime of robbery (*Pen C § 211*) have no technical meaning peculiar to the law and must be presumed to be within the understanding of jurors. Thus, jury instructions explaining such terms are not required. *People v. Hays* (1983, Cal App 4th Dist) 147 Cal App 3d 534, 195 Cal Rptr 252, 1983 Cal App LEXIS 2217.

The administering of drugs to overcome a victim's resistance constitutes "force" within the meaning of *Pen C § 211*, providing that robbery is the felonious taking of personal property against the victim's will accomplished by means of force or fear. Accordingly, the evidence was sufficient to sustain defendant's conviction for robbery, where the

convictions were predicated on evidence showing that in each instance defendant used lorazepam, a tranquilizer, dissolved in hot coffee in order to drug his victims and render them unconscious thereby overcoming their resistance to the taking of various items of personal property from their homes or persons. A showing of "force or fear" is not, and cannot be, limited to external forces such as bludgeoning the victim or displaying a lethal weapon to overcome his will and resistance. *People v. Dreas* (1984, Cal App 1st Dist) 153 Cal App 3d 623, 200 Cal Rptr 586, 1984 Cal App LEXIS 1812.

Defendant's use of a knife was not an element of the crime of robbery because the particular means by which force was employed was not an element, and thus the use of the knife could be the basis of an enhancement under Cal. Penal Code § 12022(b). *In re Michael L.* (1985) 39 Cal 3d 81, 216 Cal Rptr 140, 702 P2d 222, 1985 Cal LEXIS 297.

Robbery (*Pen C § 211*) is the felonious taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear. It is the use of force or fear that distinguishes robbery from grand theft from the person. *People v. Mungia* (1991, Cal App 4th Dist) 234 Cal App 3d 1703, 286 Cal Rptr 394, 1991 Cal App LEXIS 1179, review denied (1992, Cal) 1992 Cal LEXIS 283.

The force or fear required to establish robbery under *Pen C § 211*, is not synonymous with a physical corporeal assault. The terms "force" and "fear," as used in the definition of robbery, have no technical meaning peculiar to the law and must be presumed to be within the understanding of jurors. "Force" is a relative concept, since some people are more vulnerable than others. The determination of whether the physical act applied to the victim constitutes force is a factual question that the jury must determine using its own common sense, and it may consider both the victim's and the defendant's physical characteristics. *People v. Mungia* (1991, Cal App 4th Dist) 234 Cal App 3d 1703, 286 Cal Rptr 394, 1991 Cal App LEXIS 1179, review denied (1992, Cal) 1992 Cal LEXIS 283.

In the context of the robbery statute (*Pen C § 211*), "force" is not limited to an application of power such as bludgeoning the victim. The test is whether resistance is involuntarily overcome. Thus, administration of intoxicating drugs that render the victim unconscious or dazed can constitute "force" within the robbery statute. *People v. Pretzer* (1992, Cal App 2d Dist) 9 Cal App 4th 1078, 11 Cal Rptr 2d 860, 1992 Cal App LEXIS 1121.

Substantial evidence supported a conviction of robbery (*Pen C § 211*), even though the victim managed to escape from his apartment before defendants succeeded in carrying away his property, where the victim could, but for defendants' use of force or fear, have taken steps to exercise physical control over his property; thus, it was taken from his "immediate presence." Although a piece of video equipment was still attached to the premises by its cable when the victim left the apartment, the taking (asportation) was begun in his presence, and defendants did successfully carry the property away. *People v. Dominguez* (1992, Cal App 4th Dist) 11 Cal App 4th 1342, 15 Cal Rptr 2d 46, 1992 Cal App LEXIS 1483.

In the robbery prosecution of a man who snatched two purses from the lap of a woman who was being pushed in a wheelchair by a companion, the element of taking from the companion accomplished by means of fear was satisfied, where substantial evidence permitted the reasonable inference that defendant's forceful struggle to wrest the purses from the wheelchair victim caused her companion to be fearful and shocked. *People v. Prieto* (1993, Cal App 2d Dist) 15 Cal App 4th 210, 18 Cal Rptr 2d 761, 1993 Cal App LEXIS 465, review denied (1993, Cal) 1993 Cal LEXIS 4167.

In a robbery (*Pen C § 211*) prosecution, no reversible error resulted from the trial court's jury instruction on the element of force or fear. The court instructed the jury that aiming of a gun at a victim accompanied by a demand and receipt of property amounted to force and an inference of fear. In explaining or defining an element of an offense, a trial court must exercise care so as not to confuse legal determinations with factual ones. The court's instruction intruded on the jury's role as factfinder. However, this error is reviewed under a harmless-error standard, and the trial court's error was harmless beyond a reasonable doubt. Only identity was at issue at trial, and defendant did not dispute that each victim had been robbed. Moreover, the court left for the jury's determination whether a gun had actually been aimed at the victims and whether there had been demands for property. The jury specifically found a firearm was used and could

not have reasonably doubted that this use amounted to force or fear. *People v. Higareda* (1994, Cal App 2d Dist) 24 Cal App 4th 1399, 29 Cal Rptr 2d 763, 1994 Cal App LEXIS 456, review denied (1994, Cal) 1994 Cal LEXIS 4259, cert den (1994) 513 US 1062, 115 S Ct 676, 130 L Ed 2d 608, 1994 US LEXIS 8922.

In a prosecution for a robbery (*Pen C § 211*) occurring at an automated teller machine, the trial court, after instructing the jury that robbery is accomplished by means of force, violence, fear, or intimidation (*CALJIC No. 9.40*), erred in further instructing that where intimidation is relied on, it must be established by proof of conduct, words, or circumstances reasonably calculated to produce fear. The taking necessary to support a conviction for robbery must be accomplished by means of force or fear. The trial court's instruction, however, created an ambiguity as to whether "fear" and "intimidation" are different concepts for purposes of robbery, and as to whether it was necessary for the jury to find that the victim was, in fact, afraid in order to reach a guilty verdict. Moreover, the prosecution stated in closing argument that proof of either fear or intimidation was satisfactory for a conviction, that intimidation was the primary factor in the case, and that the robbery was accomplished by "pure intimidation." Thus, the prosecution's arguments exacerbated the ambiguities that the instruction created. *People v. Davison* (1995, Cal App 1st Dist) 32 Cal App 4th 206, 38 Cal Rptr 2d 438, 1995 Cal App LEXIS 109, rehearing denied (1995, Cal App 1st Dist) 1995 Cal App LEXIS 219.

The element of fear for purposes of robbery (*Pen C § 211*) is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his or her property. Although the victim need not explicitly testify that he or she was afraid in order to show the use of fear to facilitate the taking, there must be evidence from which it can be inferred that the victim was in fact afraid, and that such fear allowed the crime to be accomplished. The extent of the victim's fear does not need to be extreme. *People v. Davison* (1995, Cal App 1st Dist) 32 Cal App 4th 206, 38 Cal Rptr 2d 438, 1995 Cal App LEXIS 109, rehearing denied (1995, Cal App 1st Dist) 1995 Cal App LEXIS 219.

In a prosecution for robbery (*Pen C § 211*), the trial court's error in instructing the jury that where intimidation is relied on to support a robbery conviction, it must be established by proof of conduct, words, or circumstances reasonably calculated to produce fear, thus creating an ambiguity as to whether intimidation alone was sufficient to support a robbery conviction, was harmless. Under other instructions that defined robbery as a taking by means of force or fear and stated that the prosecution must prove a taking by force, violence, fear, or intimidation, "fear" was an alternative to "intimidation," and thus the ambiguous instruction did not improperly restrict the jury's consideration of the evidence. Moreover, evidence that a defendant's acts did induce fear in a victim is probative of whether the acts were objectively intimidating. The victim testified that it was night when defendant and his accomplice approached her at an automated teller machine, that no one else was present, and that defendant spoke to her in a way that made her feel he "meant business." The victim further testified that she did not know whether defendant and the accomplice were going to use violence, and that she moved towards her car for safety. This evidence showed, beyond a reasonable doubt, that the erroneous instruction must have made no difference in the verdict. *People v. Davison* (1995, Cal App 1st Dist) 32 Cal App 4th 206, 38 Cal Rptr 2d 438, 1995 Cal App LEXIS 109, rehearing denied (1995, Cal App 1st Dist) 1995 Cal App LEXIS 219.

