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

PHOTO OF VICTIM ALIVE - VICTIM IS CHILD IN PHOTO

At def's penalty phase, DDA introduced pictures of victim when he was a child. This would normally not be proper, but victim was still a minor when def killed him.

MENDEZ P. v. () 7/1/2019 **CAL**

D. P. / SPEC. CIRC. / MISC - D.P./SPEC. CIRC.

HABEAS DISCOVERY - 1054.9 PC - ACCESS TO COURT EXHIBITS

Def seeks access to court exhibits for retesting in support of possible death penalty Habeas under PC 1054.9. HELD: Def must show good cause to get court order to get material from 3rd parties. -- NO GOOD CAUSE needed to get access to material possessed by the court.

SATELE def v. SUP 7/18/2019 **CAL**

INSTRUCTIONS/ELEMENT / MISDEMEANORS AND

RESISTING - 148 PC - OBSTRUCTING OFFICER - KNOWLEDGE ELEMENT

Both PC 148(a)(1) and PC 69, require that the def KNOW that the person they are resisting/interfering is a peace officer performing his/her duty. --- PC 243(b) permits KNOWN or SHOULD HAVE KNOWN.

A. L. In Re () 7/30/2019 **6:**

INSTRUCTIONS/ELEMENT / MISC - FELONY

WITNESS INTIMIDATION - 136.1(a) PC / 136.1(b) PC - MALICE

Dissuading a witness case. PC 136.1(a) requires MALICE. PC 136.1(b) does NOT. Def was charged with subdivision (b), therefore CALCRIM 2622 does not need to be modified to add MALICE.

BRACKINS P. v. () 7/2/2019 **6:**

MOTIONS / BAIL / OR

BAIL FORFEITURE - DEF FTA's; WRONGLY EXCUSED - SUBSEQUENT FTA

Court Hrg over "subpoened" records was hrg where def was required to appear under PC 977. Def FTA. Def atty asked that absence be waived. Granted. Months later, after many appearances, def FTA's again, bail forfeited. --- DCA finds 1st FTA unexcused. Failure to forfeit then fatal.

NORTH RIVER INS P. v. () 6/28/2019 **6:**

MISCELLANEOUS / WRITS

HABEAS - GENERALLY - MOOT IF PETITIONER GETS RELIEF

Case involves Prop 57's provisions for early parole and CDC's regulations created to give effect to Prop 57. --- Ultimately, Habeas petition is dismissed as MOOT.

ARROYO In Re () 6/25/2019 **4:3**

MISCELLANEOUS / WRITS

HABEAS - DEATH PENALTY - FALSE PENALTY EVID - 1473 PC

Habeas referee found that witness X falsely testified that def sexually assaulted her in def's PENALTY trial. Per PC 1473, def is entitled to relief if X's testimony was material. --- HELD: def's death sentence is vacated.

ROGERS In Re () 7/15/2019 **CAL**

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

DDA - ARYAN BROTHERHOOD TATS PROVE DEF IS "bad" PERSON

In Penalty phase, DDA argued at length about how def's Aryan Brotherhood membership made def a BAD GUY. But, AB membership had nothing to do with the murder. --- HELD: the evid of AB membership was admissible. BUT, DDA's misuse of evid requires reversal of penalty verdict.

YOUNG P. v. () 7/25/2019 **CAL**

MOTIONS / 170.6

TIMELINESS - HABEAS PETITIONS

Def files Habeas petition. Def is informed his petition has been assigned to Judge X "for all purposes". Held: (1) CCP 170.6 clock starts to run once def was informed. (2) the appropriate clock is the 10-day criminal clock, not the 15-day civil clock.

BONTILAO def v. SUP 7/24/2019 **6:**

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - EXPERTS - BATTERED WOMEN - CALCRIM 850

Domestic Violence case. Victim reported, then recanted, then un-recanted and testified. Expert testified and CALCRIM 850 given. UPHELD.

BRACKINS P. v. () 7/2/2019 **6:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - NEW DIVERSION PROGRAMS

Newly enacted mental health diversion - PC 1001.36 - applies retroactively to all open cases, including cases on appeal. DCA remands for hearing re: def's eligibility for Diversion. --- DCA's in conflict

WEAVER P. v. () 7/1/2019 **6:**

JUVENILE / SENTENCING

WARDSHIP TERMS - SEARCH TERMS FOR ALL ELECTRONICS

Minor is made a ward due to conviction of PC 288. HELD: Search terms for all electronic devices are appropriate.

