

PERFORMING LEGALLY SOUND FORENSIC EVALUATIONS: A DISCUSSION OF CA RULES AND CASE LAW

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MAJOR POINTS

- A Model for Forensically Relevant Reports
- Application: PC 1367 Competency to Stand Trial
- Application: PC 1027 Not Guilty By Reason of Insanity
- Other Applications
- Discussion & Questions

WHY?

- APA Specialty Guidelines
 - 2.04: “Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the **legal and professional standards, laws, rules, and precedents** that govern their participation in legal proceedings and that guide the impact of their services on service recipients (EPPCC Standard 2.01).”
 - 10.01: “Focus on Legally Relevant Factors”
- Common report writing error: “**Forensic purpose unclear**” (Grisso, 2010).
- Testimony
- Educate courtroom
- Consistent application of standard across jurisdictions

PERFORMING LEGALLY SOUND FORENSIC EVALUATIONS: A MODEL

1. Identify the Legal Standard
2. Identify the Standard of Proof
3. Research and Identify Relevant Case Law
4. Focus Your Report on Legally Relevant Factors

1) LEGAL STANDARD

- Penal Code
- Rules of Court
- Jury Instructions

2) STANDARD OF PROOF

- The standard/burden of proof determines the level of evidence that must be provided in order to prevail.
 - *Preponderance of the evidence* (greater than 50%)
 - *Clear and convincing* (greater than 75%)
 - *Beyond a reasonable doubt* (greater than 90%)

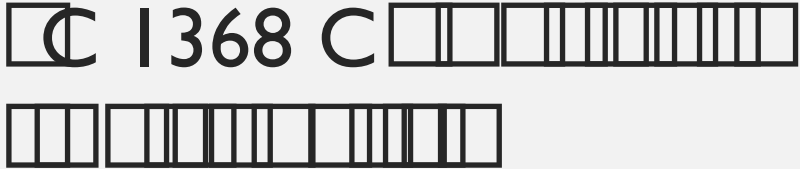

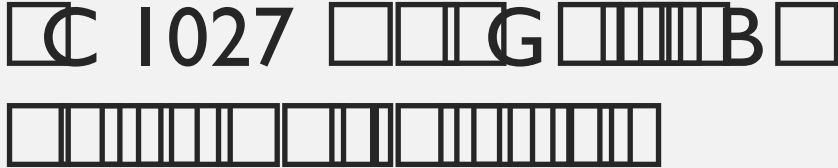




3) CASE LAW

- Case law / precedent: A court decision in an earlier case with facts and legal issues *similar* to the dispute currently before a court.
- Stare Decisis: courts should adhere to the precedents set in earlier decisions. Binding authority comes from higher courts in the same jurisdiction. However, all courts must follow a U.S. Supreme Court decision.

4) FOCUS YOUR REPORT ON LEGALLY RELEVANT FACTORS

- What is the purpose of the referral? (What is the legal question?)
- How does one answer that question?
- How did you arrive at your conclusion?

APPLICATION

-  C 1368 C 
-  C 1027  G  B 


COMPETENCY TO STAND TRIAL LEGAL STANDARD

California's current legal standard:

Penal Code § 1367(a):

- If as a result of a “mental disorder or defect” ...
- Unable to understand the nature of the criminal proceedings
 - Factual and rational understanding*
- OR**
- Unable to assist counsel in the conduct of a defense in a rational manner

*Gowensmith, D., Murrie, D. & Kois, L. (2023, November). *Evaluation of Competence to Stand Trial*. Presented by the Judicial Council of California.