For purposes of *Pen C § 211* (robbery is felonious taking of personal property from person, against his or her will, by means of force or fear), the element of force or fear is satisfied if the force or fear caused the victim to give up his or her property. *People v. Smith* (1995, Cal App 2d Dist) 33 Cal App 4th 1586, 40 Cal Rptr 2d 31, 1995 Cal App LEXIS 347, review denied (1995, Cal) 1995 Cal LEXIS 4464.

In a prosecution for robbery (*Pen C § 211*), there was sufficient evidence that defendant took the victim's property by means of force or fear. Defendant, who had forced the victim into a camper, saw her attempting to hide \$20 by taking it out of her jeans pocket and putting it in her sock. Defendant told the victim that he would not steal her money and that she could put it back in her sock. He then raped her. When he put down the knife he was holding, the victim took the knife and stabbed defendant in the back. Defendant wrestled the knife away from the victim, bit her on the cheek, and told her to stop screaming, saying, "Shut up because those guys out there told me to come get you and if you don't be quiet, they will come in and just act like nothing happened because they think you are my girlfriend so that they

think we are having a fight." With the knife positioned towards the victim, defendant said that the pain was killing him, and took the \$20 from the victim's jeans pocket, while she was still on the bed. This was sufficient evidence of the use of force or fear to deprive the victim of her money. *People v. Smith* (1995, Cal App 2d Dist) 33 Cal App 4th 1586, 40 Cal Rptr 2d 31, 1995 Cal App LEXIS 347, review denied (1995, Cal) 1995 Cal LEXIS 4464.

In order to support a conviction of robbery (*Pen C § 211*), the taking (either the gaining possession of or the carrying away of the property) must be accomplished by force or fear. This element was satisfied where defendant, while stealing a stereo from the victim's car, was confronted by the victim and swung at him with a screwdriver, while at the same time getting out of the victim's car and holding onto the stereo. Even though defendant may have gained possession of the property without the use of force or fear, his mere theft became a robbery when he resorted to force or fear while carrying away the loot. It was sufficient that defendant used force or fear to prevent the victim from regaining the car stereo. *People v. Torres* (1996, Cal App 2d Dist) 43 Cal App 4th 1073, 51 Cal Rptr 2d 77, 1996 Cal App LEXIS 250, review denied (1996, Cal) 1996 Cal LEXIS 2791, overruled in part *People v. Mosby* (2004) 33 Cal 4th 353, 15 Cal Rptr 3d 262, 92 P3d 841, 2004 Cal LEXIS 6234.

The willful use of fear to retain property immediately after it has been taken from the owner constitutes robbery (*Pen C § 211*). So long as the perpetrator uses the victim's fear to accomplish the retention of the property, it makes no difference whether the fear is generated by the perpetrator's specific words or actions designed to frighten, or by the circumstances surrounding the taking itself. *People v. Flynn* (2000, Cal App 2d Dist) 77 Cal App 4th 766, 91 Cal Rptr 2d 902, 2000 Cal App LEXIS 33, review denied (2000, Cal) 2000 Cal LEXIS 4151.

Since the central element of robbery is force or fear, a defendant may be convicted of a separate robbery for each victim of such force or fear, even if the victims are in joint possession of the property taken. However, in a prosecution arising out of a restaurant robbery, defendant was improperly convicted of committing two separate robberies that evening, based on the separate ownership of the two amounts of money taken, where he committed only one larceny against a single victim of one threatened application of force occurring at the same place and time. Under these circumstances, the single larceny could only support a single county of robbery. *People v. Marquez* (2000, Cal App 3d Dist) 78 Cal App 4th 1302, 93 Cal Rptr 2d 758, 2000 Cal App LEXIS 182, review denied (2000, Cal) 2000 Cal LEXIS 5723.

In a prosecution for robbing a video store (*Pen C § 211*) and for kidnapping to commit rape, the jury could reasonably infer that defendant took the victim's property, four videotapes, by either force or fear, despite defendant's contention that he decided to take the videos after the attack, which was only theft, not robbery. Where a defendant begins a sexual assault, aware that the victim has property and takes it, the jury may infer the defendant intended to commit both rape and robbery. Here defendant knew the victim had videotapes because he was in her video store. Moreover, the victim testified she feared for her life and defendant took the videos against her will. Defendant also admitted hitting her before he left. *People v. Shadden* (2001, Cal App 2d Dist) 93 Cal App 4th 164, 112 Cal Rptr 2d 826, 2001 Cal App LEXIS 839, review denied (2002, Cal) 2002 Cal LEXIS 345.

Where defendant's victim testified that he was scared when defendant and defendant's passenger, claiming to be undercover police officers, approached him late at night as the victim was attempting to tow his car, the evidence was sufficient to show that defendant took the victim's property, contents from his wallet, by means of fear and unlawful injury. *People v. Gonzales* (2003, Cal App 6th Dist) 114 Cal App 4th 560, 8 Cal Rptr 3d 88, 2003 Cal App LEXIS 1866, review denied (2004) 2004 Cal. LEXIS 2417 .

Although the manager was not present when defendant broke into a restaurant and took money, defendant used force against the manager, who arrived as defendant was leaving, to retain the stolen money and remove it from the manager's immediate presence; such use of force was sufficient to support defendant's conviction for robbery, and the trial court correctly instructed the jury that a taking was from the immediate presence of the victim if it occurred in an area within the victim's reach, observation, or control such that the victim could, if not overcome by force or fear, retain possession of the property. *People v. Gomez* (2005, Cal App 4th Dist) 134 Cal App 4th 1241, 36 Cal Rptr 3d 680, 2005

Cal App LEXIS 1908, review gr, depublished (2006, Cal) *42 Cal Rptr 3d 1*, *132 P3d 211*, *2006 Cal LEXIS 3728*.

Purse snatch satisfied the force or fear element of robbery where the thief wrested the purse from the victim, who had it on her person, using the amount of force necessary to get it away; the thief succeeded by cutting or breaking a strap that was over the victim's shoulder and pulled on the strap with enough strength to defeat the victim's efforts to hold on to the purse. *People v. Thomas* (2005, Cal App 2d Dist) *127 Cal App 4th 368*, *25 Cal Rptr 3d 509*, *2005 Cal App LEXIS 335*, rehearing denied (2005, Cal App 2d Dist) *2005 Cal App LEXIS 558*, review gr, depublished (2005, Cal) *30 Cal Rptr 3d 464*, *114 P3d 717*, *2005 Cal LEXIS 6561*, transferred (2005, Cal) *34 Cal Rptr 3d 198*, *119 P3d 962*, *2005 Cal LEXIS 9988*.

Sufficient evidence supported second-degree robbery convictions because the victims were frightened into giving defendant money. In a four-hour period after the victim refused to give him money, defendant threatened to kill the victim and fired gunshots near the front of the store where the victim worked; two hours after the shots were fired, defendant returned to the store and the victim gave him money. *People v. Carrasco* (2006, Cal App 2d Dist) *137 Cal App 4th 1050*, *40 Cal Rptr 3d 768*, *2006 Cal App LEXIS 399*.

Although defendant, who murdered his mother, argued that he could not be found to have stolen from his mother by means of force or fear because his mother was already dead when he took her property, the point was meritless. It was defendant who applied the force to his mother, and substantial evidence was presented to show that defendant did so with the intent to steal. *People v. Abilez* (2007) *41 Cal 4th 472*, *61 Cal Rptr 3d 526*, *2007 Cal LEXIS 6758*, modified (2007, Cal) *2007 Cal LEXIS 8908*, modified, rehearing denied (2007, Cal) *2007 Cal LEXIS 8987*.

