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D. P. / SPEC. CIRC. / JURY SELECTION

CHALLENGE FOR CAUSE - ANSWERS CONTRADICTORY

After many conflicting statements, Juror says "I believe I can set aside my personal views and be an impartial juror. But, I am not sure than I can." Challenge for cause denied. UPHELD.

WESTERFIELD P. v. () 2/4/2019 **CAL**

MOTIONS / SEVERANCE/JOINDER

COUNTS - CRIME 1 IS ITSELF EVID OF MOTIVE FOR CRIME 2

Def charged with kidnap/rape/murder of 7 year old. Def's possession of child porn is relevant evid on the issue of MOTIVE and INTENT. The two crimes are "connected in their commission" and are properly joined.

WESTERFIELD P. v. () 2/4/2019 **CAL**

EVIDENCE / 352 / RELEVANCE

EXHIBIT - AUTHENTICATION - ANONYMOUS PHONE CALLS

7 year old girl kidnapped and missing. During a time def has an alibi, victim's mother gets anonymous phone call allegedly from kidnapper. - no trace, no ID, no follow up call. Over def's objection, evid of call is excluded as lacking any foundation that call was legit. UPHELD

WESTERFIELD P. v. () 2/4/2019 **CAL**

D. P. / SPEC. CIRC. / PEN - EVIDENCE

VICTIM IMPACT - VICTIM WAS CHILD - IMPACT ON CLASSMATES

7 year old is kidnapped and murdered. --- Victim impact evidence properly included testimony of how the death affected victim's teachers and classmates.

WESTERFIELD P. v. () 2/4/2019 **CAL**

TRIAL / WHEELER

PERMISSIBLE REASONS - GENUINE, RACE-NEUTRAL, BUT DEBATABLE

At bottom, the final WHEELER test is not the reasonableness of the DDA's stated reasons, it is simply that the reasons are race-neutral and that the DDA is credible when she says they are the TRUE reasons.

ARMSTRONG P. v. () 2/4/2019 **CAL**

MISCELLANEOUS / ATTY ETHICS

ATTY DUTY - CLIENT WISHES THAT NO MITIGATION BE PRESENTED

D.P. def does NOT want to go pro per, but also REFUSES to let his atty present mitigation at penalty phase. HELD: Def's decision was knowing / intelligent / voluntary. Def atty must abide by it.

AMEZCUA & P. v. () 2/28/2019 **CAL**

TRIAL / JUROR/VERDICT ISSUES

MISC - SEQUESTRATION DUE TO MASSIVE PUBLICITY

A decision to NOT sequester a jury in a case with massive local publicity is reviewed on an abuse of discretion standard. This case, trial court trusted the jurors to follow his frequent admonishments to avoid all media reports about the case. -- UPHELD.

WESTERFIELD P. v. () 2/4/2019 **CAL**

TRIAL / MISC - TRIAL

Q&A - OPENING THE DOOR - CORRECTING MISLEADING QUESTIONS

Good example of how a def atty's cross-examination can undo the careful balancing of the court's prior orders and OPEN THE DOOR to that which the court had previously kept out.

WESTERFIELD P. v. () 2/4/2019 **CAL**

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - DOG SNIFF EVID - CALJIC 2.16

CALJIC 2.16 re: dog sniff evidence UPHELD.

WESTERFIELD P. v. () 2/4/2019 **CAL**

D. P. / SPEC. CIRC. / JURY SELECTION

CHALLENGE FOR CAUSE - I WILL FOLLOW LAW I STRONGLY OBJECT TO

A juror can personally think the law is wrong and still be a fair juror as long as the juror says he/she will follow the law. -- even the law re: the death penalty.

ARMSTRONG P. v. () 2/4/2019 **CAL**

TRIAL / WHEELER

APPELLATE REVIEW - COMPARATIVE ANALYSIS OF JURORS - NIT-PICKING

Conviction affirmed 4-3. 3 justices found inconsistencies in how DDA evaluated jurors and concluded WHEELER should have been granted. 4 justices said the dissenters were overly nit-picking the record to find a DDA-bias that the trial court did not see.