COMPETENCY TO STAND TRIAL LEGAL STANDARD

- 2023 California Rules of Court, Rule 4.130 Mental competency proceedings:
 - 4.130(d) Examination of defendant
 - A. A brief statement of the examiner's training and previous experience
 - B. Examination summary: mental status, diagnosis, and a statement as to whether symptoms of the mental health disorder would respond to mental health treatment
 - C. Detailed analysis of the competence of the defendant using California's current legal standard
 - D. Summary of an assessment conducted for malingering or feigning symptoms, which may include but need not be limited to psychological testing
 - E. *A statement on whether treatment with antipsychotic or other medication is medically appropriate
 - F. A list of all sources of information
 - G. A placement recommendation, if possible, if defendant is charged with a felony offense

Rule 4.130(d)(E) – amended effective May 15, 2023

COMPETENCY TO STAND TRIAL LEGAL STANDARD

*If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, the psychologist's opinion must be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion must not exceed the scope of their license. If a psychiatrist examines the defendant and opines that treatment with antipsychotic medication is appropriate, the psychiatrist must inform the court of their opinion as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments, as outlined in Penal Code section 1370.

Rule 4.130(d)(E) – amended effective May 15, 2023

Penal Code § 1369

COMPETENCY TO STAND TRIAL STANDARD OF PROOF

- Presumption of competence... “unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent.”

(§ 1369, subd. (f); see also *People v. Rells* (2000); Rule 4.130. (d)(C), Mental Competency Proceedings).

RELEVANT CASE LAW

- ***People v. Leonard*** (2007): Appointment of director of Regional Center?
 - if developmental disability is a question, defendant needs to be evaluated by **experts qualified in that area.**

also, *Penal Code § 1369*



RELEVANT CASE LAW

People v. Jackson (2018)

- Court of Appeal, Fourth District, Division 2, California
- Despite numerous findings of incompetency due to Mental Retardation, Jackson was found competent based on a single report authored by the state hospital, convicted, and sentenced to three years in state prison.
- Jackson appealed his conviction, arguing trial court erroneously found him competent to stand trial
- Jackson argued neither his conviction nor his sentence could stand because neither competency finding was based on substantial evidence. Appellate court agreed and reversed judgment.



RELEVANT CASE LAW

People v. Jackson (2018) Cont'd.

- Court of Appeal, Fourth District, Division 2, California

Appellate Court: As Dr. Kania opined, the fact Jackson could respond only to "simplistic and concrete communication that is repeated to him numerous times... suggest[s] that he is not trial competent," rather than the opposite.



RELEVANT CASE LAW

- ***People v. Houser, Jr. (2016):***
 - Court of Appeal, Fourth District, Division 2, California
 - During trial, defense counsel expressed concern about trial competency. A psychologist was appointed –
 - “The court appointed Dr. Chuck Leeb, a psychologist, to assess defendant's mental competence. Dr. Leeb submitted a written report and then testified.⁶ We will describe Dr. Leeb's testimony in detail below, but for purposes of setting forth the history of the proceedings, it suffices to say that Dr. Leeb testified that defendant was schizophrenic and hearing voices, and that he had an irrational but genuine fear of the prosecutor, sufficient to cause a “flat out panic response” at the thought of being in the prosecutor's presence. Based on his understanding of the legal requirements for competency to stand trial, however, he concluded that defendant was competent.”
 - Based on Dr. Leeb's testimony and observation of defendant, the court ruled he was competent. Houser, Jr. appealed.
 - However, appellate court discussed the concept of “**limited competence**,” i.e., that a defendant who has the cognitive ability to understand the proceedings and could otherwise rationally assist in his or her defense is nevertheless legally incompetent if a paranoid delusion prevents him or her from doing so.
 - Ultimately ruled that the court erred in not ordering a full competency hearing, even though the psychologist testified he was competent.

COMPETENCY TO STAND TRIAL REPORT: PUTTING IT ALL TOGETHER

- List all sources of information
 - It is best practice to consult with referring party/counsel and to utilize multiple sources of collateral data
 - (Gowensmith, Murrie, & Kois, 2023; and Melton et al., 2018).
 - Also mentioned in Competency Rules of Court.

- Examination summary: mental status, diagnosis, and a statement as to whether symptoms of the mental health disorder would respond to mental health treatment

- Summary of an assessment conducted for malingering or feigning symptoms, which may include but need not be limited to psychological testing

(cont'd).