Defendant's claim during his second-degree robbery trial that CALCRIM No. 1600 was deficient because it did not require proof the victim was actually afraid and did not require proof of force beyond that necessary to accomplish seizure of the property lacked merit because there is no requirement that the instruction define the terms fear or force as defendant suggested. Defendant's argument about the level of force required had no application because the victim gave up the property willingly out of fear after defendant put a knife to the victim's throat, and the trial court was not required to define the terms fear and force for the jury. *People v. Anderson* (2007, Cal App 3d Dist) *152 Cal App 4th 919*, *61 Cal Rptr 3d 903*, *2007 Cal App LEXIS 1042*.

In a robbery trial under *Pen C § 211*, defendant's use of force or fear was established by evidence that defendant pushed a mall security guard when confronted near a music store and thereby prevented the guard from regaining possession of merchandise that defendant took from the music store. *People v. Gunter* (2007, 2d Dist) *156 Cal App 4th 913*, *2007 Cal App LEXIS 1823*.

Evidence that defendant's accomplice cut or broke a purse strap over the victim's shoulder and pulled on the strap with enough strength to defeat the victim's efforts to hold on to the purse was sufficient to satisfy the force or fear element of robbery; by instructing the jury on grand theft as a lesser included offense, the trial court correctly allowed the jury to decide whether defendant's accomplice used more force than the amount needed to take the purse without resistance. *People v. Thomas* (2007, 2d Dist) *156 Cal App 4th 988*, *2007 Cal App LEXIS 1830*.

Purse snatch can qualify as a robbery when the perpetrator wrests the purse from the victim's person, using the amount of force necessary to overcome the victim's resistance. *People v. Thomas* (2007, 2d Dist) *156 Cal App 4th 988*, *2007 Cal App LEXIS 1830*.

There was sufficient evidence that defendant committed robbery when he left a store without paying for merchandise; by brandishing a metallic object that resembled a weapon, defendant induced fear in a store employee and stopped the employee from chasing him, which was sufficient to establish the fear element of robbery. *People v. Villa* (2007, 2d Dist) *2007 Cal App LEXIS 2043*.

9. Asportation

Section requires taking of personal property which is in possession of another from his person or immediate possession; though some asportation is required, distance property is taken may be very small. *People v. Salcido* (1960, Cal App 4th Dist) 186 Cal App 2d 684, 9 Cal Rptr 57, 1960 Cal App LEXIS 1684.

Escape of robber with loot is part of robbery itself. *People v. Phillips* (1962, Cal App 1st Dist) 201 Cal App 2d 383, 19 Cal Rptr 839, 1962 Cal App LEXIS 2605.

Distance that property is taken may be very small and still be sufficient asportation to constitute robbery as defined in this section. *People v. Navarro* (1963, Cal App 5th Dist) 212 Cal App 2d 299, 27 Cal Rptr 716, 1963 Cal App LEXIS 2846.

General rule is that attempted escape of robber with or without loot is integral part of robbery and falls in category of res gestae. *People v. Young* (1963, Cal App 2d Dist) 214 Cal App 2d 641, 29 Cal Rptr 595, 1963 Cal App LEXIS 2655.

Requisite asportation element of robbery was adequately stated in an instruction that one necessary element for robbery is carrying away of property, but that to constitute carrying away, property need not be retained in thief's possession or be removed from owner's premises, and that any removal of article from place where it is kept by owner, done with requisite intent, whereby thief obtains possession and control of property at least for fraction of time is sufficient to constitute element of carrying away. *People v. Nazzaro* (1963, Cal App 2d Dist) 223 Cal App 2d 375, 35 Cal Rptr 879, 1963 Cal App LEXIS 1542.

Robbery is not complete at moment robber obtains possession of stolen property; crime includes element of asportation, robber's escape with loot being considered as important in commission of crime as gaining possession of property. *People v. Anderson* (1966) 64 Cal 2d 633, 51 Cal Rptr 238, 414 P2d 366, 1966 Cal LEXIS 294.

There is sufficient asportation to sustain a robbery conviction if the property is removed from the person of the victim. *People v. Gibbs* (1970, Cal App 4th Dist) 12 Cal App 3d 526, 90 Cal Rptr 866, 1970 Cal App LEXIS 1644.

There was substantial evidence to support the first degree robbery convictions (*Pen C § 211*) of two defendants, where the uncontroverted evidence established that the victim was compelled at knife point by one defendant, while another held onto her hair, to drive her vehicle a certain distance and was then forcibly thrown out of it, leaving her purse and the vehicle in the possession of defendants, who had dominion over both. The completed offense of robbery was committed even though defendants were unable to escape with the vehicle and purse to a place of temporary safety. No extended asportation is required for the offense to pass from the attempt stage to the consummated offense. *People v. Green* (1979, Cal App 1st Dist) 95 Cal App 3d 991, 157 Cal Rptr 520, 1979 Cal App LEXIS 2029.

A robbery is not completed at the moment the robber obtains possession of the stolen property. The crime of robbery includes the element of asportation, the robber's escape with the loot being considered as important in the commission of the crime as gaining possession of the property. Thus, a robbery occurs when a defendant uses force or fear in resisting attempts to regain the property or in attempting to remove the property from the owner's immediate presence regardless of the means by which he originally acquired the property. *People v. Estes* (1983, Cal App 1st Dist) 147 Cal App 3d 23, 194 Cal Rptr 909, 1983 Cal App LEXIS 2160.

The evidence sufficed to show that defendant took a man's wallet from his person or immediate presence, and thus committed robbery, where during examination the man answered the question whether he lost any money by saying he had only a few dollars "on" him and, asked what else was taken "from" him, said there were only a few dollars in his wallet. *People v. Phan* (1993, Cal App 2d Dist) 14 Cal App 4th 1453, 18 Cal Rptr 2d 364, 1993 Cal App LEXIS 388, review denied (1993, Cal) 1993 Cal LEXIS 3695.

The element of asportation for purposes of robbery (*Pen C § 211*) is satisfied by a very slight movement, and there is no requirement that the robber have manual possession of the property. Further, the robber's escape with the loot is

not necessary to commit the crime. *People v. Torres* (1996, Cal App 2d Dist) 43 Cal App 4th 1073, 51 Cal Rptr 2d 77, 1996 Cal App LEXIS 250, review denied (1996, Cal) 1996 Cal LEXIS 2791, overruled in part *People v. Mosby* (2004) 33 Cal 4th 353, 15 Cal Rptr 3d 262, 92 P3d 841, 2004 Cal LEXIS 6234.

In a prosecution for a take-over robbery of a bank, brief movement of a bank manager and teller from the public area of the bank to the vault room did not support convictions for kidnapping for the purpose of robbery, *Pen C § 209(b)(1)*, which required movement of a victim that was not merely incidental to the commission of the underlying robbery, for which defendants were charged under *Pen C § 211*. *People v. Washington* (2005, Cal App 2d Dist) 127 Cal App 4th 290, 25 Cal Rptr 3d 459, 2005 Cal App LEXIS 320, review denied (2005, Cal) 2005 Cal LEXIS 6828.

Evidence that defendant took merchandise without paying for it and threatened guards who followed him from the store was sufficient to support defendant's conviction for second degree robbery; although the guards were in a security monitoring room observing defendant on security cameras when defendant gained possession of the merchandise, this was a taking from their immediate presence because the merchandise was within their observation or control, and preventing the recovery of property through force or fear is itself a taking by force or fear. *People v. Johnson* (2006, Cal App 1st Dist) 141 Cal App 4th 1161, 46 Cal Rptr 3d 594, 2006 Cal App LEXIS 1183, review gr, depublished (2006, Cal) 52 Cal Rptr 3d 85, 147 P3d 1013, 2006 Cal LEXIS 13526.