ARMSTRONG P. v. () 2/4/2019 **CAL**

JUVENILE / PROCEDURE

PROCEDURE - DEFERRED ENTRY OF JUDGMENT - 790 W&I - UNPAID RESTITUTION

Minor enters deferred entry of judgment program. After completing program, case is dismissed, BUT, the unpaid restitution is converted into a civil judgment under W&I 724. -- UPHELD.

J. G. In Re () 2/25/2019 **CAL**

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JUVENILE / SENTENCING

RESTITUTION - MINOR'S ABILITY TO PAY - SOCIAL SECURITY BENEFITS
While juvi court CANNOT directly order that a portion of minor's Social Security Benefits be used to make restitution, the court MAY take the SS benefits into account when assessing the minor's ABILITY TO PAY restitution.

J. G. *In Re ()* 2/25/2019 **CAL**

APPELLATE ISSUES / WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - ARBUCKLE ERROR
Def was not sentenced by the judge who took her plea and she did not affirmatively waive her ARBUCKLE rights. She also failed to make any objection at the time of her sentencing. HELD: No need for objection, affirmative waiver must be taken. -- REMANDED for new sentencing.

BUENO *P. v. ()* 2/19/2019 **5:**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - DISCOVERY - DDA GETS ALL OF DEF TREATMENT RECORDS
Newly enacted W&I 6603(j) authorizes the DDA to SUB DT anything and everything the SexVioPredator evaluators reviewed as part of their evaluation. --- this case upholds W&I 6603(j).

LANDAU *def v. SUP* 2/15/2019 **4:3**

INSTRUCTIONS/ELEMENT / PRIORS

GENERALLY - FOREIGN PRIORS - 9-3 JURY VERDICTS IN FOREIGN STATE
Def's prior murder conviction was in JAMAICA where 9-3 verdicts are permitted. HELD: If the crime elements match up to Calif crime, that is ALL that matters. Court is not concerned with whether the PROCEDURE used in foreign court meets Calif standards.

JOHNSON *P. v. ()* 2/5/2019 **4:1**

EVIDENCE / HEARSAY

VIOLENT CRIME VICTIM - VICTIM WROTE RAP LYRICS RE: DEF
Victim wrote RAP lyrics that, if true, explained why def had motive to murder victim. HELD: admissible. The fact that they were song lyrics went to their weight, not their admissibility.

JOHNSON *P. v. ()* 2/5/2019 **4:1**

INSTRUCTIONS/ELEMENT / LESSERS

MURDER (watson) / GROSS VEH MANSL WHILE INTOXICATED
Gross veh manslaughter while Intoxicated is NOT a lesser to a Watson DUI Murder charge. DCA rejects def invitation to expand the "accusatory pleading" test for lessers to include facts proven up at prelim.

ALVAREZ *P. v. ()* 2/28/2019 **4:1**

APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - POST WAIVER - SENTENCING ERRORS
Def's plea bargain included an explicit waiver of right to appeal that explicitly included right to appeal his sentence which had not yet been imposed. -- HELD: this waiver prevents def from appealing a CTS issue. CTS was determined after the waiver was signed.

BECERRA *P. v. ()* 2/11/2019 **6:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - APPELLATE DECISIONS - BANKS - AID/ABET FELONY 187
Def's 1999 Spec Circ conviction reversed on Habeas. DCA analyzed the evidence and concluded no reasonable jury would have found def acted with reckless inference to life and was a major participant. --- Def knowingly supplied the guns for the robbery, and suggested the target. BANKS is retroactive.

RAMIREZ *In Re ()* 2/20/2019 **5:**

INSTRUCTIONS/ELEMENT / HOMICIDE

HEAT OF PASSION - THRESHOLD OF EVID NEEDED
CCTV showed def entering barbershop and leaving 16 seconds later. Inside, def shot and killed victim. HELD: Insufficient evid to support Heat of Passion instruction, or lack of express malice.