COMPETENCY TO STAND TRIAL PUTTING IT ALL TOGETHER

- A detailed analysis of the competence of the defendant using California's current legal standard
 - Mental disorder or defect
 - Ability/inability to understand the nature of the criminal proceedings
 - Factual AND rational understanding is “assumed” under *Dusky v. U.S.* and should be included in assessment
 - Ability/inability to assist counsel in the conduct of a defense in a rational manner
 - Reference standard of proof if necessary

- A statement on whether treatment with antipsychotic or other medication is medically appropriate

- Placement recommendation / referral to Regional Center if appropriate

ULTIMATE ISSUE TESTIMONY

Regarding the expert's report and testimony, California Evidence Code § 805 notes, "Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact."

COMPETENCY SAMPLE

REASON FOR EVALUATION:

Pursuant to a court order dated DATE I evaluated NAME's competency to stand trial under Evidence Code § 730 and 952 and Penal Code § 1368/1367(a)¹.

¹ According to Penal Code § 1367(a), "... A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner."

FINDINGS AND ANALYSIS OF FORENSIC ISSUE

1) OPINION: Mr. Doe has a mental disease or defect (Schizoaffective Disorder)

Analysis:

The presence of "a mental disorder or developmental disability" is required for a determination of mental incompetency. There is considerable data suggesting NAME....

Assessment conducted for malingering or feigning of symptoms:

Due to the nature of the evaluation, I considered the possibility that NAME was exaggerating

2) OPINION: Mr. Doe is able to understand the proceedings against him.

3) OPINION: Mr. Doe is UNABLE to assist counsel in his defense in a rational manner.

4) (If applicable) OPINION: NAME should be examined by a psychiatrist.⁵

Analysis:

Given the presence of ongoing symptoms of psychosis, including auditory hallucinations, delusions, and paranoia, treatment with antipsychotic medication may be medically appropriate. NAME's diagnosis of XXXX is typically known to benefit from treatment. I did not

5) Placement recommendation?

⁵ PC § 1369(2)(A) indicates that the examining licensed psychologist or psychiatrist shall evaluate whether treatment with antipsychotic medication is appropriate. According to the California Rules of Court, Rule 4.130(d)(E), "If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, the psychologist's opinion must be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion must not exceed the scope of their license."

OPINION EXAMPLE

“... viewing Mr. Doe's current functioning and mental status in totality, his ongoing auditory hallucinations, paranoia, and disorganized and unpredictable behavior significantly impede his ability to assist his own defense in a rational manner. That is, these symptoms impair his ability to communicate and therefore render him unable to share pertinent information, develop and plan a defense, and give directions and receive feedback from counsel. Moreover, his paranoia and agitation, which has resulted in numerous physical altercations with custodial staff, indicates he is similarly unable to manage his courtroom behavior. This finding is consistent with Mr. Doe's scores on the Consult With Counsel and Overall Rational Ability scales on the ECST-R, both of which reflected “Severe” impairment. The vast majority of Mr. Doe's high scores on these scales were due to his inability to respond meaningfully due to his internal preoccupation and paranoia.”

CRIMINAL RESPONSIBILITY

PC 1027 Not Guilty By Reason of Insanity

CRIMINAL RESPONSIBILITY LEGAL STANDARD

- California's Penal Code § 25(b): *"In any criminal proceedings... in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves... that he or she was incapable of knowing or understanding the nature and quality of his or her act **and** of distinguishing right from wrong at the time of the commission of the offense."*

CRIMINAL RESPONSIBILITY LEGAL STANDARD

- Jury instructions (CACI No. 3450)

The defendant was legally insane if:

- 1. When (he/she) committed the crime[s], (he/she) had a mental disease or defect;**

AND

- 2. Because of that disease or defect, (he/she) was incapable of knowing or understanding the nature and quality of (his/her) act or was incapable of knowing or understanding that (his/her) act was morally or legally wrong.**

- *People v. Skinner* (1985): the California Supreme Court ruled that the conjunctive “and” in the Penal Code must have been a grammatical error.

