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TRIAL / WITNESS

WITNESS IS LIKELY TO NOT RETURN FOR DAY 2 - SEQUESTER IN HOTEL

Defense Witness' behavior was so bad while testifying, court ordered her to stay, under guard, in hotel overnight to insure her attendance the next day. HELD: defendants have NO STANDING to object. Only issue on appeal is how, if at all, this affected fairness of trial. Jury was not aware.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

MOTIONS / SEVERANCE/JOINDER

DEF'S - CO-DEF IS PRO PER

3 def case. 1 def goes Pro Per. HELD: this is NOT grounds to sever. Record fails to show Pro Per's mistakes/misbehavior prejudiced the other two defs.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

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

DEF'S COURTROOM Demeanor IN 1st TRIAL - ADMITTED IN 2nd TRIAL

When jury returned DP guilty verdict, def yelled at jury and said his gang "rules". Penalty phase hangs. At new Penalty Phase, evidence of Def's outburst admitted as evid of def's gang membership. UPHeld.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

DEFENDANT'S STATEMENTS / VOLUNTARY

FACTORS - MIRANDA VIOLATION - POST INVOKE

At scene, def invokes. At hospital (def was shot during arrest), def invokes to 2nd cop, then to Detective. Hours later def invokes to DDA hired shrink. Later still, def sees the shrink waiting in hallway and INVITES him in to talk. HELD: Multiple requests to talk were WRONG. But, def freely reinitiated.

JOHNSON P. v. () 1/3/2022 CAL

DEFENDANT'S STATEMENTS / VOLUNTARY

FACTORS - DEF'S Demeanor (AS CAPTURED ON AUDIO TAPE)

Circumstances strongly hint that statement was coerced and not voluntary, BUT, the audio tape makes it clear was NOT intimidated or nervous or scared. Def was calm, cool, and cogent and intelligent. Def even said knew his atty would be upset by his talking to police.

JOHNSON P. v. () 1/3/2022 CAL

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

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

D.P. case. Juror X said while she STRONGLY believes all cop killers should be executed, she understands that each case and each def is unique and her duty as a juror is to individually assess this case and def under the court's instructions. -- def's challenge for cause denied. UPHeld.

JOHNSON P. v. () 1/3/2022 CAL

MOTIONS / FARETTA / PRO PER ISSUES

GROUND TO DENY - COMPETENCY TO ACT AS ATTY - NO

DP def's FARETTA motion is Granted for PENALTY PHASE (w/advisory atty). On appeal def asserts he was too uneducated, inexperienced, and stupid to represent himself. HELD: Def was fully able to understand his right to atty and knowingly waive that right. That is all it takes.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

TRIAL / COURT SECURITY

SHACKLING DEF - FACTORS - MULTIPLE GANG DEF'S IN COURT

3 def GANG case. In determining amount of courtroom restraints, court saw heightened risk due to once a single def started something, the other two were likely to join in. Ultimately, all three were wearing STUN BELTS (this was in 1995). UPHeld in 2022.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

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

PENALTY PHASE RETRIALS - JURY MUST "ACCEPT" PRIOR FINDINGS

At penalty phase retrial, jury instructed that they must "accept" prior jury's GUILTY findings. HELD: this does NOT mean the jury cannot consider the presence of lingering doubt as mitigation.

HOMLES & McCLAIN & P. v. () 1/31/2022 CAL

DEFENDANT'S STATEMENTS / MIRANDA

POST INVOKE - DEF INITIATION AFTER NUMEROUS INVOCATIONS

At scene, def invokes. At hospital (def was shot during arrest), def invokes to 2nd cop, then to Detective. Hours later def invokes to DDA hired shrink. Later still, def sees the shrink waiting in hallway and INVITES him in to talk. HELD: Multiple requests to talk were WRONG. But, def freely reinitiated.

JOHNSON P. v. () 1/3/2022 CAL

EVIDENCE / HEARSAY

EVID 356 - PARTS OF POLICE INTERVIEWS

In LONG interview w/ police shrink, def talks about the crime and talks about his long history of mental illness. DDA plays jury edited tape relating to crime only. Def seeks to play rest of tape under Ev 356. HELD: Historical material DOES NOT explain, or give context to, the crime discussion.

