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SUPREME COURT
FILED

JUL 13 2011

Frederick K. Ohlrich Clerk

Deputy

In the Supreme Court of the State of California

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN MANZO,

Defendant and Appellant.

Case No. S191400

Fourth Appellate
District, Division One,
Case No. D055671

San Diego County
Superior Court, Case
No. SCS 212840

RESPONDENT'S MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE,
CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES
OF THE CALIFORNIA SUPREME COURT:

Respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 8.252(a), and 8.520(g), to take judicial notice of the relevant legislative history of Penal

Code section 246. These relevant documents, which are appended to this motion, include the following:

Exhibit 1: Assem. Bill No. 414 (1949 Reg. Sess.) as introduced Jan. 12, 1949, §1;

Exhibit 2: Assem. Amend. to Assem. Bill No. 414 (1949 Reg. Sess.) April 7, 1949;

Exhibit 3: Assem. Bill No. 414, Stats. 1949, ch. 698, § 1, p. 1200;

Exhibit 4: Assem. Bill No. 3303, Stats. 1976, ch. 1119, § 1, p. 5023;

Exhibit 5: Assem. Comm. on Crim. Jus. on Assem. Bill No. 3303 (1975-1976 Reg. Sess.) April 7, 1976 [proposed amendment]; and

Exhibit 6: Sen. Comm. on Judiciary, com. on AB 3303 (1975-1976 Reg. Sess.) as amended May 5, 1976, pp. 1-2.

Each of the attached exhibits is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Pursuant to this authority, it is appropriate to take judicial notice of these documents because they contain the legislative history of Penal Code section 246. (See *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 742 [court took judicial notice of legislative history pertaining to Vehicle Code section 38503, including statement prepared by the Assembly’s Committee on Transportation]; *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, fn. 3 [court took judicial notice of committee reports and individual legislators’ (including co-authors’) comments from the Assembly and Senate committee bill files].)

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CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court take judicial notice of the documents attached in **Exhibits 1 through 6.**

Dated: July 11, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
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Supervising Deputy Attorney General



CHRISTINE LEVINGSTON BERGMAN
Deputy Attorney General
Attorneys for Plaintiff & Respondent

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EXHIBIT 1

ASSEMBLY BILL

No. 414

Introduced by Mr. Stewart

January 12, 1949

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 246 to the Penal Code, relating to the discharging of firearms or throwing of missiles into dwelling houses or occupied buildings.

The people of the State of California do enact as follows:

1 SECTION 1. Section 246 is added to the Penal Code, to
2 read:
3 246. Any person who shall maliciously and wilfully dis-
4 charge a firearm or throw or project any rock, brick, bottle,
5 metal, or other missile, or project any substance capable of
6 doing serious bodily harm at an inhabited dwelling house or
7 occupied building, is guilty of a felony, and upon conviction
8 shall be punished by imprisonment in the state prison for not
9 less than one or more than five years or by imprisonment in the
10 county jail not exceeding one year.

EXHIBIT 2

AMENDED IN ASSEMBLY APRIL 7, 1949

CALIFORNIA LEGISLATURE—1949 REGULAR SESSION

ASSEMBLY BILL

No. 414

Introduced by Mr. Stewart

January 12, 1949

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 246 to the Penal Code, relating to the discharging of firearms or throwing of missiles ~~into~~ AT dwelling houses or occupied buildings.

The people of the State of California do enact as follows:

1 SECTION 1. Section 246 is added to the Penal Code, to
2 read:
3 246. Any person who shall maliciously and wilfully dis-
4 charge a firearm or throw or project any rocks, brick, bottle,
5 metal, or other missile, or project any substance capable of
6 doing serious bodily harm at an inhabited dwelling house or
7 charge a firearm at an inhabited dwelling house or occupied
8 building, is guilty of a felony, and upon conviction shall be
9 punished by imprisonment in the state prison for not less than
10 one or more than five years or by imprisonment in the county
11 jail not exceeding one year.

EXHIBIT 3

CHAPTER-----

An act to add Section 246 to the Penal Code, relating to the discharging of firearms or throwing of missiles at dwelling houses or occupied buildings.

The people of the State of California do enact as follows:

SECTION 1. Section 246 is added to the Penal Code, to read:

246. Any person who shall maliciously and wilfully discharge a firearm at an inhabited dwelling house or occupied building, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for not less than one or more than five years or by imprisonment in the county jail not exceeding one year.

Assembly Bill No. 414

Passed the Assembly April 18, 1949

Chief Clerk of the Assembly

Passed the Senate June 3, 1949

Secretary of the Senate

This bill was received by the Governor this _____
day of _____, 1949, at _____ o'clock _____ m.

Private Secretary of the Governor

ASSI

==

Speaker of the Assembly

==

President of the Senate

Approved -----, 1949

Governor

EXHIBIT 4

Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1976

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 8, 1976,
and General Election, November 2, 1976

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1975-76 Regular Session



Compiled by
BION M. GREGORY
Legislative Counsel

Department of Health.

