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CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

VAGUENESS/OVERBROAD - PRIOR ENHANCEMENTS - CRIME DESCRIPTION

U.S. v. DAVIS: Fed gun enhancement statute describes qualifying prior crimes as "crimes of violence" and defines that term as a crime "that by its nature involves a substantial risk that physical force against a person or property may be used". HELD: this is VAGUE.

DAVIS U.S. 6/24/2019 U.S.

TRIAL / WHEELER

APPELLATE REVIEW - DISCREPANCIES IN HOW DDA QUESTIONED JURORS

FLOWERS v. MISSISSIPPI: In deciding the genuineness of the DDA's stated reasons for preempts on minorities, court MAY consider discrepancies, if any, in how the DDA questioned minority prospective jurors.

FLOWERS U.S. 6/21/2019 U.S.

MOTIONS / DOUBLE JEOPARDY

FED PROSECUTION / STATE CONVICTION

GAMBLE v. U.S.: Supreme Ct reaffirms longstanding Dual Sovereignty rule of double jeopardy that permits both Fed and State prosecutions for the same criminal conduct. --- 7-2 decision

GAMBLE U.S. 6/17/2019 U.S.

SEARCH & SEIZURE / EXIGENT CIRCUMSTANCES

SITUATION - DUI - SEIZING BLOOD - DEF UNCONSCIOUS

MITCHELL v. WISCONSIN: DUI arrestee passes out before giving a chemical sample. -- Supreme Ct declines to issue bright-line rule that ALL such cases would permit a blood draw w/out a warrant. BUT, court stated that def's unconsciousness is a strong factor pointing towards EXIGENCY.

MITCHELL U.S. 6/27/2019 U.S.

INSTRUCTIONS/ELEMENT / HOMICIDE

ATTEMPT 187 - KILL ZONE - IF IN DOUBT, DON'T USE

KILL ZONE instructions are NOT APPLICABLE in situations where def's actions expose people in the zone with a high risk of death and/or serious injury. Def (beyond a reasonable doubt) must INTEND that EVERYONE in the zone DIE. --- When in doubt, DON'T GIVE the instruction.

CANIZALES P. v. () 6/24/2019 CAL

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

DEF PRESENCE - ATTY/ATTY/JUDGE EMAILS RE: POSSIBLE STIPS

D.P. case. After jury questionnaires completed, both attys and judge exchanged emails re: possible STIPS to excuse jurors without additional questioning. Agreement made w/out def participation. Put on record in def's presence. -- UPHELD. If violation of statute, it is harmless.

CARO P. v. () 6/13/2019 CAL

TRIAL / WHEELER

MISC - DDA's PAST WHEELER ACTS IN PRIOR TRIAL - SAME DEF

FLOWERS v. MISSISSIPPI. Earlier conviction reversed on WHEELER grounds. New trial has same DDA. Court MAY consider the DDA's past WHEELER sins when evaluating the genuineness of the stated reasons for the preempts of minorities in new trial.

FLOWERS U.S. 6/21/2019 U.S.

TRIAL / WHEELER

APPELLATE REVIEW - COMPARATIVE ANALYSIS OF JURORS

FLOWERS v. MISSISSIPPI: In deciding the genuineness of the DDA's stated reasons for preempts on minorities, court MAY consider if the same factors resulted in the preempt of non-minority jurors.

FLOWERS U.S. 6/21/2019 U.S.

CONSTITUTIONAL ISSUES / RIGHT TO JURY TRIAL

JURY TRIAL RIGHT - V/P HRG's IF NEW FINDINGS INCREASE SENTENCE

U.S. v. HAYMOND: Jury convicts def and gets probation. At v/p hearing, Court makes additional factual finding that has the effect of increasing def's sentence. REVERSED on APPRENDI grounds. Absent waiver, only JURY can find facts that increase sentence.

HAYMOND U.S. 6/26/2019 U.S.

SENTENCING / RESTITUTION

CRIMES - INFRACTIONS

LOS ANGELES APPELLATE DIV: In the appropriate case, the VICTIM of an INFRACTION is entitled to a RESTITUTION hearing and order.

SMALLING P. v. () 5/30/2019 SUPP

INSTRUCTIONS/ELEMENT / HOMICIDE

ATTEMPT 187 - KILL ZONE - MULTIPLE SHOTS INTO A CROWD

Shooting multiple shots into a crowd is NOT ENOUGH for KILL ZONE instructions.