JOHNSON P. v. () 1/3/2022 CAL

TRIAL / MISC - TRIAL

DDA MISCONDUCT - EYE-ROLLING AND SMIRKING

Yes, DDA's smirking and eye-rolling during testimony of defense witnesses was improper and misconduct, it was also HARMLESS.

JOHNSON P. v. () 1/3/2022 CAL

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

MITIGATION - OPINIONS OF DEF'S FAMILY - RE: PENALTY; RE: DEF

Penalty phase def witness: I Love def. I think def is good person. I would miss def if he were dead. I want def to live. -- ALL OK. BUT, I my opinion, the jury should vote for life --- NOT OK.

JOHNSON P. v. () 1/3/2022 CAL

MOTIONS / 1385

LIMITS ON - CAN'T USE TO GIVE LESSER GUN ENHANCEMENT - NOT

Newly granted PC 1385 authority over PC 12022.53 gun enhancements gives Sentencing Courts authority - in the interest of justice - to impose LESSER INCLUDED 12022.53 gun enhancements.

TIRADO P. v. () 1/20/2022 CAL

SENTENCING / CTS/GOOD TIME

GOOD/WORK/TIME - 1368 PC TREATMENT CONFINEMENT - SB 317

SB 317 (2021) extends 4019 GoodTime credit to 1368 defs while in State Hospital. HELD: ESTRADA does NOT apply. GoodTime credit is designed to influence FUTURE behavior, not lessen punishment for past behavior. --- Also, this does not violate Equal Protection.

ORELLANA P. v. () 1/25/2022 6:

MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - 4019 PC GOODTIME EXTENDED TO 1368 DEF'S

SB 317 (2021) extends 4019 GoodTime credit to 1368 defs while in State Hospital. HELD: ESTRADA does NOT apply. GoodTime credit is designed to influence FUTURE behavior, not lessen punishment for past behavior. --- Also, this does not violate Equal Protection.

ORELLANA P. v. () 1/25/2022 6:

APPELLATE / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - MUST GIVE TIME TO CONSULT WATTY

Def enters into plea bargain. Sua Sponte, the court takes a verbal waiver of appellate rights. No one objects. HELD: this is NOT a valid waiver. Def had no opportunity to consult with counsel before making waiver.

ORELLANA P. v. () 1/25/2022 6:

MISCELLANEOU / JUDICIAL DUTIES & ETHICS

JUDICIAL DUTY - NO DUTY TO SUA SPONTE SCREEN DEF FOR DIVERSION

Court has NO SUA SPONTE DUTY to refer a def for screening for MENTAL HEALTH DIVERSION under PC 1001.36.

BANNER P. v. () 1/21/2022 5:

PAROLE / PAROLE DECISIONS

PROP 57 - DEPT OF CORRECTIONS REGULATIONS - SUPREME CT

Def "is currently" in prison for BOTH violent felonies and nonviolent felonies. CDCR regulations, per Prop 57, do NOT make def eligible for early parole. HELD. Regulations are PROPER interpretation of Prop 57. --- Case does not address what "is currently" means.

MOHAMMAD In Re () 1/3/2022 CAL

SENTENCING / ENHANCEMENTS

GUN USE - 12022.53 PC - 1385 AUTHORITY TO PICK LESSER SUBDIVISION

Newly granted PC 1385 authority over PC 12022.53 gun enhancements gives Sentencing Courts authority - in the interest of justice - to impose LESSER INCLUDED 12022.53 gun enhancements.

TIRADO P. v. () 1/20/2022 CAL

MENTAL HEARINGS / 1368

CTS / PC 4019 GOODTIME - TIME IN STATE HOSPITAL - SB 317

SB 317 (2021) extends 4019 GoodTime credit to 1368 defs while in State Hospital. HELD: ESTRADA does NOT apply. GoodTime credit is designed to influence FUTURE behavior, not lessen punishment for past behavior. --- Also, this does not violate Equal Protection.