CRIMINAL RESPONSIBILITY RELEVANT CASE LAW & RULES

- *People v. Baker* (1959): “Sound mind' and 'legal sanity' are not synonymous.”
- *People v. Coddington* (2000): “A person may be mentally ill or mentally abnormal and yet not be legally insane.”
- *People v. Jefferson* (2004): Presumption of sanity
- PC § 25(b): this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence

MENTAL DISORDER OR DEFECT

- California Penal Code § 29.8 provides exclusions for “a personality or adjustment disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating substances.”
 - Regardless of whether the substances caused organic damage or a settled mental defect or disorder which persists after the immediate effects of the intoxicant
 - Affirmed by *People v. Robinson* (1999)

NATURE AND QUALITY

People v. Wolff (1964):

California Supreme Court
Case

“First, did the defendant have sufficient mental capacity to know and understand what he was doing....?”

Detective Stenberg thereafter interrupted Officer Hamilton's interrogation, and asked the following questions: "Q. (Det. W. R. Stenberg) You knew the wrongfulness of killing your mother? A. I did. I was thinking of it. I was aware of it. [\[fn. \[10\]\]](#) Q. You were aware of the wrongfulness. Also had you thought what might happen to you? A. That is a question. No. Q. Your thought has been in your mind for three weeks of killing her? A. Yes, or of just knocking her out. [\[fn. \[11\]\]](#) Q. Well, didn't you feel you would be prosecuted for the wrongfulness of this act? A. I was aware of it, but not thinking of it." Officer Hamilton asked: "Q. Can you give a reason or purpose for this act of killing your mother? Have you thought out why you wanted to hurt her? A. There is a reason why we didn't get along. There is also the reason of sexual intercourse with one of these other girls, and I had to get her out of the way. [\[fn. \[12\]\]](#) Q. Did you think you had to get her out of the way permanently? A. I sort of figured it would have to be that way, but I am not quite sure."

Thus, contrary to the misunderstanding of counsel and amicus curiae, Officer Stenberg's question ("You knew the wrongfulness of killing your mother?") related unequivocally to defendant's knowledge at the time of the commission of the murder; and defendant's equally unequivocal answer ("I did. I was thinking of it. I was aware of it.") related to the same period of time. This admission, coupled with defendant's uncontradicted course of conduct and other statements set forth hereinabove, constitutes substantial evidence from which the jury could find defendant legally sane at the time of the matricide.

NATURE AND QUALITY

People v. Wolff (1964):

Among the kinds of conduct of a defendant which our courts have held to constitute evidence of legal sanity are the following:

- "an ability on the part of the accused to devise and execute a deliberate plan" (People v. David (1939) supra, [12 Cal. 2d 639](#), 647 [9])
- "the manner in which the crime was conceived, planned and executed" (People v. Darling (1962) supra, [58 Cal. 2d 15](#), 21 [9])
- the fact that witnesses "observed no change in his manner and that he appeared to be normal" (People v. Caetano (1947) [29 Cal. 2d 616](#), 620 [5] [177 P.2d 1])
- the fact that "the defendant walked steadily and calmly, spoke clearly and coherently and appeared to be fully conscious of what he was doing" (People v. Van Winkle (1953) [41 Cal. 2d 525](#), 529 [2] [261 P.2d 233]);
- the fact that shortly after committing the crime the defendant "was cooperative and not abusive or combative" (People v. Dennis (1960) supra, [177 Cal. App. 2d 655](#), 658)
- And that "questions **[61 Cal. 2d 806]** put to him ... were answered by him quickly and promptly" (People v. Loomis (1915) 170 Cal. 347, 349 [149 P. 581])
- Amongst other indicators of rational behavior and logical thinking.



WRONGFULNESS

“...the clinical question for forensic evaluators, and ultimately the legal question for the trier of the fact, is whether or not the defendant’s mental disorder or defect impaired his capacity to reason through the illegality of the act” (Yakush & Wolbransky, 2013; p. 360).

LEGAL VS. MORAL WRONGFULNESS

While there is only one definition of what is legal, arguably, there are unlimited views on what is moral.

People v. Stress (1998) and *People v. Torres* (2005) have affirmed standard includes Legal OR Moral wrongfulness.