CANIZALES P. v. () 6/24/2019 CAL

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

CHALLENGE FOR CAUSE - MY SPOUSE STRONGLY DISLIKES D.P.

Prospective juror says he was OK with death penalty, but his wife was adamantly opposed. He worried his marriage would be negatively affected if he returned death verdict. --- Excused for cause. UPHELD.

CARO P. v. () 6/13/2019 CAL

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APPELLATE ISSUES / HARMLESS ERROR

HARMLESS ERROR - FAILURE TO ORDER DISCOVERY

D.P. case. Def seeks discovery of any investigative material DDA has re: prospective jurors. Trial court denied discovery on WORK PRODUCT grounds. -- On appeal, court ducks work product issue and says any error is harmless and it would be pure speculation to find prejudice.

CARO *P. v. ()* 6/13/2019 **CAL**

TRIAL / WITNESS ISSUES

SPECIAL WITNESS - MENTALLY ILL WITNESS - PSYCH RECORDS

Def asks trial court to review IN CAMERA the psychiatric records of a key DDA witness to see if impeaching material is present. Witness objected and invoked privilege. Trial court denied def request. UPHELD.

CARO *P. v. ()* 6/13/2019 **CAL**

TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - DELIBERATIONS - HALLWAY TALK BETWEEN TWO JURORS

During deliberations, in juror parking lot, juror 9 approaches juror 11, and talks about the case. AFTER HEARING, court excuses 9 but keeps 11 saying anything 11 said was just being polite. UPHELD. (Court had to find 9 not credible in order to make this finding.)

CARO *P. v. ()* 6/13/2019 **CAL**

MISCELLANEOUS / MISC

1203.01 PC - CREATING RECORD FOR FUTURE PAROLE HEARING

In 2007, def, age 17, convicted of 187. In 2019 def wants FRANKLIN hrg to preserve info about him to assist him in his newly created early parole hearing under PC 3051. HELD: PC 1203.01 authorizes court to let def gather info, give it to ct, and ct will send it to Dept of Corrections. (hrq optional)

COOK *P. v. ()* 6/3/2019 **CAL**

DEFENDANT'S / VOLUNTARY

FACTORS - POLICE LIES TO THE SUSPECT RE: REASON FOR QUESTIONS

Detectives approach def on a ruse, claiming to want to talk to def about Sex Registration issues (def was PC 290 registrant), when they really wanted to talk about an unsolved old murder. --- Nothing wrong with this.

MOLANO *P. v. ()* 6/27/2019 **CAL**

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - PAST FELONY GANG MEMBERSHIP - 186.22(a) PC

Pre-Prop 47, def convicted of GANG CRIME - PC 186.22(a) - based on def committing underlying felony X for gang purposes. PROP 47 made X a misdemeanor. HELD: the 186.22(a) conviction should be DISMISSED.

VALENZUELA *P. v. ()* 6/3/2019 **CAL**

DEFENDANT'S / CUSTODY

DEF IN HOSPITAL BED TOO INJURED TO MOVE

Police have PC to arrest def for 187, and fully intend to once def released from hospital. Def physically unable to leave hospital bed due to injuries. Police question def without Miranda. HELD: Def NOT in custody.

CARO *P. v. ()* 6/13/2019 **CAL**

EVIDENCE / 352 / RELEVANCE

ILLUSTRATIVE AIDS - COMPUTER ANIMATIONS

Computer animations are NOT admissible as evidence of what the COMPUTER thinks happened. They are admissible SOLELY as an illustration of what some expert (who can be cross-examined) thinks happened.

CARO *P. v. ()* 6/13/2019 **CAL**

TRIAL / MISC - TRIAL

JUROR NOTES ARE FOREVER SECRET

D.P. def objects on appeal to the destruction of juror notes at the end of the case. HELD: Def has no right to access juror notes - ever.

CARO *P. v. ()* 6/13/2019 **CAL**

INSTRUCTIONS/ELEMENT / MENTAL DEFENSES

DELUSIONS / HALLUCINATIONS

Def was behaving strangely on the day of the shooting. After the shooting, def told others that he shot "the devil". The victim was someone def knew. The victim had Horn Tattoos. HELD: this evidence, alone, does NOT support the giving of instructions re: HALLUCINATIONS.