J. S. In Re () 7/11/2019 **4:1**

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INSTRUCTIONS/ELEMENT / CHILD AS VICTIM CRIMES

HUMAN TRAFFICKING - 236.1 PC

Def convicted of Human Trafficking - PC 236.1(c)(2). HELD: 236.1(c)(2) does NOT require that def intend to procure victim for SOMEONE ELSE's sex use. This case, def himself was the sole person intended to have sex with victim.

JACOBO P. v. () 7/2/2019 4:1

SENTENCING / 654

HUMAN TRAFFICKING (326.1 PC) / SEX W/ TRAFFICKING VICTIM

Def first procures minor victims for sex -- Human Trafficking, PC 236.1 -- and then has sex with the victims. HELD: These acts are NOT PC 654 to each other.

JACOBO P. v. () 7/2/2019 4:1

APPELLATE ISSUES / HARMLESS ERROR

HARMLESS ERROR - SHACKLED DEF, JURY NEVER SAW SHACKLES

Close call on the use of restraints on def during trial is ducked. If there is nothing in the record indicating the jury could see the restraints, it is HARMLESS.

KOPP P. v. () 7/31/2019 4:1

SENTENCING / 654

CONSPIRACY TO COMMIT X / CRIME Y IS ONE OF MANY OVERT ACTS

Count 1: conspiracy with 10 overt acts. Count two: Overt act #3. HELD: Counts one and two are 654 to each other ONLY if the other 9 overt acts were not proven.

KOPP P. v. () 7/31/2019 4:1

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - FORCE LIKELY TO PRODUCE GBI - CUT BRAKE LINES

Reasonable jury could conclude on these facts that def's cutting of the brake lines of V's vehicle was act LIKELY to produce death or GBI, therefore, PC 245. (In fact, the cutting was discovered before vehicle used. No one was hurt.)

MARSH P. v. () 7/15/2019 4:1

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - EXPERTS - BATTERED WOMEN - CALCRIM 850

Domestic Violence case. Victim reported, then recanted, then un-recanted and testified. CALCRIM 850 given. UPHELD.

SEXTON P. v. () 7/15/2019 4:1

INSTRUCTIONS/ELEMENT / CHILD AS VICTIM CRIMES

CHILD PORNOGRAPHY - 311.4 PC - COVERED GENITALS

While the photo itself has minor victim's genital or pubic areas covered by a thong, the sexual nature of pose shows sexual conduct, and is therefore a violation of PC 311.4(d)(1).

JACOBO P. v. () 7/2/2019 4:1

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - BOTH VERSIONS - SINGLE EVENT

During a single beat-down, def uses a knife to cut the victim and hands and feet to stomp, hit, and kick the victim. On these facts, def can be convicted, and sentenced, on BOTH PC 245 (deadly weapon) and PC 245 (force likely).

KOPP P. v. () 7/31/2019 4:1

INSTRUCTIONS/ELEMENT / MISC - FELONY

CONSPIRACY - MULTIPLE SMALL CONSPIRACIES v ONE BIG ONE

Jury is not bound by DDA charging determination as to how many separate conspiracies def was involved in. Jury could decide there was only one BIG conspiracy. --- SUA SPONTE duty of court to instruct on the issue.

KOPP P. v. () 7/31/2019 4:1

SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - ABILITY TO PAY - DUENAS - NOT FOLLOWED

Disagreeing with DUENAS, DCA says def has the burden of raising the issue of his inability to pay any fine imposed, and has the burden of proving inability. --- Ability-to-pay includes FUTURE ability-to-pay.

KOPP P. v. () 7/31/2019 4:1

SENTENCING / PROBATION

TERMS - SEARCH TERMS FOR ELECTRONIC DEVICES

Def convicted of stealing other peoples cell phones (to sell for drug money). HELD: search terms of all electronic devices are appropriate.

PATTON P. v. () 7/25/2019 4:1

INSTRUCTIONS/ELEMENT / PRIORS

SERIOUS FELONY - 667 PC - FOREIGN PRIORS - MATCHING ELEMENTS

Arizona robbery statute does NOT align with California robbery statute. Def's 5-year prior based on Arizona robbery conviction is STRICKEN.

SEXTON P. v. () 7/15/2019 4:1

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SENTENCING / 654

DOMESTIC VIOLENCE (273.5 PC) / 245 PC

Domestic violence case. HELD: 273.5 PC and 245 PC are 654 to each other when they are both based on the same act.

SEXTON P. v. () 7/15/2019 4:1

SENTENCING / PROBATION

TERMS - SEARCH TERMS FOR ELECTRONIC DEVICES - ECPA

Search terms for all of def's electronic devices was appropriate for def convicted of ID theft - PC 530.5(c)(3). ---- Calif Electronic Communications Privacy Act (ECPA) has NO EFFECT on a courts ability to impose search terms on electronic devices as part of Probation.