(b) Investigations conducted by independent laboratories.

(c) Any other investigations approved by the State Department of Health.

The applicant shall reimburse the State Department of Health and the Department of Justice for any actual expenses incurred by such departments in connection with such reports.

SEC. 18. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be an appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local governmental entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

CHAPTER 1119

An act to amend Section 246 of the Penal Code and Section 23110 of the Vehicle Code, relating to crimes and penalties.

[Approved by Governor September 20, 1976. Filed with Secretary of State September 21, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 246 of the Penal Code is amended to read:
246. Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling house or occupied building, or occupied motor vehicle is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison or by imprisonment in the county jail not exceeding one year.

SEC. 2. Section 23110 of the Vehicle Code is amended to read:
23110. (a) Any person who throws any substance at a vehicle or any occupant thereof on a highway is guilty of a misdemeanor.

(b) Any person who with intent to do great bodily injury maliciously and willfully throws or projects any rock, brick, bottle, metal or other missile, or projects any other substance capable of doing serious bodily harm at such vehicle or occupant thereof is guilty of a felony and upon conviction shall be punished by imprisonment in the state prison.

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities which, in the aggregate, do not result in significant

identifiable cost changes.

CHAPTER 1120

An act to add Section 4131.5 to the Penal Code, relating to battery.

[Approved by Governor September 20, 1976. Filed with
Secretary of State September 21, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 4131.5 is added to the Penal Code, to read:
4131.5. Every person confined in, sentenced to, or serving a sentence in, a city or county jail, industrial farm, or industrial road camp in this state, who commits a battery upon the person of any individual who is not himself a person confined or sentenced therein, is guilty of a public offense and is punishable by imprisonment in a state prison for not more than three years or in a county jail for not more than one year.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities which, in the aggregate, do not result in significant identifiable cost changes.

CHAPTER 1121

An act to amend Section 313.1 of the Penal Code, relating to pornography.

[Approved by Governor September 20, 1976. Filed with
Secretary of State September 21, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 313.1 of the Penal Code is amended to read:
313.1. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit any harmful matter to the minor is guilty of a misdemeanor.

(b) Every person who misrepresents himself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter is guilty of a misdemeanor.

EXHIBIT 5

BILL DIGEST
ASSEMBLY COMMITTEE ON
CRIMINAL JUSTICE

///
4-0
As Amended

Bill: AB 3303

Hearing Date: 4-7-76

AUTHOR: Goggin

SUBJECT: Shooting at Occupied Car

*75 B 90 winner
723110 re laws*

BILL DESCRIPTION:

Under current law it is a felony to shoot at (even if the shot misses) an inhabited dwelling house or occupied building.

Under current law it is a felony to throw a rock, bottle, etc., at a vehicle with the intent to do great bodily harm to driver or occupant. Simple act of throwing is a misdemeanor.

Under current law it is a felony to discharge a firearm at a vehicle or occupant thereof with the intent to do great bodily harm.

AB 3303 would make it a felony to discharge a firearm at an occupied motor vehicle.

COMPARISON:

	<u>Current Law</u>	<u>AB 3303</u>
1. Cover act of shooting at car?	Yes	Yes
2. Need the car be occupied?	Not technically	Yes
3. Require any intent?	Yes - to commit GBI	No
4. Need injury occur?	No	No
5. Punishment	Felony (5 yr. top)	Wobbler (5 year top)

COMMENT: The act designed as illegal in AB 3303 seems to be covered by current law.

Source: San Bernardino County D.A.

Support and Opposition: Unknown

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Bill Analysis

Work Sheet

RE: Bill No. AB 3303

Please complete this form and return it to the Assembly Committee on Criminal Justice as soon as possible.

1. Origin of the bill:

(a) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)
San Bernardino County District Attorney
James M. Cramer

(b) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the session, bill number and disposition of the bill.
Not to our knowledge

(c) Has there been an interim committee report on the bill? If so, please identify the report.
No

2. Problem or deficiency in the present law which the bill seeks to remedy:
See attached.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by the committee staff.

4. Hearing:

(a) Approximate amount of time necessary for hearing.
15 minutes

(b) Names of witnesses to testify at the hearing.

District Attorney James Cramer or representative

EXHIBIT 6

SENATE COMMITTEE ON JUDICIARY

1975-76 REGULAR SESSION

AB 3303 (Goggin)
As amended May 5
Penal/Vehicle Codes

A
B
3
3
0
3

FIREARMS
-VEHICLES-

HISTORY

Source: San Bernardino County District Attorney

Prior Legislation: None

Support: Calif. District Attorneys Ass'n., Calif.
Peace Officers Ass'n., City of Los
Angeles

Opposition: No Known

DIGEST

Makes it a felony to maliciously and willfully discharge a firearm at an occupied motor vehicle (Sec. 246, Pen. C.).

Makes conforming changes (Sec. 23110, Veh. C.).

PURPOSE

Strengthen the law prohibiting the discharge of a firearm at a motor vehicle.