9.5. Jury Selection

Prisoner was convicted of murder under *Pen C § 187*, attempted murder under *Pen C §§ 187, 664*, robbery under *Pen C § 211*, and attempted robbery under *Pen C §§ 211, 664*. Although he claimed that the trial court violated his right to a jury trial when it overruled his objections to peremptory challenges of African-Americans, the state appellate court's decision that the prosecutor exercised the challenges in good faith by setting out race-neutral reasons and that the challenges were not applied inconsistently did not entitle the prisoner to federal habeas relief. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

9.8. Instructions

No unanimity instruction was required in a trial under *Pen C § 211* to distinguish between takings of the victim's shoes and cell phone because those takings occurred almost simultaneously during a first assault, and there was no evidence suggesting otherwise; although a second incident occurred when defendants later took \$20, the failure to give a unanimity instruction was harmless because, given the record, it was reasonable to conclude that the jury believed beyond a reasonable doubt that defendant committed all of the charged acts if defendant committed any. *People v. Curry* (2007, 3d Dist) 2007 Cal App LEXIS 2143.

10. Evidence

Testimony that defendant resembles robber or looks like him is sufficient to support conviction. *People v. Jackson* (1960, Cal App 2d Dist) 183 Cal App 2d 562, 6 Cal Rptr 884, 1960 Cal App LEXIS 1788.

Testimony of one witness, if believed by trier of fact, is sufficient to support robbery conviction. *People v. Williams* (1960, Cal App 2d Dist) 183 Cal App 2d 715, 6 Cal Rptr 881, 1960 Cal App LEXIS 1816, cert den (1961) 366 US 967, 6 L Ed 2d 1257, 81 S Ct 1927, 1961 US LEXIS 878.

Testimony of witnesses referring to defendant as being person who participated in robberies charged was sufficient to identify him as perpetrator of the crimes. *People v. Salcido* (1960, Cal App 4th Dist) 186 Cal App 2d 684, 9 Cal Rptr 57, 1960 Cal App LEXIS 1684.

Conviction of robbery may be proper where accused's identity is based on testimony of single witness; this identification need not be corroborated by other evidence. *People v. Wyback* (1961, Cal App 2d Dist) 193 Cal App 2d

754, 14 Cal Rptr 501, 1961 Cal App LEXIS 1766.

Testimony of robbery victim, if believed by trier of facts, is sufficient of itself to warrant conviction and no corroborative evidence is required. *People v. McLaine* (1962, Cal App 2d Dist) 204 Cal App 2d 96, 22 Cal Rptr 72, 1962 Cal App LEXIS 2223; *People v. Sanders* (1963) 217 CA2d 606, 31 Cal Rptr 707, 1963 Cal App LEXIS 1947; *In re Corey* (1964, Cal App 1st Dist) 230 Cal App 2d 813, 41 Cal Rptr 379, 1964 Cal App LEXIS 937.

When specific intent is essential element of crime charged, as is intent to steal in crime of robbery, and proof of that intent is circumstantial, jury must be instructed that it cannot find defendant guilty on circumstantial evidence unless circumstances were not only consistent with hypothesis of guilt, but inconsistent with any other rational conclusion. *People v. Gomez* (1963, Cal App 1st Dist) 223 Cal App 2d 572, 35 Cal Rptr 823, 1963 Cal App LEXIS 1570.

Testimony of single witness, if not inherently incredible, is sufficient evidence to support conviction for robbery, and where defendant was identified by two witnesses as one of two men who committed robbery and identified by three witnesses as one who attempted another robbery, there was ample evidence of his guilt. *People v. Davis* (1966, Cal App 2d Dist) 241 Cal App 2d 51, 50 Cal Rptr 215, 1966 Cal App LEXIS 1211.

The testimony of a robbery victim, if believed by the trier of facts, is sufficient of itself to warrant a conviction, and no corroborative evidence is required. *People v. Jackson* (1967, Cal App 3d Dist) 253 Cal App 2d 68, 61 Cal Rptr 319, 1967 Cal App LEXIS 2321.

The testimony of a robbery victim, if believed by the trier of fact, is sufficient of itself to warrant a conviction, and no corroborative evidence is required. *People v. Smith* (1967, Cal App 5th Dist) 253 Cal App 2d 299, 61 Cal Rptr 457, 1967 Cal App LEXIS 2351.

Necessary element of robbery is specific intent to steal property, which can be inferred from circumstances. *People v. Jennings* (1958, Cal App 4th Dist) 158 Cal App 2d 159, 322 P2d 19, 1958 Cal App LEXIS 2344; *People v. Nichols* (1967, Cal App 5th Dist) 255 Cal App 2d 217, 62 Cal Rptr 854, 1967 Cal App LEXIS 1263. *People v. De Priest* (1969, Cal App 3d Dist) 2 Cal App 3d 423, 82 Cal Rptr 526, 1969 Cal App LEXIS 1425.

When a person is shown to be in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances which tend to show guilt will support a conviction of robbery. *People v. Mulqueen* (1970, Cal App 3d Dist) 9 Cal App 3d 532, 88 Cal Rptr 235, 1970 Cal App LEXIS 1969.

In a prosecution for robbery in violation of *Pen C* § 211, and the infliction of great bodily injury on the victim in violation of *Pen C* § 213, failure of the court to give an instruction with respect to the effect of circumstantial evidence amounted to prejudicial error where, while the court gave an instruction on the effect of circumstantial evidence in relation to proof of the specific intent to permanently deprive the owner of his property as an element of robbery, the court did not repeat the instruction on the effect of circumstantial evidence in relation to proof of the specific intent to commit great bodily injury as a basis for enhancement of punishment under *Pen C* § 213. *People v. Salas* (1976, Cal App 2d Dist) 58 Cal App 3d 460, 129 Cal Rptr 871, 1976 Cal App LEXIS 1531.

A conviction for robbery and capital homicide pursuant to *Pen C* § 211 and *Pen C* § 187 with a robbery-murder special-circumstance allegation pursuant to *Pen C* § 190.2(a)(17)(A), was reversed because of the cumulative prejudice from a combination of prosecutorial misconduct and other errors rendering the defendant's trial fundamentally unfair. The prosecutor committed constant and egregious misconduct at both the guilt and penalty phases of defendant's trial. The prosecutor, inter alia, misstated the evidence, misstated facts, referred to facts not in evidence, made misstatements of law, acted derisively towards defense counsel, and threatened a defense witness with prosecution for perjury if his testimony did not conform to a prior interview. The trial court abused its discretion by failing to determine for itself whether defendant should be shackled inside the courtroom, and instead delegated that decision to the sheriff's department. The trial court failed to excuse a bailiff from further courtroom duties after he testified against defendant, and erred by failing to instruct the jury to consider the testimony of the bailiff as it would any other witness. The trial

court also erred by failing to instruct the jury it must find defendant intended to kill before it could sustain a robbery-murder special-circumstance allegation, and further erred by affirmatively instructing the jury it need not find defendant harbored the intent to kill. *People v. Hill* (1998) 17 Cal 4th 800, 72 Cal Rptr 2d 656, 952 P2d 673, 1998 Cal LEXIS 1683.

Defendant was found guilty of first degree murder (*Penal C* §§ 187, 189), first degree robbery (*Penal C* §§ 211, 212.5), attempted rape (*Penal C* §§ 261, 664), and first degree burglary (*Penal C* § 459). Testimony of a witness that the victim believed defendant had stolen a missing welder was properly admitted, although not for the reason stated by the trial court that defendant had "opened the door" during cross-examination. The evidence was admissible for the nonhearsay purpose of showing the victim's state of mind concerning defendant (*Ev C* § 1250(a)(1)). Further, the evidence was not unreliable on the basis that the victim and witness did not know that defendant stole the welder since the evidence was not used as proof of the theft, but rather to show the victim's state of mind. *People v. Smithey* (1999) 20 Cal 4th 936, 86 Cal Rptr 2d 243, 978 P2d 1171, 1999 Cal LEXIS 3907, rehearing denied (1999) 21 Cal 4th 845a, 1999 Cal LEXIS 6251.