JOHNSON *P. v. ()* 2/5/2019 **4:1**

DEFENDANT'S / AMBIG. INVOKE

GENERALLY - CONTEXT, USE OF - "YEAH, YEAH" AS A VERBAL HABIT
Def had verbal habit of saying "Yeah, Yeah" in response to every question before going on to answer the question. In this context, the "yeah, yeah" def said after being asked (after waiver, in mid-interview) if he wanted an atty was NOT an unambiguous invocation.

JOHNSON *P. v. ()* 2/5/2019 **4:1**

MOTIONS / DISCOVERY

EXCULPATORY - BRADY - PAST OFFICER CONTACTS WITH DEF
Def arrested by officer X. Weeks earlier, X was investigating a different crime and the Def was a witness (possible suspect) in the earlier report. HELD: There is no BRADY violation for failure to disclose X's prior contact with def. The earlier report has no relevance and no impeachment value.

JIMENEZ *P. v. ()* 2/21/2019 **4:1**

SENTENCING / RESTITUTION

GENERALLY - PRISON EARNINGS - 2085.5 PC
PC 2085.5 authorizes Dept of Corrections to deduct a portion of inmate's prison earnings to pay any outstanding restitution bill. HELD: 2085.5 is not limited to restitution for commitment offense. It applies to very old, unpaid, restitution order on case def did time and was released on.

ELLIS *P. v. ()* 1/14/2019 **4:1**

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MOTIONS / MISC - MOTIONS

CIVIL COMPROMISE - 1377 PC - HIT-AND-RUN CASES - VC 20002

Is a misdemeanor Hit-and-Run - VC 20002 - subject to a civil compromise under PC 1377 ? Answer: NO. The general public is the victim of "the running", not the people involved in the accident.

DIMACALI P. v. () 2/28/2019 4:1

APPELLATE ISSUES / MISC APPELLATE ISSUES

REMAND PROCEDURE - NO REMAND IF DCA KNOWS WHAT TRIAL CT WOULD DO

At original sentencing, the court explicitly stated intention to give def the max sentence possible. -- On this record, there is no need to remand to give court opportunity to exercise discretion it did not have at time of sentencing.

JONES P. v. () 1/28/2019 3:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - WHEN IS DEF'S CASE FINAL?

Def sentenced to prison in 2015 and case became final in 2015. In 2018, enhancement statute (PC 12022.5) changes in way that would benefit def. Def asks trial court for new sentence. Denied. Def appeals --- HELD: case is final. Trial ct had no jurisdiction. The appeal is DISMISSED as improper.

FUIMAONO P. v. () 2/8/2019 3:

APPELLATE ISSUES / MISC APPELLATE ISSUES

REMAND PROCEDURE - REMAND RE: SENTENCING - NEED FOR HEARING

When a non-final case is remanded to give trial court opportunity to exercise discretion that it did not have at time of original sentencing, then the def has a right to a hearing, with him present, and def atty must have opportunity to submit brief and to be heard at the hearing.

ROCHA P. v. () 2/19/2019 2:4

INSTRUCTIONS/ELEMENT / ENHANCEMENTS

GBI - 12022.7 PC - BASE CRIME - RECKLESS DRIVING VC 23103/23105

VC 23105 says Reckless Driving (23103) can be charged as a felony of someone is seriously injured. HELD: 23105 is NOT a separate crime. It is a sentencing provision. THEREFORE, notwithstanding 12022.7(g), a GBI enhancement can be added to 23103/23105.

ESCARCEGA P. v. () 2/20/2019 2:3

DEFENDANT'S / MIRANDA

POST-INVOKED - DEF TALKING TO FAMILY - POLICE ARRANGE TALK

Def arrested for beating his infant child. Mirandized, denies, invokes. Def then put in room with child's mother (def's girlfriend). Police secretly tape def confessing. HELD: As long as def did not believe GF was a police agent, then this is NOT custodial interrogation. No Miranda violation.

OROZCO P. v. () 2/28/2019 2:2

TRIAL / WHEELER

APPELLATE REVIEW - COMPARATIVE ANALYSIS OF JURORS

In response to Wheeler motion, DDA gives reason X. Motion denied. On appeal, def argues reason X applied to 2 jurors that DDA did not excuse. DCA is left to explain the subtle reasons X applied MORE to excused juror than to the non-excused jurors.