COMMENT

1. Under existing law, any person who maliciously and willfully discharges a firearm at a motor vehicle or at an occupant is guilty of a felony if he intends to do great bodily harm (Sec. 23110, Veh. C.).

(More)

This bill eliminates the requirement that the defendant intend to do great bodily harm.

3

3

0

3

2. According to the proponents, the requirement that the prosecution prove that the defendant intended great bodily harm has hampered efforts to obtain convictions in serious cases. They contend that the act of discharging a firearm at an occupied vehicle is serious enough to warrant a felony punishment.

3. Under existing law, it is a felony to maliciously and willfully discharge a firearm at an inhabited dwelling house or occupied building. (Sec. 246, Pen. C.).

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 3303

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

The District Atty of San Bernardino County
MR James Brannan

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

Department of Justice, Attorney General of Calif,
in support San Bernardino Co. District Atty, the
California Highway Patrol, the Calif. Home & Office Assn
in opposition

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

see attached

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

BILL DIGEST

ASSEMBLY COMMITTEE ON
CRIMINAL JUSTICE

Bill: AB 3303

Hearing Date: 4-7-76

AUTHOR: Goggin

SUBJECT: Shooting at Occupied Car

BILL DESCRIPTION:

Under current law it is a felony to shoot at (even if the shot misses) an inhabited dwelling house or occupied building.

Under current law it is a felony to throw a rock, bottle, etc., at a vehicle with the intent to do great bodily harm to driver or occupant. Simple act of throwing is a misdemeanor.

Under current law it is a felony to discharge a firearm at a vehicle or occupant thereof with the intent to do great bodily harm.

AB 3303 would make it a felony to discharge a firearm at an occupied motor vehicle.

COMPARISON:

	<u>Current Law</u>	<u>AB 3303</u>
1. Cover act of shooting at car?	Yes	Yes
2. Need the car be occupied?	Not technically	Yes
3. Require any intent?	Yes - to commit GBI	No
4. Need injury occur?	No	No
5. Punishment	Felony (5 yr. top)	Wobbler (5 year top)

COMMENT: The act designed as illegal in AB 3303 seems to be covered by current law.

Source: San Bernardino County D.A.

Support and Opposition: Unknown

SENATE DEMOCRATIC CAUCUS

SENATOR JOHN F. DUNLAP, *Chairman*

Bill No. AB 3303

Author: Goggin (D)

Subject: Crimes: Dwellings, buildings, vehicles; penalties

Revenue & Taxation Committee:
Be placed on Second Reading.

Version of Bill: May 5, 1976

Policy Committee: Judiciary

Version of Bill: May 5, 1976

Ayes (7) Carnter, Deukmejian, Grunsky, Presley, Rains, Roberti, Petris

Noes (0)

Purpose of Legislation:

Under existing law, it is a felony punishable by imprisonment for not less than one year or more than five years in state prison to maliciously and willfully throw or project specified matter at, or discharge a firearm at, a vehicle or any occupant thereof on a highway with intent to do great bodily injury. It is also an alternative felony-misdemeanor for any person to maliciously and willfully discharge a firearm at an inhabited dwelling or occupied building with the felony punishable by imprisonment in the state prison for not less than one year or more than five years.

This bill would make it an alternative felony-misdemeanor to maliciously and willfully discharge a firearm at an occupied motor vehicle and would delete the specified minimum and maximum periods of imprisonment in state prison.

Most Recent Amendments:

August 19, 1976 amendments reflected in Purpose of Legislation (above).

Proponents:

California Highway Patrol
California District Attorneys' Association
California Peace Officers' Association
City of Los Angeles

Opponents:

Arguments in Support:

The requirement that the prosecution prove that the defendant intended great bodily harm has hampered efforts to obtain convictions in serious cases. They contend that the act of discharging a firearm at an occupied vehicle is serious enough to warrant a felony punishment.

Arguments in Opposition:

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **The People v. Martin Manzo**
No.: **S191400**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **July 12, 2011**, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Arthur Martin
Attorney at Law
P.O. Box 5084
Klamath Falls, OR 97601
[Attorney for Appellant Manzo - 2 Copies]

Clerk of the Court – For Delivery to:
The Honorable Timothy R. Walsh
San Diego County Superior Court
500 Third Avenue
Chula Vista CA 91910-5694

The Honorable Bonnie M. Dumanis
District Attorney – Attn: Appeals
San Diego County D.A.'s Office
330 West Broadway, Suite 1320
San Diego, CA 92101

Mr. Stephen M. Kelly, Clerk
Fourth Appellate District, Div. One
California Court of Appeal
750 B Street, Suite 300
San Diego, CA 92101

Additionally, I electronically served a copy of the above document from Office of the Attorney General's electronic notification address ADIEService@doj.ca.gov on **July 12, 2011**, to **Appellate Defenders, Inc.** at its electronic address: eservice-criminal@adi-sandiego.com.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **July 12, 2011**, at San Diego, California.

Loreen Blume
Declarant

Loreen Blume
Signature