In a prosecution for multiple offenses, including murder with special circumstances of murder in the commission of robbery, the evidence was sufficient to prove robbery (*Pen C* § 211), where there was ample evidence that defendant planned before the killing to steal from the victim, did steal from her before she returned home, and then took additional property by force. From this and the entirety of other evidence, a rational juror could find it proven beyond a reasonable doubt that defendant attacked the victim with the intent of taking property from her person or immediate presence and did take such property. *People v. Sakarias* (2000) 22 Cal 4th 596, 94 Cal Rptr 2d 17, 995 P2d 152, 2000 Cal LEXIS 2060, rehearing denied (2000) *Supreme Court Minute* 05-24-2000, 2000 Cal. LEXIS 4427, cert den (2000) 531 U.S. 947, 121 S. Ct. 347, 148 L. Ed. 2d 279, 2000 U.S. LEXIS 6959, 69 U.S.L.W. 3268.

Evidence was sufficient to sustain defendant's robbery conviction where the victim was last seen riding off with defendant, a larger purse was located near the victim's body, a witness testified that the victim carried money in a smaller purse that could fit inside the larger one, and the purse with the money was missing. *People v. Maury* (2003) 30 Cal 4th 342, 133 Cal Rptr 2d 561, 68 P3d 1, 2003 Cal LEXIS 2623, modified, rehearing denied (2003) 2003 Cal. LEXIS 3969, cert den (2004) 540 U.S. 1117, 124 S. Ct. 1058, 157 L. Ed. 2d 909, 2004 U.S. LEXIS 262, 72 U.S.L.W. 3447.

Trial of robbery and carjacking charges should have been bifurcated from street gang enhancement based on weighing of relevant factors, including the fact that some of the gang evidence would not have been admissible on underlying charges; however, dismissal of the weaker count eliminated the possibility of "spill over," and the error was harmless. *People v. Hernandez* (2003, Cal App 2d Dist) 109 Cal App 4th 1338, 135 Cal Rptr 2d 917, 2003 Cal App LEXIS 934, review gr, depublished (2003, Cal) 4 Cal Rptr 3d 703, 76 P3d 364, 2003 Cal LEXIS 6647, aff'd, superseded (2004) 33 Cal 4th 1040, 16 Cal Rptr 3d 880, 94 P3d 1080, 2004 Cal LEXIS 7235.

Petitioner's claim in a habeas petition that the evidence had not been sufficient to convict him on one of several robberies was rejected where the testimony of the victim, who identified a mask found at petitioner's apartment as the mask worn during the robbery (although the witness initially described it differently, the discrepancy was explained away), combined with evidence of the similarities with other robberies to which petitioner was linked, was sufficient for a reasonable fact-finder to conclude beyond a reasonable doubt that petitioner committed the robbery. *Roberson v. Knowles* (2003, ND Cal) 2003 US Dist LEXIS 9746.

Defense counsel did not render ineffective assistance in failing to object under *Ev C* § 1291 to the introduction in defendant's trial for murder, burglary, robbery, rape, and kidnapping of defendant's testimony in a separate trial; that defendant made the decision to address a co-defendant's assertions in that separate trial could not be attributed to legal compulsion rendering that testimony inadmissible in this proceeding. *People v. Marlow* (2004) 34 Cal 4th 131, 17 Cal Rptr 3d 825, 96 P3d 126, 2004 Cal LEXIS 7591, cert den (2005) 544 U.S. 953, 125 S. Ct. 1706, 161 L. Ed. 2d 532, 2005 U.S. LEXIS 2860, 73 U.S.L.W. 3569.

Sufficient evidence supported defendant's robbery conviction where defendant used force to take property from the victim's presence by resisting the victim's attempts to stop him from fleeing with the victim's watch in his pocket. If the taking of property from the person of another is accomplished by force, although the victim does not know what is being done, it is, nevertheless, robbery. *People v. Jackson* (2005, Cal App 5th Dist) 128 Cal App 4th 1326, 27 Cal Rptr 3d 793, 2005 Cal App LEXIS 689, modified (2005, Cal App 5th Dist) 2005 Cal App LEXIS 696, rehearing denied (2005, Cal App 5th Dist) 2005 Cal App LEXIS 885, review denied (2005, Cal) 2005 Cal LEXIS 8504.

California prisoner who was convicted of murder and robbery under *Pen C* §§ 187, 211 was entitled to 28 USCS § 2254 habeas relief where the prosecution's failure to disclose the principal witness's immunity deal violated the prosecution's duty under Brady because the evidence was material to impeachment of the witness whose testimony was central to prosecution's case; the prosecution's failure to disclose the immunity deal violated the prisoner's due process rights under *U.S. Const. amend. V* because the evidence would have been valuable in impeaching the witness whose testimony included the prisoner's alleged confession and provided the only evidence of a motive and the opportunity to kill the victim *Horton v. Mayle* (2005, 9th Cir Cal) 408 F3d 570, 2005 US App LEXIS 8121.

Although the trial court erred in admitting into evidence a recording of a telephone call made from a codefendant to defendant with significant police involvement, the error was harmless beyond a reasonable doubt because the evidence of defendant's guilt under *Pen C* §§ 187(a), 211, 207, and 190.2(a)(17)(A) and (B) was overwhelming without regard to the codefendant's statements during the pretext call. A witness testified of defendant's plans to rob the victim of his truck and how defendant, working together with the codefendant, bound the victim with duct tape as the codefendant held a gun on the victim, emptied the victim's pockets of his keys and wallet, and voluntarily left with the codefendant and the victim; after the murder, defendant told the witness that they had to take care of the body and joked about how she liked duct tape. *People v. Wahlert* (2005, Cal App 4th Dist) 130 Cal App 4th 709, 31 Cal Rptr 3d 603, 2005 Cal App LEXIS 998, rehearing denied (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1108, review gr, unpublished (2005, Cal) 34 Cal Rptr 3d 657, 120 P3d 1050, 2005 Cal LEXIS 10767.

Evidence was sufficient to sustain defendant's conviction of murder, robbery, and burglary stemming from crimes committed at the victim's residence, with the exception of the lying-in-wait special circumstance; the evidence supported the jury's conclusions that defendant with the requisite felonious intent forced his way into the victim's apartment, encountered the victim, compelled her to disclose her bank password, then fatally strangled her, concealed her body in her bedroom closet, took her wallet, and subsequently depleted her bank account. *People v. Carter* (2005) 36 Cal 4th 1215, 32 Cal Rptr 3d 838, 117 P3d 544, 2005 Cal LEXIS 8910, modified (2005) 2005 Cal. LEXIS 11890, modified, rehearing denied (2005) 2005 Cal. LEXIS 12016, 2005 Cal. Daily Op. Service 9365, 2005 D.A.R. 12780, cert den (2006) 126 S. Ct. 1625, 164 L. Ed. 2d 340, 2006 U.S. LEXIS 2569, 74 U.S.L.W. 3543.

Sufficient evidence supported a conviction for first degree felony murder premised on an attempted robbery because the victim, a bartender, was found stabbed and slashed repeatedly, next to the bar's floor safe with the contents of her purse strewn about the floor. Defendant's conduct leading up to the murder supported a finding of a plan to gain entry into the bar after it closed and then rob the bartender of the day's receipts. *People v. Elliot* (2005) 37 Cal 4th 453, 35 Cal Rptr 3d 759, 122 P3d 968, 2005 Cal LEXIS 13254, rehearing denied (2006) 2006 Cal. LEXIS 1241, cert den (2006) 127 S. Ct. 121, 166 L. Ed. 2d 91, 2006 U.S. LEXIS 6687, 75 U.S.L.W. 3167.

There was sufficient evidence to convict defendant of robbery and find true a related special-circumstance allegation because defendant testified that he wrested a shotgun from the victim, meaning to steal it at the time the struggle ensued, and had no intention of giving it back to her. The shotgun was later found in the pickup truck that defendant stole from the victim. *People v. Huggins* (2006) 38 Cal 4th 175, 41 Cal Rptr 3d 593, 131 P3d 995, 2006 Cal LEXIS 4393, rehearing denied (2006) 2006 Cal. LEXIS 6329, 2006 D.A.R. 6385, cert den (2006), 127 S. Ct. 501, 166 L. Ed. 2d 374, 2006 U.S. LEXIS 8101, 75 U.S.L.W. 3233.