MITCHELL *P. v. ()* 6/24/2019 **CAL**

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

PENALTY PHASE - AVOIDING MISTRIALS BY JURY ADMONITIONS

At penalty phase, contrary to prior court admonition, victim's brother told jury that victim's sister committed suicide due to grief over victim's death. (this was highly speculative). Request for MISTRIAL denied, jury admonished to disregard. UPHELD.

MOLANO *P. v. ()* 6/27/2019 **CAL**

MOTIONS / BAIL / OR

FTA'S - IMMEDIATE BAIL FORFEITURE - IMMEDIATE UNDOING OF

Five minutes after bail forfeited and bench warrants issued, def atty arrives with excuses for being hours late. Forfeiture vacated. HELD: This was nonevent. No duty to notify bond company. --- weeks later, Def FTA's. This second forfeiture is UPHELD.

BANKERS *P. v. ()* 6/19/2019 **6:**

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INSTRUCTIONS/ELEMENT / MISC - FELONY

THREATS - FALSE BOMB THREATS - 148.1(c) PC

Minor tells his friend about how one day, he was going to blow up their school. Def says he was joking, the friend wasn't sure so he told principal. Def convicted of PC 148.1(c) - making a FALSE bomb threat. HELD: 148.1(c) is NOT unconstitutional. -- Statement must be malicious.

J. M. *In Re ()* 6/24/2019 **5:**

MOTIONS / WITHDRAW PLEA / STRIKE

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

DCA orders 1994 guilty plea set aside under PC 1473.7. Def need only show he did not "meaningfully understand" immigration consequences, and WOULD HAVE NOT plead guilty if he did understand, by Preponderance of Evidence.

MEJIA *P. v. ()* 6/26/2019 **4:3**

MENTAL HEARINGS / 1026

NGI PLEA - CANNOT STIP TO STATE HOSPITAL W/OUT AN NGI PLEA

DDA and def atty presented "deal" to court where def pleads GUILTY to charges and then both sides STIPULATE that def was INSANE and should be sentenced to State Hospital. NGI plea never entered. HELD: this is illegal plea bargain. Def request to vacate it should be granted.

JOHN *P. v. ()* 6/12/2019 **4:2**

SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

CONSENSUAL CONTACT v DETENTION - WHITE SEARCH LIGHTS USED WHILE STOPPED

Cop sees occupied parked car at 1:30 am in residential area. Pulls up behind it and turns on two bright WHITE search lights pointed at car, intending to make consensual contact with occupants. HELD: Use of TWO search lights turned this into DETENTION w/out Reasonable Suspicion.

KIDD *P. v. ()* 5/16/2019 **4:2**

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - DEADLY WEAPON - CAR KEYS

Def has his car keys sticking through his knuckles as he makes a fist. Def then swings at torso of V once. V jumps back and is not hit. -- Jury finds that this was a PC 245. UPHELD. -- Supreme Ct tells DCA to rehear in light of *In Re B. M. 6 C5th 528*. --- DCA UPHOLDS AGAIN.

KOBACK *P. v. ()* 6/27/2019 **4:2**

MOTIONS / 170.6

MISC - AFTER DISMISSAL AND REFILE - CLEAN 170.6 SLATE

DDA dismisses and refiles a felony set for trial because he could not find a witness. DDA then files a 170.6 on the judge previously assigned the case. HELD: 170.6 should be accepted BECAUSE the dismissal/refile was NOT done for the purpose of filing a 170.6.

OLIVO *P. v. ()* 6/27/2019 **4:2**

INSTRUCTIONS/ELEMENT / MISC - FELONY

PEACE OFFICER, UNLAWFUL USE OF FORCE BY - 149 PC

Officer X responds to call for help in dispute between Dad/Mom over child visitation. X ends up arresting Dad. (Dad used to date X's wife). X charged and convicted of PC 149 - unlawful use of force/unlawful arrest. --- lots of issues related to PC 149. (DA files amicus disagreeing w/ AG)

PERRY *P. v. ()* 6/18/2019 **5:**

INSTRUCTIONS/ELEMENT / MISC - FELONY

EXTORTION BY ATTYS IN LITIGATION - DEMAND LETTERS

Lawyer convicted of EXTORTION by a demand letter telling X that his (unrelated) adultery will be revealed in court if no settlement. Def submitted argumentative/inaccurate instruction on CCC section 47 litigation privilege. HELD: Sua Sponte duty to give accurate CCC 47 instruction.

