

Tricks and treats in Halloween precedent



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EXCEPTIONALLY APPEALING

With everyone sick of the pandemic, neighborhood boredom seems to have prompted early Halloween decorations. Following suit, let's explore what precedent has to say about this month's last-day holiday and trick-or-treating, in particular.

To begin, our Supreme Court has confirmed that trick-or-treating is legal. Although Penal Code Section 529 criminalizes false impersonation (i.e., pretending to be someone you're not), in *People v. Rathert*, 24 Cal. 4th 200, 208 (2000), the court noted that the defendant "cites no instance in the history of this state of any persons being prosecuted for, e.g., trick-or-treating or attending a costume party, and we are aware of none. The ancient customs of masquerade and trick-or-treating antedate, and have survived, the enactment of section 529. The statute clearly was not designed to eliminate these innocuous practices."

Yet is trick-or-treating really innocuous? Bad things happen on the streets of California every night, and kids in costume parading around in the dark can compound the calamity.

The Dangers of Trick or Treating. Over 70 years ago, Presiding Justice Minor Moore waxed poetic about a horrible Halloween accident in *Burton v. Los Angeles Ry. Corp.*, 79 Cal. App. 2d 605, 608 (1947): "It was Halloween and spirits walked. Little children were eager, excited, and gay, and their oldsters joined in the merriment. Little Dorothy and her sister Betty, age seven, were enjoying the childish sport of 'trick or treat' among the neighbors of the Burtons in the city of Los Angeles. ... The street was clear; the head lights of the bus glared. Hand in hand, Betty leading, they proceeded to the center of the street, suddenly to discover the bus was bearing down upon them. They started to run. No other traffic was seen by Betty who barely escaped as Dorothy was stricken down and dragged 18 feet." Poor Dorothy, only five-and-a-half years old, was killed. Sadly, case law relates similar accidents: *People v. Torres*, 2015 WL 3398592 (A141443) ("on Halloween night, appellant, who was admittedly under the influence of alcohol and methamphetamine, suddenly reversed his SUV and struck a four-year-old child, throwing him into the street. After stopping momentarily, appellant sped away across the lawn.").

In addition to accidents, fighting also seems common: *In re E.B.*, 2013 WL 3167924 (E055706) ("While trick-or-treating with his younger brother on Halloween night in 2011, E.B., the minor, approached Tomas R., asked if Tomas had some marijuana, and when Tomas turned around, punched Tomas several times in the face, causing a fractured nose, an orbital fracture, and two facial lacerations."); *People v. Saeteurn*, 2007 WL 1748562 (C053237) ("While trick-or-treating on Halloween night in 2003, [defendant] and several friends participated in a fight with a group of youths. A friend gave defendant a knife to defend himself from a much larger member of the other group. During the altercation, defendant stabbed a youth in the chest."). *And see People v. Valle*, 2002 WL 1482538 (H020638) (trick-or-treater beaten and stabbed by four gang members).

Domestic tensions flare too. In *People v. Grable*, 2002 WL 194200 (E028747) a couple got into a fight: "Defendant became upset and told McIntire that she did not like his attitude. McIntire replied that it was time for defendant to leave. Defendant remained, and after attending to some trick-or-treaters who had come to the door, McIntire repeated his demand that she leave. Defendant replied that she intended to stay and tell McIntire what she thought of him. When he put a hand on her shoulder to guide her to the door, she 'went off,' in McIntire's words, yelling, 'Don't you ever touch me.' When he again attempted to show her the door, 'all hell broke loose.'

Defendant kned McIntire in the groin. When he stepped back, she came after him in a boxing stance with closed fists. A general affray ensued with both parties tangling on the floor."

In *People v. Chatman*, 2007 WL 3314404 (E043071), "Defendant and Valencia P. (the victim) took their son trick-or-treating. Defendant and the victim got into an argument, and defendant struck the victim five or six times in the chest and stomach. Defendant threatened to kill her, and he grabbed and twisted her right index finger and broke it." A broken finger makes you cry ouch! But in *People v. Ouch*, 2002 WL 1425375 (F038289), it gets worse: "Appellant went trick or treating without a costume but with a loaded handgun on Halloween night. ... [A]ppellant approached, requested money, demanded to be let inside the house, and threatened to shoot the front door open if the victims did not open the door for him."

It can be dangerous to open the door, as Maria Magallanes found out: "At approximately 9:00 p.m., Magallanes was in the kitchen washing dishes when she heard a knock on the door. Magallanes believed it was children trick-or-treating and opened the door. Five people wearing 'rabbit' masks were standing at the door. One of them said, 'Is Ernie home?' ... and then said he was there to 'collect a debt.' Appellant shifted his mask and Magallanes saw and recognized appellant's face. Appellant pulled out a gun, pointed it at Magallanes, and shot at her several times." *People v. Leon*, 2014 WL 2979461 (B244143).