There was sufficient evidence to establish the corpus delicti of the robbery of a murder victim because the victim's supervisor testified that the victim said he was robbed. *People v. Ledesma* (2006) 39 Cal 4th 641, 47 Cal Rptr 3d 326,

140 P3d 657, 2006 Cal LEXIS 9521, rehearing denied (2006) 2006 Cal. LEXIS 13100, 2006 D.A.R. 14245, cert den (2007) 2007 U.S. LEXIS 3834.

Juvenile court's error in admitting a robbery victim's statement to police was not harmless beyond a reasonable doubt. Given the limited evidence supporting the robbery element that the victim's purse was in fact taken from her person or immediate presence, and given the absence of evidence that the taking was accomplished by means of force or fear, it could not be said that the erroneous admission of the victim's statement did not contribute to the jurisdictional finding. *In re Fernando R.* (2006, Cal App 6th Dist) 137 Cal App 4th 148, 40 Cal Rptr 3d 61, 2006 Cal App LEXIS 281, review gr, depublished (2006) 44 Cal. Rptr. 3d 631, 136 P.3d 167, 2006 Cal. LEXIS 6234, 2006 Cal. Daily Op. Service 4373, 2006 D.A.R. 6400.

In the trial for a capital murder arising from the sale of a nonnarcotic in lieu of a narcotic, the evidence was sufficient to support a finding of attempted robbery, despite the fact that police found no money in the motel room where the deal took place. *People v. Hinton* (2006) 37 Cal 4th 839, 38 Cal Rptr 3d 149, 126 P3d 981, 2006 Cal LEXIS 336, modified, rehearing denied (2006) 2006 Cal. LEXIS 4634, 2006 D.A.R. 4365, cert den (2006) 127 S. Ct. 581, 166 L. Ed. 2d 434, 2006 U.S. LEXIS 8662, 75 U.S.L.W. 3263.

Prisoner was convicted of murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. The admission of preliminary hearing testimony of an unavailable witness did not support habeas relief under 28 U.S.C.S. § 2254 because the prosecution made a good faith effort to obtain the witness's presence by sending an inspector to speak to the witness's mother on numerous occasions and by issuing an all points bulletin. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Prisoner was not entitled to habeas relief pursuant to 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. Although a witness's testimony at a preliminary hearing was testimonial hearsay, it was properly admitted under *Ev C* § 1291 because the witness was unavailable and the prisoner had a prior opportunity to cross-examine him at the preliminary hearing. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Despite the failure of a victim to positively identify defendant at trial or in a pretrial photo lineup, there was substantial evidence to support defendant's robbery conviction where: (1) the victim testified that defendant appeared to be the robber; (2) the victim had given a description of the robber to the police that fairly well matched defendant's appearance and testified that a photograph taken by a bank security camera depicted the man who robbed her; (3) the victim identified the subject in another bank's surveillance camera photograph as the person who robbed her; (4) defendant was positively identified by eyewitnesses as the man who robbed the teller at that bank; and (5) the perpetrator of the robbery at the bank of the victim at issue used methods and committed acts that were essentially identical to the other robberies committed by a man positively identified as defendant. The descriptions of the robber given by all of the witnesses, including the victim, were also similar. *People v. Sullivan* (2007, Cal App 1st Dist) 151 Cal App 4th 524, 59 Cal Rptr 3d 876, 2007 Cal App LEXIS 860, modified, rehearing denied (2007, Cal App 1st Dist) 2007 Cal App LEXIS 1021, review denied (2007, Cal) 2007 Cal LEXIS 9575.

Defendant's challenge during his second-degree robbery trial to CALCRIM No. 376, the instruction on possession of recently stolen property, lacked merit because the instruction reiterated that the People had to prove guilt beyond a reasonable doubt and contained no limitation on the evidence that might be considered in determining if the People had done so, and defendant was not restricted in any way from trying to explain away his possession of the stolen property. Furthermore, because the possession of recently stolen property was so incriminating, only slight corroboration was needed to support an inference of guilt. *People v. Anderson* (2007, Cal App 3d Dist) 152 Cal App 4th 919, 61 Cal Rptr 3d 903, 2007 Cal App LEXIS 1042.

Defendant's challenge during his second-degree robbery trial to CALCRIM No. 3145, the instruction defining the enhancement for use of a deadly weapon, lacked merit because the language of the instruction did not improperly coerce

the jury into reaching a decision on the enhancement when it was unable to do so, and because the language did not put a burden on defendant to show that the object at issue had a harmless purpose. The language of the instruction could not reasonably be read to shift the burden of proof to defendant, but, instead, it merely stated what the jury might consider. *People v. Anderson* (2007, Cal App 3d Dist) 152 Cal App 4th 919, 61 Cal Rptr 3d 903, 2007 Cal App LEXIS 1042.

Trial court did not err in admitting evidence of electrophoretic testing of bloodstains on tennis shoes found in defendant's garage because the procedures utilized by the crime laboratory criminalist complied with the electrophoretic methodology that already had passed muster under the central first prong of the Kelly test, and the criminalist was fully qualified to perform electrophoretic testing and to relate the results. Even assuming arguendo that the test results from the compilation of stains from the right tennis shoe were erroneously admitted into evidence under Kelly, other evidence convincingly demonstrated defendant's guilt of first-degree murder, burglary, and robbery, including blood consistent with one victim's found on the left tennis shoe; the blood on defendant's patio that was consistent with the other victim's blood but not that of the defendant; defendant's being seen with the victims a few days before their bodies were discovered; defendant's unexplained act of driving one victim's truck, which contained a jewelry box similar to that missing from the victims' home; and defendant's sale of the victims' missing stereo speakers. *People v. Cook* (2007) 40 Cal 4th 1334, 58 Cal Rptr 3d 340, 157 P3d 950, 2007 Cal LEXIS 5070, rehearing denied (2007, Cal) 2007 Cal LEXIS 7526.

10.5. Prosecutorial Misconduct

Prisoner was not entitled to habeas relief under 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. Any prosecutorial misconduct during closing argument, including the prosecutor's statement of his personal opinion concerning the prisoner's guilt, did not violate the prisoner's due process rights. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Prisoner was not entitled to habeas relief under 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. He failed to demonstrate how the trial court's allowing a juror who heard an extraneous witness comment resulted in a substantial injurious effect on the verdict. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Prisoner was not entitled to habeas relief under 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. Even if instructing the jury with Cal. Jury Instruction Crim. 17.41.1 was erroneous, the prisoner did not show that it infected the entire trial. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Prisoner was not entitled to habeas relief under 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. He failed to show that the felony-murder jury instruction resulted in actual prejudice, and he could have been convicted under either a narrow or broad view of felon-murder accomplice liability. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

11. Judgment and Sentencing

Adult defendant, who pleaded no contest to a charge of cocaine possession in violation of *H & S C* § 11350(a), and who had previously been found in a juvenile court delinquency proceeding to have committed a robbery, a violation of *Pen C* § 211, was eligible for participation in a *Pen C* § 1210 et seq. drug treatment program because the robbery finding occurred in the context of a juvenile delinquency proceeding, he was never "convicted" of a serious or violent felony within the meaning of *Pen C* § 1210.1(b). *People v. Westbrook* (2002, Cal App 2d Dist) 100 Cal App 4th 378, 122 Cal Rptr 2d 514, 2002 Cal App LEXIS 4416.

Defendant was subject to a total determinate sentence of eight years and four months for his conviction of the following offenses: burglary, *Pen C §§ 459, 460*, and robbery, *Pen C §§ 211, 212.5(a)*, of a neighbor; burglary, *Pen C §§ 459, 460*, and attempted robbery, *Pen C §§ 211, 212.5(a), 664*, of a second neighbor; and battery with serious bodily injury, *Pen C § 243(d)*, and second degree robbery, *Pen C §§ 211, 212.5(a)*, of his girlfriend. *People v. Navarette (2003) 30 Cal 4th 458, 133 Cal Rptr 2d 89, 66 P3d 1182, 2003 Cal LEXIS 2638*, rehearing denied (2003) *2003 Cal. LEXIS 4513*, cert den (2004) *540 U.S. 1151, 124 S. Ct. 1149, 157 L. Ed. 2d 1045, 2004 U.S. LEXIS 710, 72 U.S.L.W. 3463*.