LEGAL WRONGFULNESS

- Did he/she understand the act is unlawful?

MORAL WRONGFULNESS

- *People v. Coddington* (2000): “morality... does require a sincerely held belief grounded in generally accepted ethical or moral principles derived from an external source...”
- *People v. Turgeon* (2002): An analysis of the moral prong of insanity requires an examination of both an objective and subjective component
 - “... the defendant must truly (but based on mental disease, such as a delusion) have believed that the act was moral and that society, as it exists, would have viewed it as moral as well... under currently held, generally accepted standards of morality.” (Yakush & Wolbransky, 2013; p. 363).

FORENSIC PURPOSE AND LEGALLY RELEVANT FACTORS

PC 1027 Evaluations:

- When (he/she) committed the crime[s], (he/she) had a mental disorder or defect;
- Whether (he/she) was incapable of knowing or understanding the nature and quality of (his/her) act;
- Whether (he/she) was incapable of knowing or understanding that (his/her) act was morally OR legally wrong.
 - Moral vs. Legal wrongfulness: Is there a difference? If so, address concepts separately
 - Moral wrongfulness: must meet BOTH an objective and subjective component
 - *Subjective*: (He/She) believed the act was moral
 - *Objective*: Society would have viewed it as moral as well; it would be a “generally accepted ethical or moral principle”

Evidentiary standard: Preponderance of evidence (More likely than not)

CONDUCTING AN NGI EVALUATION

Information from PC § 1368 proceedings cannot be used at this phase

Centeno v. Superior Court (2004): “A psychiatrist appointed to examine a defendant for competency may not subsequently testify on the issues of the defendant’s guilt, sanity, or penalty” (p. 42)

Centeno v. Superior Court, supra, [117 Cal.App.4th at p. 42](#)

In re Hernandez (2006) 143 Cal. App. 4th 459:

Testimony or evidence from PC 1368 proceedings cannot be used at the guilt or sanity phase of a trial unless the defendant has waived their 5th and 6th amendment rights.

WRITING THE REPORT

- CA Penal Code § 1027(b): Report should include...
 - Psychological history
 - Facts surrounding the commission of the acts used by the evaluator to make his/her examination
 - Present psychological/psychiatric symptoms
 - Substance abuse history of the defendant
 - Substance abuse history of the defendant on the day of the offense
 - A review of the police report for the offense
 - Other credible and relevant material reasonably necessary to describe the facts of the offense
- Evidence Code section 805

SANITY REPORT SAMPLE A

“While at the time of the commission of the acts constituting the offense, the defendant was able to appreciate the nature and quality of her acts, it can also be concluded with reasonable medical certainty that, as a result of mental illness, the defendant was unable to distinguish between right and wrong, and thus, unable to appreciate the wrongfulness of her actions.”

SANITY REPORT SAMPLE B

1) When Ms. Jones committed the crime, she had a mental disease or defect (Delusional Disorder, Major Depressive Disorder).

2) At the time of the commission of the alleged offense, Ms. Jones ***was capable of knowing or understanding the nature and quality of her act.***

“These actions [X,Y, Z] combined suggest an understanding of the legal wrongfulness of her actions (i.e., that the act merited police involvement and attention, that others would perceive it to be wrong/unlawful, etc.).”

SANITY REPORT B

3) At the time of the commission of the alleged offense, Ms. Jones **was capable of knowing or understanding that her act was morally and legally wrong.**

Regarding the issue of moral wrongfulness, I considered the possibility Ms. Jones believed it was morally justified or “right” to [crime]...

.... In my opinion, *the preponderance of the evidence* suggests Ms. Jones was capable of knowing or understanding moral right from wrong at the time of the alleged offense.

LEGAL RESEARCH

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Articles Case law

LEGAL RESEARCH

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Stand on the shoulders of giants

LEGAL RESEARCH

Randy's Trucking, Inc. v. Superior Court, 91 Cal. App. 5th 818 (Ct. App. 2023).