JONES P. v. () 1/28/2019 3:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - WHEN IS DEF'S CASE FINAL?

Def sentenced to prison in 2015 and case became final in 2015. In 2017, enhancement statute (H&S 11370.2) changes in way that would benefit def. Def asks trial court for new sentence. Denied. Def appeals --- HELD: case is final. Trial ct had no jurisdiction. The appeal is DISMISSED as improper.

CHAMIZO P. v. () 2/27/2019 3:

SENTENCING / RESTITUTION

INDIRECT VICTIMS - STATE REIMBURSES LOCAL SCHOOL FOR LOSS

Minor vandalises school. School is partially reimbursed for the damage by the State. -- Minor still is to pay full restitution, just that minor should pay some to school and some to the State.

LANDEN P. v. () 2/4/2019 2:6

INSTRUCTIONS/ELEMENT / HOMICIDE

VEHICULAR MANSL - W/GROSS NEG

Two lane road. Def has a dashed-yellow line on his side. Attempts to pass a truck and hits and kills victim in on-coming car. HELD: Mere fact that line was dashed does NOT mean def's act could not be RECKLESS. It is only one factor to consider.

ESCARCEGA P. v. () 2/20/2019 2:3

APPELLATE ISSUES / HARMLESS ERROR

HARMLESS ERROR - MISINSTRUCTION RE: SUPERFLUOUS ELEMENT

Court mistakenly instructed jury on an EXTRA element to the crime charged. (statute was amended). Furthermore, the instruction re: the extra element was a misstatement (of the old law). HELD: HARMLESS.

MATTHEWS P. v. () 2/28/2019 2:2

MOTIONS / WITHDRAW PLEA / STRIKE

W/DRAW GROUNDS - ADVISE RE: I.N.S. CONSEQ'S - 1473.7 PC

2009 MJ for sale conviction set aside under PC 1473.7. --- record re: def's sympathetic immigration status is strong. Record re: circumstances of def's 2009 guilty plea is weak. --- Basically, def now says he didn't think he would be deported in 2009.

CAMACHO P. v. () 2/27/2019 2:2

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JUVENILE / SENTENCING

PLACEMENTS - LENGTH OF PLACEMENT DEPENDS ON MINOR'S CONDUCT

It is OKAY for Juvi Ct to sentence minor to a local in-custody program that is of uncertain length (it all depends on how minor behaves). BUT, court must monitor the program to insure minor is not forgotten about. Ultimately, it is the court, not the program, that determines when minor gets out.

L. R. *In Re ()* 2/15/2019 1:5

INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

RECEIVING - 496 PC - DISCRETION TO CHARGE - PROP 47

Prop 47 prohibits DDA from charging a "shoplifting" as a 459 burglary. It does NOT restrict DDA discretion to charge def with PC 496 - receiving stolen property - even if the def stole the property himself in an act of "shoplifting."

BROWN *P. v. ()* 2/27/2019 1:4

SENTENCING / 654

CONSPIRACY TO COMMIT X, Y, and Z / CRIME X

Def given an consecutive sentence for crime X on victim Y and Conspiracy to commit crime X on victim Y AND some other victims. UPHeld. 654 PC applies ONLY if the ALL the alleged acts of the conspiracy on covered by the other counts.

BEMAN *P. v. ()* 2/21/2019 1:2

INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

RECEIVING - 496 PC - MULTIPLE ITEMS, MAYBE MULTIPLE CRIMES

ONLY because of the way the DDA worded the complaint, the def's possession of \$750 of stolen property from victim A and \$300 of stolen property from victim B could NOT be combined into a single count exceeding \$950. --- Complaint only alleged "received" and not "possessed".

BROWN *P. v. ()* 2/27/2019 1:4

TRIAL / WHEELER

MISC - EFFECT OF DDA LEAVING MINORITIES ON JURY

While not definitive, fact that DDA left one minority juror on the jury that heard the case was deemed by trial court as "powerful evidence" that other preempts were genuine, race-neutral. --- DCA ultimately deferred to trial court's evaluation. WHEELER properly denied.

SMITH and *P. v. ()* 2/7/2019 1:4