Defendant sentenced to prison for robbery was entitled to credit for time spent at a residential alcohol counseling program, the county jail, and at a court-ordered treatment facility. He did not knowingly and intelligently waive those credits. *People v. Burroughs (2003, Cal App 4th Dist) 108 Cal App 4th 728, 133 Cal Rptr 2d 820, 2003 Cal App LEXIS 712*, review gr, depublished (2003, Cal) *2 Cal Rptr 3d 553, 73 P3d 432, 2003 Cal LEXIS 5099*, transferred (2004, Cal) *18 Cal Rptr 3d 872, 97 P3d 814, 2004 Cal LEXIS 8878*.

Pen C § 666 by its terms does not require the statute to be specifically pleaded in the information or indictment; nor do constitutional principles of due process require that the statute be specifically alleged as long as the pleading apprises the defendant of the potential for the enhanced penalty and alleges every fact and circumstance necessary to establish its applicability. Thus, an accusatory pleading charging the greater offense of robbery and alleging several prior prison terms for theft offenses was sufficient because it necessarily put defendant on notice of the lesser included offense of petty theft and prior theft convictions and prison terms to support a felony sentence. *People v. Tardy (2003, Cal App 2d Dist) 112 Cal App 4th 783, 6 Cal Rptr 3d 24, 2003 Cal App LEXIS 1552*, review denied (2004, Cal) *2004 Cal LEXIS 225*.

In a probation revocation proceeding, failing to order an updated or supplemental probation report was error. In finding that error harmless, the court reasoned in part that the trial court was intimately acquainted with the facts of new charges underlying the probation violation and thus was aware that defendant's conduct while on probation had been poor; those charges under *Pen C §§ 245, 211, and 664*, involved using a knife in an attempt to rob a woman of a cigarette. *People v. Dobbins (2005, Cal App 3d Dist) 127 Cal App 4th 176, 24 Cal Rptr 3d 882, 2005 Cal App LEXIS 299*.

Sufficient evidence supported defendant's conviction for active participation in a criminal street gang even though the gang expert did not use the phrase "primary activity"; the use of particular language was not required to establish the criminal nature of a street gang. An officer testified that gang members attempted murders, engaged in drive-by shootings and vehicle burglaries, illegally possessed firearms, and shot at an inhabited building; further, the robberies that were the basis for defendant's conviction also provided evidence of the gang's purposes and activities. *People v. Martinez (2004, Cal App 4th Dist) 120 Cal App 4th 64, 15 Cal Rptr 3d 210, 2004 Cal App LEXIS 1040*, review gr, depublished *People v. Martinez (2004) 18 Cal. Rptr. 3d 870, 97 P.3d 812, 2004 Cal. LEXIS 8544, 2004 Cal. Daily Op. Service 8525, 2004 D.A.R. 11665*, review dismissed (2005) *24 Cal. Rptr. 3d 864, 106 P.3d 303, 2005 Cal. LEXIS 1697, 2005 Cal. Daily Op. Service 1436, 2005 D.A.R. 1924*.

Defendant's sentence for two counts of robbery in violation of *Pen C § 211* was in accord with the sentencing template, and thus the court found no error in the trial court's sentence, as follows: on the first count, the court added 25 years to life under *Pen C § 12022.53(d)* to the original five-year term, as well as 10 years under *Pen C § 667(a)*, and to this indeterminate term, the trial court added 25-years-to-life based on *Pen C § 12022.53(d)*, and on the second count, the court added 20 years under *§ 12022.53(c)* to the original five-year term, as well as 10 years under *Pen C § 667(a)*, and to this indeterminate term, the court added a 20-year determinate term based on the enhancement under *Pen C § 12022.53(c)*, and the counts were ordered to run consecutively under *Pen C §§ 667(e)(2)(B), 1170.12(a)(6)*, and a 10-year determinate term was then added under *Pen C § 667(a)*; the court rejected defendant's argument that *Pen C § 12022.53(j)* limited the imposition of enhancements. *People v. Coker (2004, Cal App 3d Dist) 120 Cal App 4th 581, 15 Cal Rptr 3d 553, 2004 Cal App LEXIS 1093*, review denied (2004, Cal) *2004 Cal LEXIS 9697*.

Death penalty for a murder in the course of a robbery, in violation of *Pen C* § 187, 211, was not rendered cruel and unusual punishment by defendant's circumstances, given defendant's extensive prior record and the fact that he shot the victim at point-blank range to halt resistance to the robbery. Mitigating factors included diagnosed bipolar disorder, but defendant apparently refused to resolve his disorder by means of the medication that was prescribed for him. *People v. Cornwell* (2005) 37 Cal 4th 50, 33 Cal Rptr 3d 1, 117 P3d 622, 2005 Cal LEXIS 9060, cert den (2006) 126 S. Ct. 1432, 164 L. Ed. 2d 135, 2006 U.S. LEXIS 1866, 74 U.S.L.W. 3485.

Death penalty was upheld for the shooting murder of a woman and her fetus. The jury found special circumstances of felony-murder robbery, felony-murder burglary, multiple murder and found that defendant personally used a firearm, was personally armed, and inflicted great bodily injury. *People v. Harris* (2005) 37 Cal 4th 310, 33 Cal Rptr 3d 509, 118 P3d 545, 2005 Cal LEXIS 9546, rehearing denied (2005) 2005 Cal. LEXIS 11766, cert den (2006) 547 US 1065, 126 S Ct 1655, 164 L Ed 2d 411, 2006 US LEXIS 2824.

Defendant who killed and robbed a victim in the course of stealing his motor home was properly convicted of first-degree murder and robbery and sentenced to death. *People v. Schmeck* (2005) 37 Cal 4th 240, 33 Cal Rptr 3d 397, 118 P3d 451, 2005 Cal LEXIS 9350, modified (2005) 2005 Cal. LEXIS 11169, modified, rehearing denied (2005) 2005 Cal. LEXIS 11739, 2005 Cal. Daily Op. Service 8989.

Death penalty was proper where defendant was convicted of shooting two victims in the course of robbing a sandwich shop, in violation of *Pen C* §§ 187, 211, 1203.06(a)(1), and 12022.5(a). *People v. Robinson* (2005) 37 Cal 4th 592, 36 Cal Rptr 3d 760, 124 P3d 363, 2005 Cal LEXIS 13680, rehearing denied (2006) 2006 Cal. LEXIS 2783, cert den (2006) 127 S. Ct. 381, 166 L. Ed. 2d 269, 2006 U.S. LEXIS 7519, 75 U.S.L.W. 3194.

Death penalty, which was imposed for multiple murders and felony murder under *Pen C* §§ 190.2, 211, was reversed because defendant was prejudiced by judge's comment that premeditation was a "gimme," when lack of premeditation was the defense's central theory in mitigation. The trial judge also committed misconduct by persistently making disparaging comments directed toward defendant's counsel and experts. *People v. Sturm* (2006) 37 Cal 4th 1218, 39 Cal Rptr 3d 799, 129 P3d 10, 2006 Cal LEXIS 2977, rehearing denied (2006, Cal) 2006 Cal LEXIS 5938.

Death penalty was affirmed where defendant was properly convicted of killing a store owner during the course of robbing the store. *People v. Perry* (2006) 38 Cal 4th 302, 42 Cal Rptr 3d 30, 132 P3d 235, 2006 Cal LEXIS 4952.

Prisoner was not entitled to habeas relief under 28 U.S.C.S. § 2254 following his conviction for murder under *Pen C* § 187, attempted murder under *Pen C* §§ 187, 664, robbery under *Pen C* § 211, and attempted robbery under *Pen C* §§ 211, 664. His sentence was not excessive because the prisoner failed to show that it was grossly disproportionate to the crime. *Mouton v. Runnels* (2006, ND Cal) 2006 US Dist LEXIS 33487.