WRIGHT P. v. () 7/2/2019 3:

MISCELLANEOUS / WRITS

WRIT - MANDATE - VICTIM SEEKING REVIEW OF RESTITUTION ORDER

Victims Bill of Rights does NOT give victims right to file their own appeal of a restitution order. BUT, they may seek relief by way of WRIT OF MANDATE if they think trial court failed to impose required Restitution.

CRUMP def v. SUP 7/9/2019 2:8

APPELLATE ISSUES / POST GUILTY PLEA APPEALS

POST GUILTY PLEA - CERTIF OF PC - NEED FOR - SB 1393

Def pleads guilty and is sentenced. Then SB 1393 passes giving court NEW PC 1385 authority to strike 5-year priors. HELD: Def needs a Certif of PC before filing an appeal asking for a new sentencing hearing.

WILLIAMS P. v. () 7/16/2019 2:8

MOTIONS / WITHDRAW PLEA / STRIKE

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

Def seeks to vacate a 2016 guilty plea under PC 1473.7 while still on Parole. HELD: Def's on Parole (or in custody) are NOT eligible to bring a PC 1473.7 motion.

DeJESUS P. v. () 7/26/2019 2:3

SENTENCING / ENHANCEMENTS

GUN USE - 12022.53(h) PC - FACTORS TO CONSIDER RE: STRIKING

Case remanded for new sentencing hearing in order to give Ct opportunity to exercise new authority to strike gun enhancements under PC 12022.53(h). HELD: The rules of court re: factors to consider are as applicable to this hrg as they were at the original sentencing hrg.

PEARSON P. v. () 7/31/2019 2:1

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

MAYHEM - GENERAL GBI INSTRUCTIONS NOT RELEVANT

MAYHEM - PC 203 - has it's own definition of GBI in that it lists certain injuries that it concludes as a matter of law that they "ARE" GBI. General GBI instructions are NOT sua sponte required.

TURNER P. v. () 7/23/2019 3:

SENTENCING / PROBATION

TERMS - DRUG TESTING - NON-DRUG CASE

Probation term for urine testing is stricken. Nothing in the record suggests def has a drug problem.

WRIGHT P. v. () 7/2/2019 3:

SENTENCING / RESTITUTION

GENERALLY - HARM MUST COME FROM CONDUCT CHARGED

Massive gas leak harms hundreds. Utility pleads ONLY to a criminal violation of duty to promptly report the leak. Criminal court finds delay in reporting, itself, did NOT cause injury requiring restitution. UPHELD. (Civil lawsuits adequate remedy)

CRUMP def v. SUP 7/9/2019 2:8

EVIDENCE / PRIVILEGES

PSYCHOTHERAPIST - DANGEROUS PATIENT EXCEPTION

Counselor at minor's group home says he talks to minors to determine if they need a psychotherapist. He attempts NO treatment. Minor tells counselor he will stab the next person at school that bullies him. HELD: (1) not therapist, (2) IF therapist, disclosure of statement proper.

A. C. In Re () 7/9/2019 2:6

MOTIONS / WITHDRAW PLEA / STRIKE

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

Is there any petition so weak as to prohibit the granting of a PC 1473.7 motion to vacate plea due to under appreciated immigration consequences. This DCA says yes. -- def claim he would not plead guilty if he only knew is NOT supported by record.

DeJESUS P. v. () 7/26/2019 2:3

SEARCH & SEIZURE / EXIGENT CIRCUMSTANCES

SITUATION - CONCERN FOR SAFETY OF OCCUPANTS - SHOTS FIRED

In high-crime East Palo Alto, there are microphones throughout the city and software to ID location of any gunshots. ShotSpotter says 11 gunshots happened minutes ago from the driveway area of a residence. HELD: this creates exigent circumstance to enter residence and look for victims.

RUBIO P. v. () 7/18/2019 1:4

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INSTRUCTIONS/ELEMENT / DUI'S

FST's - DONE POST-ARREST. NO MIRANDA GIVEN

FST's not administered until after arrest and transport to station.
No Miranda given. HELD: being asked to perform physical tests is not INTERROGATION. Def's verbal comments were spontaneous.
BUT, FST asking def to show mental acuity by verbalizing something accurately MIGHT be.

COOPER *P. v. ()* 7/18/2019 1:3

INSTRUCTIONS/ELEMENT / MISDEMEANORS AND

BURGLARY TOOLS - 466 PC

Constructive Possession is NOT ENOUGH for PC 466 - possession of burglary tools. Statute requires tools be "upon him or her in his or her possession." Tools in a nearby backpack belonging to def is NOT enough. Def must be seen wearing (or carrying) the backpack.

BAY *P. v. ()* 7/10/2019 1:1