91 Cal.App.5th 818 (2023)

RANDY'S TRUCKING, INC., et al., Petitioners,
v.
THE SUPERIOR COURT OF KERN COUNTY, Respondent;
ANGELA BUTTRAM et al., Real Parties in Interest.

[No. F084849.](#)

Court of Appeals of California, Fifth District.

April 26, 2023.

3 *823 Appeal from the Superior Court No. BCV-20-100982.

ORIGINAL PROCEEDINGS; petition for writ of mandate. Bernard C. Barmann, Judge.

Haight Brown & Bonesteel, Arezoo Jamshidi, Kaitlyn A. Jensen, Krsto Mijanovic,
Elizabeth Rhodes and Steven Scordalakis for Petitioners.

4 *824 Artiano Shinoff and Paul V. Carelli IV for American Academy of Clinical
Neuropsychology and Inter Organizational Practice Committee as Amici Curiae on
behalf of Petitioners.

Law Offices of Ryan Connolly and Ryan Connolly for Manson Western, Inc., as Amici
Curiae on behalf of Petitioners.

Carlton Fields and Stephanie G. Chau for Psychological Assessment Resources, Inc., as

CALIFORNIA SUPREME COURT

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CRIMINAL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Thursday, September 21, 2023.]

People v. Arellano, S277962. (H049413; 86 Cal.App.5th 418; Santa Clara County Superior Court; 159386.) Petition for review after the Court of Appeal reversed a post-judgment motion and remanded for resentencing in a criminal matter. This case presents the following issue: When a defendant obtains resentencing of a conviction under Penal Code section 1172.6, subdivision (e), is the trial court permitted to impose not only the target offense or underlying felony, but also corresponding enhancements?

People v. Burgos, S274743. (H045212; 77 Cal.App.5th 550; Santa Clara County Superior Court; C1518795, C1756994.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses and remanded for further proceedings. The court limited review to the following issue: Does the provision of Penal Code section 1109 governing the bifurcation at trial of gang enhancements from the substantive offense or offenses apply retroactively to cases that are not yet final?

The screenshot shows the homepage of the California Supreme Court website. The browser address bar displays "supreme.courts.ca.gov". The page features a dark blue header with the text "JUDICIAL BRANCH OF CALIFORNIA" on the left and "Supreme Court" and "Courts of Appeal" on the right. A search bar is located in the top right corner. Below the header, a navigation menu includes "Home", "Case Information", "Opinions", "E-Filing & Procedures", and "News and Events". The main content area has a blue background with a grid pattern and features the text "Supreme Court of California" in a large white font, with "THE STATE'S HIGHEST COURT" in a smaller white font below it.

CALIFORNIA SUPREME COURT

Rodriguez v. Superior Court, S272129. (H049016; 70 Cal.App.5th 628; C1650275, C1647395). Petition for review after the Court of Appeal denied a petition for writ of prohibition. This case presents the following issue: Does an incompetency commitment end when a state hospital files a certificate of restoration to competency or when the trial court finds that defendant has been restored to competency?

Make UC A Good Neighbor v. Regents of University of California, S279242. (A165451; 88 Cal.App.5th 656, mod. 88 Cal.App.5th 1293a; Alameda County Superior Court; RG21110142.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) require public agencies to consider as an environmental impact the increased social noise generated by student parties that a student housing project might bring to a community?

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- People v. Arcega*, 32 Cal. 3d 504 (1982)
- People v. Coddington*, 23 Cal.4th 529 (2000)
- People v. Houser, Jr.* 6 Cal.App.5th 6 (2016)
- People v. Jackson*, 26 Cal. App. 5th 371, 237 Cal. Rptr. 3d 79 (Ct. App. 2018).
- People v. Jefferson*, 119 Cal.App.4th 508, 519 (2004)
- People v. Leonard* (2007)
- People v. Rells*, 996 P.2d 1184, 94 Cal. Rptr. 2d 875, 22 Cal. 4th 860 (2000).

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People v. Wolff, 61 Cal.2d 795 (1964).

United States v. Ewing, No. 07-5098 (2007)

Yakush, B. A., & Wolbransky, M. (2013).
Insanity and the Definition of Wrongfulness in
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