ORELLANA P. v. () 1/25/2022 6:

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - CTS GOODTIME RULES - 1368 DEF'S

SB 317 (2021) extends 4019 GoodTime credit to 1368 defs while in State Hospital. HELD: ESTRADA does NOT apply. GoodTime credit is designed to influence FUTURE behavior, not lessen punishment for past behavior. --- Also, this does not violate Equal Protection.

ORELLANA P. v. () 1/25/2022 6:

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - NO SUA SPONTE DUE TO SCREEN

Court has NO SUA SPONTE DUTY to refer a def for screening for MENTAL HEALTH DIVERSION under PC 1001.36.

BANNER P. v. () 1/21/2022 5:

MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - EXPANSION OF 1170.95 PC

Def files PC 1170.95 petition. Petition denied because def was convicted of ATTEMPT 187. During appeal, SB 775 amends 1170.95 to include ATTEMPT cases. HELD: SB 775 applies to all open 1170.95 petitions, which includes def.

PORTER P. v. () 1/6/2022 5:

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SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - ELIGIBILITY - OLD ATTEMPT CONVICTIONS - YES DUE TO AMEND

Def files PC 1170.95 petition. Petition denied because def was convicted of ATTEMPT 187. During appeal, SB 775 amends 1170.95 to include ATTEMPT cases. HELD: SB 775 applies to all open 1170.95 petitions, which includes def.

PORTER P. v. () 1/6/2022 5:

MISCELLANEOUS / MISC

ELECTRO CONVULSIVE THERAPY - PRISON - 2670 PC

Prison warden asks trial court for permission to have def undergo ElectroConvulsiveTherapy (ECT) per PC 2670 et seq. (Def not competent to consent or object) Court approved. On HABEAS, DCA remands for additional evid of whether def, in the past, ever objected or consented.

TERRAZAS In Re () 1/11/2022 4:2

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - NEW SENTENCE DISCRETION - 654 PC

AB 518 (2021) amends PC 654. Courts are no longer required to sentence on the most serious of two charges that are 654 to each other. Ct has discretion to choose either and STAY the other. HELD: AB 518 is RETROACTIVE to all open cases. This case is remanded for new sentencing.

MANI P. v. () 1/26/2022 3:

EVIDENCE / 1101 (b)

1109 EV - DOMESTIC VIOLENCE - WHAT IS ACT OF DOMESTIC VIOLENCE

Amended Ev 1109 expanded definition of "domestic violence" beyond the PC 13700 definition to include FAMILY 6211 and FAMILY 6203, and FAMILY 6320. -- This now includes "disturbing the peace" of specified people. Breaking into home to steal things Disturbs the Peace.

MANI P. v. () 1/26/2022 3:

SEARCH & SEIZURE / AUTOS / CONTAINERS

AUTOS ARE PER SE EXIGENT - NOT WHEN ON PRIVATE PROPERTY

Def's Car parked on private residential land (not owned by def) is NOT per se EXIGENT. Police cannot enter on to the property to seize the car w/out a warrant (or actual exigency).

RORABAUGH P. v. () 1/25/2022 3:

APPELLATE / MISC APPELLATE

WENDE BRIEF - NOT APPLICABLE TO APPEALS OF 1026.5(b) PC EXTENSIONS

Def's NGI commitment was extended two years under PC 1026.5(b). Def appeals. WENDE brief filed. Must DCA independently review entire record? NO. WENDE does not apply.

LUPER P. v. () 1/14/2022 2:8

TRIAL / JUROR/VERDICT ISSUES

JUROR ADDRESSES - CCP 237

Following conviction, def seeks juror addresses under CCP 237. Court surveys jurors. 6 object, 6 don't. HELD: A single objection obligates the court to conduct a GOOD CAUSE hearing. Ct did and found no Good Cause. Therefore NO juror info released, even for those who did not object.