Don't go in! Haven't the horror flicks taught us "don't go into the house" and "don't get into the car"? On Halloween night, "defendant answered the door at his home as [the girls] were trick-or-treating in the neighborhood. Defendant invited them in when they stopped by ... and they watched television. Defendant complimented [one] on her costume and rubbed her outer thigh; she tried to move away from him." *People v. Cavallaro*, 178 Cal. App. 4th 103, 106 (2009); *see also In re Wells*, 46 Cal. App. 3d 592, 595 (1975) ("two young girls were out trick-or-treating when petitioner offered them a ride. The girls got into petitioner's car; he promised them a dollar if they 'didn't tell anybody'; he then drove about four blocks to a dark, dead-end street, stopped his car and said to the girls: 'Let me see your panties.' The girls thereupon jumped out of petitioner's car and ran away crying."); *People v. Allison*, 2017 WL 83497 (E064502) (six-year-old trick or treater sexually assaulted by 28-year-old); *People v. Rudolph*, 2010 WL 3872137 (A127267) (unlawful intercourse with a 15-year-old trick-or-treater).

Some might hope to avoid the dangers of trick-or-treating by attending a party. But that might not be all that safe either. *People v. Contreras*, 2009 WL 2622821 (F056215) (gang members fire shotgun into Halloween party); *People v. Marten*, 2007 WL 4296621 (C050078) ("ghastly Halloween tale" of gang shooting); *People v. Buttelo*, 2015 WL 1310564 (C068381) (shooting on way to Halloween party); *People v. Fields*, 2014 WL 5767526 (C068047) (gang-related shooting at Halloween costume party); *People v. Sanchez*, 2016 WL 909139 (D067336, 2016) (fatal Halloween party shooting).

Then there are all those haunted houses, most of which are silly, but some are truly frightening. For example: "Scott Griffin purchased a ticket to experience 'The Haunted Trail,' an outdoor haunted house type of attraction where actors jump out of dark spaces, often inches away from patrons, holding prop knives, axes, chainsaws, or severed body parts. After passing what he believed was the exit and 'giggling and laughing' with his friends about how much fun they had, Griffin unexpectedly was confronted by a final scare known as the 'Carrie' effect -- so named

because, like the horror film *Carrie* (MGM 1976), patrons are led to believe the attraction is over, only to be met by one more extreme fright. This was delivered by an actor wielding a gas powered chainsaw (the chain had been removed), who approached Griffin, frightened him, and gave chase when Griffin ran away. Griffin was injured when he fell while fleeing. Griffin sued ... alleging negligence and assault." *Griffin v. The Haunted Hotel, Inc.*, 242 Cal. App. 4th 490, 493 (2015).

Halloween case law is not all torts and criminal law; employment and IP cases exist too: *Meraz v. Jo-Ann Stores, Inc.*, 2004 WL 882458 (C.D. Cal. 2004) (allegation that employer retaliated against employee for not working in costume on Halloween); *Nat'l Theme Prods., Inc. v. Jerry B. Beck, Inc.*, 696 F. Supp. 1348, 1349 (S.D. Cal. 1988) (copyrights infringed on Rabbit-In-Hat, Tigress, Magic Dragon, and Pampered Pup costumes).

There's even constitutional law: In *Doe v. City of Simi Valley*, 2012 WL 12507598 (C.D. Cal. 2012), concerned that "trick-or-treating on Halloween offers unique opportunities for sex offenders to victimize children," a city enacted a "Halloween Ordinance" imposing "restrictions on the conduct of sex offenders on Halloween." Plaintiffs, a group of registered sex offenders (and their family members) who desired "to hand out candy to trick-or-treaters and decorate the exterior of their residences with lights and Halloween decorations," sued to have the Halloween Ordinance declared facially unconstitutional in violation of the First Amendment.

For some, the true enticement of Halloween is terrifying gore. Since this is a family paper, we're not going there. *But see Catsouras v. CHP*, 181 Cal. App. 4th 856, 863 (2010) ("gruesome death images" emailed on Halloween); *People v. Dennis*, 17 Cal. 4th 468, 489 (1998) (death penalty affirmed for gruesome machete Halloween murder).

Finally, you may be thinking that Halloween law is a niche area with precedent that you've never heard of and will never use. But consider this: The famous "*Terry Stop*" occurred on Halloween, giving us *Terry v. Ohio*, 392 U.S. 1, 5 (1968).

Exceptional research assistance by former Manatt associate Joshua Stillman.