Although defendant could not claim on appeal that duplicative counts should be reversed outright, as he pleaded guilty to those counts and had failed to obtain the certificate of probable cause necessary to challenge the validity of the plea, because defendant's plea agreement did not include a sentencing lid, he could raise a challenge to the legality of the sentences, a circumstance occurring after the entry of his plea, without obtaining a certificate of probable cause, pursuant to *Cal. Rules of Court, Rule 30(b)(4)*. As a result, defendant's sentences on the duplicative counts could not stand and had to be stayed under *Pen C* § 654 because, on each of those counts, defendant was sentenced twice for robbing a single store employee victim of personal property and the store's money during the course of a single robbery. *People v. Cuevas* (2006, Cal App 2d Dist) 142 Cal App 4th 1141, 48 Cal Rptr 3d 675, 2006 Cal App LEXIS 1372, review gr, depublished, review den in part (2007, Cal) 53 Cal Rptr 3d 801, 150 P3d 692, 2007 Cal LEXIS 3.

W & I C § 731 did not vest a juvenile court with the discretion to commit a minor to a camp community placement program for less than the maximum term to which an adult offender could be sentenced. The confinement was based on charges of marijuana possession under *H & S C* § 11359 and robbery and assault under *Pen C* § 211, 245(a)(1). *In re Geneva C.* (2006, Cal App 2d Dist) 141 Cal App 4th 754, 46 Cal Rptr 3d 264, 2006 Cal App LEXIS 1127, review denied

C. (*Geneva*), *In re* (2006) 2006 Cal. LEXIS 12503.

In a second degree robbery case, the prosecutor committed prejudicial misconduct requiring reversal of defendant's conviction by improperly vouching for the integrity of her office and the victim when she argued that defendant was the perpetrator because he was the person charged. No objection and admonition to the jury to disregard the impropriety would have cured the harm caused by the prosecutor's comments. *People v. Alvarado* (2006, Cal App 2d Dist) 141 Cal App 4th 1577, 47 Cal Rptr 3d 289, 2006 Cal App LEXIS 1256.

Defendant was not denied his due process rights to a jury trial and finding of guilt beyond a reasonable doubt under Blakely by a trial court's imposition of consecutive terms upon his six robbery convictions where he had committed the robbery offenses one after another unabated until he was captured after his final robbery of a bank. Defendant's sentence was not out of all proportion to the punishment in California for commission of multiple, serious robbery offenses by a recidivist offender, and thus the imposition of a sentence upon defendant under the three strikes law of 210 years to life did not constitute cruel and unusual punishment. *People v. Sullivan* (2007, Cal App 1st Dist) 151 Cal App 4th 524, 59 Cal Rptr 3d 876, 2007 Cal App LEXIS 860, modified, rehearing denied (2007, Cal App 1st Dist) 2007 Cal App LEXIS 1021, review denied (2007, Cal) 2007 Cal LEXIS 9575.

Death sentence was not grossly disproportionate to defendant's culpability, despite defendant's low intelligence, chronic and uncontrolled epilepsy, brain damage, and mental illness, because defendant committed two robberies, in violation of *Pen C* § 211, during which defendant murdered six people by shooting them in the head, and, to ensure the deaths of two victims, fired at close range, holding the gun less than two inches from their heads. *People v. Leonard* (2007) 40 Cal 4th 1370, 58 Cal Rptr 3d 368, 157 P3d 973, 2007 Cal LEXIS 5071, rehearing denied (2007, Cal) 2007 Cal LEXIS 6951.

In a case involving the repeated stabbing of a nine-year-old victim in the course of a burglary and robbery, defendant was properly convicted of first degree murder under *Pen C* § 187, first degree residential burglary under *Pen C* § 459; , and first degree residential robbery under *Pen C* §§ 211, 212.5(a) and sentenced to death based on the robbery-murder and burglary-murder special circumstances in *Pen C* § 190.2(a)(17). *People v. Alfaro* (2007, Cal) 2007 Cal LEXIS 8215.

Where defendant's crimes of first-degree murder, first-degree robbery, and first-degree burglary were part of a single course of indivisible conduct carried out with the intent to fulfill a single objective, his separate sentences violated *Pen C* § 654' s prohibition against double punishment, and if defendant technically served the three distinct sentences imposed, they would each mandate a separate sentencing enhancement in the event he was convicted of another felony in the future. The evidence demonstrated that defendant and an accomplice entered the victim's hotel room with the intention of robbing him and that the victim, who had become acquainted with defendant's accomplice earlier that day, was strangled in the course of carrying out the robbery, and there was no evidence that the killing was either intended to or did accomplish any goal other than to facilitate the planned robbery, and no evidence that defendant was predisposed to violence for its own sake. *People v. King* (2007, 4th Dist) 156 Cal App 4th 1526, 2007 Cal App LEXIS 1904.

Harmless Sixth Amendment error occurred when the trial court imposed upper term sentences for robbery under *Pen C* § 211 without permitting the jury to decide the aggravating factors, as a jury would unquestionably have found true the aggravating circumstance of breach of trust against a vulnerable victim under *Cal. Rules of Court, Rule 4.421(a)(3)*, (g), given that the victim was seven months pregnant at the time that one defendant gathered friends to rob and beat her with the intent to cause a miscarriage; likewise, there was overwhelming evidence that one of the friend's actions were cruel and callous toward two vulnerable victims under *Cal. Rules of Court, Rule 4.421(a)(1)*, (3). *People v. Curry* (2007, 3d Dist) 2007 Cal App LEXIS 2143.

12. Double Jeopardy; Multiple Prosecution

Given that a first jury deadlocked on robbery counts, the court could not say that its verdict acquitting defendant of felony murder reflected a finding that defendant did not commit robbery. The first jury's verdicts were inconsistent on the issue of whether defendant committed robbery and therefore did not collaterally estop a second prosecution for robbery, or retrial of firearm enhancements. *People v. Morales* (2003, Cal App 4th Dist) 112 Cal App 4th 1176, 5 Cal Rptr 3d 615, 2003 Cal App LEXIS 1600, review denied (2004, Cal) 2004 Cal LEXIS 990.

13. Felony Murder

In a prosecution for capital felony murder under *Pen C § 189*, it was harmless error for the trial court to refuse a lesser-included offense instruction on the offense of involuntary manslaughter under *Pen C § 192* because a jury necessarily decided the factual questions posed by the omitted instructions adversely to a habeas corpus petitioner under other properly given instructions as it found petitioner guilty of robbery and burglary and it found true the special circumstance allegations that petitioner killed the victim in the commission of robbery and burglary in violation of *Pen C § 211, 459*. To render those verdicts, the jury had to find that petitioner had already formed the intent to steal when he entered the victims' apartment and assaulted them, thus necessarily rejecting petitioner's version of the events. *Lewis v. Woodford* (2007, ED Cal) 2007 US Dist LEXIS 4846.

Evidence supported a finding of a felonious taking of property from a victim's person by means of force or fear, for purposes of a robbery-murder theory of first degree murder under *Pen C § 190.3* and a robbery conviction under *Pen C § 211* because there was evidence that the victim was dragged or forced into a dumpster alcove and was sexually assaulted and shot in the head, that defendant was in possession afterwards of the victim's car, keys, and credit card, and that defendant needed money and transportation to make a planned trip. *People v. DePriest* (2007, Cal) 2007 Cal LEXIS 8291.

Evidence was sufficient to support a finding that defendant killed a victim in the course of robbery for purposes of the felony-murder rule under *Pen C §§ 189, 211* and a robbery-murder special circumstance under *Pen C § 190.2(a)(17)*, because the victim's vehicle was found in Mexico, where defendant went after killing the victim and before being arrested and two of the victim's checks were on defendant's person at the time of arrest. Although defendant had a pattern of taking property from some women by guile rather than force or fear, that circumstance did not make the jury's verdict unreasonable. *People v. Kelly* (2007, Cal) 2007 Cal LEXIS 13795.

SUGGESTED FORMS

Allegation Charging Robbery