ZAMORA P. v. () 1/14/2022 4:3

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - ALTERNATIVE LEGAL THEORIES - KILL ZONE

In 2015, def was convicted of attempt 187 in case in which an Erroneous KILL ZONE instruction was given. The opinion is all about whether the error was HARMLESS or not. HELD: Error was prejudicial. HABEAS is GRANTED. Conviction reversed and remanded.

LISEA In Re () 1/13/2022 3:

SENTENCING / 654

GENERALLY - COURT MAY IMPOSE THE SHORTER AND STAY THE LONGER

AB 518 (2021) amends PC 654. Courts are no longer required to sentence on the most serious of two charges that are 654 to each other. Ct has discretion to choose either and STAY the other. HELD: AB 518 is RETROACTIVE to all open cases. This case is remanded for new sentencing.

MANI P. v. () 1/26/2022 3:

SENTENCING / 654

VIOLATION OF COURT ORDER (166 PC) BY DOING CRIME X / CRIME X

Crime X and violation of Court Order -- PC 166(a)(4) -- by the commission of Crime X, are PC 654 to each other.

MANI P. v. () 1/26/2022 3:

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MTNS - MEANINGFULLY UNDERSTAND

Def seeks to w/draw plea under PC 1473.7. In petition and in testimony def swears he did not "meaningfully" understand he would be deported. Transcript of plea is clear that def is understand. Motion DENIED. UPHELD. Def has burden (preponderance).

ABDELSALAM P. v. () 1/6/2022 2:8

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - FORUM TO APPLY BANKS RETROACTIVELY - YES

This DCA finds that a pre-BANKS/CLARK spec circ verdict does NOT make def ineligible for PC 1170.95 relief as a matter of law.

MEJORADO P. v. () 1/3/2022 2:8

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SENTENCING / RESTITUTION

ITEM - REDUCED MARKET VALUE OF CAR DUE TO "ONCE STOLEN" STATUS

Expert at restitution hearing testified that market value of Victim's car was reduced \$3,000 because computer search would reveal the car was once STOLEN even though it was recovered undamaged. Court ordered \$3,000 restitution. UPHHELD. No need for victim to sell car and incur the loss.

NEWSOM P. v. () 1/10/2022 2:8

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - SENTENCING PRESUMPTIONS

1/1/2022 amendment to PC 1170(b)(6) -- making the LOWER term the presumptively correct sentence if def is 26 years old -- is RETROACTIVE to all open cases per ESTRADA. Case remanded for new sentencing hearing.

FLORES P. v. () 1/13/2022 1:5

INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

MAIL THEFT - 530.5(e) PC

MAIL THEFT under PC 530.5(e) is NOT reduced to a MISD under PROP 47.

CHATMAN P. v. () 1/31/2022 1:4

INSTRUCTIONS/ELEMENTS / CHILD AS VICTIM CRIMES

CHILD PORNOGRAPHY - 311.4 - COMMERCIAL USE

PC 311.2(b) prohibits distributing child porn "for commercial consideration". Held: trading child porn w/intent to get more child porn in return is NOT "for commercial consideration." Def must receive some "profit" from the activity OTHER than more child porn.

WIMER P. v. () 1/20/2022 1:1

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - HEARING - EVID - PRIOR GUN USE FINDING

In 1994, def plea guilty to 187 and PERSONAL USE gun enhancement. In 2019 PC 1170.95 petition def claims the Gun Use he admitted was for brandishing and a co-def did the actual shooting. HELD: Record of Conviction does NOT support def. 1170.95 properly denied.

GARRISON P. v. () 12/17/2021 2:1

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

PROP 47 - ELIGIBILITY - MAIL THEFT - 530.5(e) PC

MAIL THEFT under PC 530.5(e) is NOT reduced to a MISD under PROP 47.

CHATMAN P. v. () 1/31/2022 1:4

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - HEARING - EVID - DICTA FROM APPELLATE OPINION

Def 2007 murder conviction did not include any verdict or finding that def personally struck the fatal blow. (it was gang beating). Appellate Opinion affirming conviction included DICTA stating def was the actual killer. HELD: This is NOT controlling. PC 1170.95 must make independent decision.

LANGI P. v. () 1/12/2022 1:4