

## DEVELOPMENTS IN CALIFORNIA HOMICIDE LAW

### I. INTRODUCTION\*

Of all crimes, homicide is perhaps the most serious. The result is, by definition, the death of a human being or fetus, and the consequences to the guilty individual may be equally as severe. Therefore, it is of the utmost importance that a practitioner, who either prosecutes or defends a homicide charge, understands the current state of California's homicide law. The interests at stake are that of the public's protection from criminal actors, and a defendant's protection from the infliction of a harsh penalty.<sup>1</sup>

California homicide law, however, is far from clear. Legislative inaction and ineffective ameliorative attempts by the courts to clarify archaic statutes prompted Justice Mosk to declare that "the law of homicide is in need of revision."<sup>2</sup> The purpose of this work is not to critique or propose solutions, but to serve as a reference guide to important developments in California homicide law. This work attempts to clarify the current state of the law in those respective areas affected by recent developments and, through citations, to serve as a gateway to recent case law, pertinent statutes, and secondary material.

Part II outlines the general structure of California homicide law. It lays out the basic foundation of criminal liability and defines the categories of murder and manslaughter. Part II then concludes with an overview of California death penalty law, known as special

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1. 1 OSCAR LEROY WARREN & BASIL MICHAEL BILAS, WARREN ON HOMICIDE, at iii (1938).

2. In re Christian S., 7 Cal. 4th 768, 784-85, 872 P.2d 574, 584, 30 Cal. Rptr. 2d 33, 43 (1994) (Mosk, J., concurring); see Charles L. Hobson, *Reforming California's Homicide Law*, 23 PEPP. L. REV. 495, 495 (1996).

circumstances, and provides an in-depth analysis of prior-murder and felony-murder special circumstances.

Part III discusses the mens rea requirement for the intentional homicides. In California, the three types of murder that involve an intent to kill are: premeditated murder, second-degree murder with express malice, and murder as a result of provocation. Part III analyzes the elements of the offenses, as well as the trends in the current courts. For instance, courts now tend to stray from the once rigid "Anderson factors" in determining whether sufficient evidence exists for premeditation. Second-degree murder with express malice requires a purpose to kill. Provocation enables murder to be mitigated to voluntary manslaughter.

Part IV examines the mens rea for the unintentional homicides. An actor may be liable for his unintended killings pursuant to several theories: second-degree murder under an implied malice theory, provocative act murder, or involuntary manslaughter. Implied malice murder exists where death results because of the defendant's reckless conduct. Provocative act murder also requires that a defendant act recklessly. Here, however, a defendant is liable for a killing that occurs when his provocative conduct triggers a third party to respond in a fatal way. As long as the defendant's conduct proximately caused the killing, he is liable although someone else actually fired the fatal shot. Part IV concludes with a discussion of involuntary manslaughter, which occurs when a defendant's criminal negligence causes a death.

Part V explores the issue of causation in homicide as divided into the elements of causation-in-fact and proximate causation. Typically, homicide cases focus primarily on the doctrine of proximate cause. Part V divides proximate cause into the following categories: (1) concurrent causation; (2) preexisting condition of the victim; (3) the intervening act doctrine; and (4) the felony-murder doctrine. This approach provides useful tools for practitioners confronted with various issues of causation. In addition, Part V explores the doctrine of transferred intent. While similar in some aspects to causation, this Part effectively treats the transferred intent doctrine as a separate discussion.

Part VI examines the felony-murder doctrine, which is triggered when a killing is committed during the perpetration of a non-assault

felony. Codified under Section 189 of the California Penal Code, the first-degree felony-murder doctrine applies strictly to killings committed during the commission of an enumerated felony. On the other hand, courts have attempted to limit the scope of the second-degree felony-murder doctrine by imposing restrictions such as an inherent danger requirement. This disparity in the scope of application of the felony-murder doctrine between first and second-degree murder demonstrates that, while some courts and scholars may disfavor the felony-murder doctrine, it remains firmly rooted in California law. Part VI then turns to a discussion of the agency doctrine as applied to felony-murder in California homicide law. Several problems arise regarding how far liability should extend when a co-felon or third party actually commits the killing.

Part VII turns to accomplice liability, which is a difficult area of California criminal law. This Part seeks to explore what courts mean by “aiding and abetting” and “natural and probable consequences.” Part VII concludes with a brief examination of the relationship required between the accomplice and the primary perpetrator before liability can be imposed.

Part VIII analyzes the conspiracy doctrine in California as it applies to homicide law. The discussion provides an overview of the elements of the crime, followed by an exposition of the various characteristics that make conspiracy unique as well as controversial. For instance, conspiracy is punishable as a separate crime from the underlying offense. This means conspirators may face charges both for the conspiracy itself and for the completed offense. As an inchoate crime, conspiracy subjects the defendant to criminal sanctions at a stage earlier than any other offense. Moreover, it imposes vicarious liability for the substantive offenses of co-conspirators. Finally, there are procedural advantages that make charging conspiracy an attractive alternative to charging a defendant for the substantive offense. Part VIII illustrates how, because of its unique characteristics, conspiracy is a powerful weapon for the prosecutor and can lead to unjust results if abused.

Part IX explores the subject of self-defense to murder. First, the concept of justifiable homicide is introduced and discussed, followed by a detailed discussion of the imminent harm requirement. Part IX then examines the current controversy regarding how much of a

defendant's experiences and point of view should be considered in determining how an objectively reasonable person in the place of the defendant would have acted. In addition, the limitations that the courts have placed on the use of individualized evidence to prove objective belief are explored. The development of the self-defense doctrine in cases of battered women's syndrome is analyzed throughout Part IX and compared to the more common applications of self-defense.

Finally, Part X discusses the insanity defense as it operates in California homicide law. Since the early nineteenth century, California has, with slight variation, followed the "M'Naughton test" for legal insanity. Part X examines the substantive aspects of that test, including the requirement that a defendant claiming insanity must have been either unable to appreciate the nature of his conduct at the time he committed a criminal act or unable to appreciate the wrongfulness of the act. Part X then touches upon some of the procedural implications of the defense, including competency to stand trial and the role of expert testimony.