TOLEDANO *P. v. ()* 6/24/2019 **4:3**

SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - ABILITY TO PAY - STATE PRISON EARNINGS

(1) Counsel should not have anticipated DUENAS decision re: ability to pay ALL fines/fees. Failure to object does not waive issue on appeal. (2) Fees involved are so small that PRISON wages could cover them, therefore, any DUENAS error is Harmless.

JONES *P. v. ()* 6/28/2019 **4:2**

PRELIMS / 995 / MISC - PRE/995

995 - GROUNDS - REVIEW OF 1538.5 RUN AT PRELIM

Def runs 1538.5 at prelim. Loses. Def seeks reconsideration under 1538.5 (i). Loses again. Can def get a 3rd judicial opinion by making a 995 motion? YES.

KIDD *P. v. ()* 5/16/2019 **4:2**

INSTRUCTIONS/ELEMENT / HOMICIDE

HEAT OF PASSION - CUMULATION OF LITTLE UPSETS

Event 4 days earlier CANNOT be adequate provocation for heat of passion instructions. The IMMEDIATE loss of property CANNOT be adequate provocation. -- Could the two together be adequate? DCA concedes the two events should be considered as a group for synergistic effect.

McSHANE *P. v. ()* 6/14/2019 **4:2**

INSTRUCTIONS/ELEMENT / DRUGS

GENERALLY - USABLE AMOUNT

Prison cell search revealed def possessed small scraps of paper that had been previously soaked in methamphetamine solution. Impossible to say what amount of METH would get into bloodstream if eaten. -- HELD: this was USABLE amount of METH.

POLK *P. v. ()* 6/14/2019 **4:2**

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APPELLATE ISSUES / WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - SENTENCING - ABILITY TO PAY

On this record, the def's failure to object is a WAIVER of right to appeal the failure of the sentencing court to make a finding of ability to pay restitution fine. (Def was sentenced pre-DUENAS.)

GUTIERREZ P. v. () 6/4/2019 4:1

JUVENILE / UNFITNESS

SB 1391 - NEW AGE CUT-OFF EFFECTIVE 1/1/2019

After Prop 57, legislature passes SB 1391 which says 14 and 15 year olds can't be found unfit. HELD: SB 1391 does NOT CONFLICT with Prop 57, it furthers the intent and goals of Prop 57.

K. L. & R. Z. P. v. SUP 6/19/2019 3:

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ROBBERY - FORCE - DEF IMPERSONATING POLICE OFFICER

Def touches victim while ordering him to give up his property while pretending to be a peace officer. HELD: evidence presented in this case supported finding that FORCE was used and not submission to authority. Therefore, ROBBERY conviction stands. -- No PER SE rule.

MONTALVO P. v. () 6/20/2019 3:

SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

PC TO ARREST - BASED ON UNAUTHENTICATED ROBBERY VIDEO

At 1538.5, PC for def's arrest was arresting officer X watching videos of def doing 211's. Officer X could NOT authenticate the video's. HELD: PC for arrest can come from hearsay. X had sufficient hearsay info to permit him to reasonably suspect the videos were genuine. (Plus, they LOOKED genuine.)

ALEXANDER & P. v. () 6/25/2019 1:5

MOTIONS / 1385

LIMITS ON - CAN'T USE TO DISMISS A PAROLE VIOLATION PETITION

PC 1385 does NOT authorize a judge to dismiss a Parole Violation petition "in the furtherance of justice". A parole violation petition is not an "action" as that word is used in 1385.

WILEY P. v. () 6/28/2019 1:3

INSTRUCTIONS/ELEMENT / CHILD AS VICTIM CRIMES

288.3 PC - COMMUNICATION W/MINOR W/INTENT TO HAVE SEX

Def communicates on-line with undercover cop pretending to be 13 year old girl and sets up sex rendezvous. Convicted of PC 288.3 (sex communication with minor). HELD: Def's BELIEF he was communicating with a minor is sufficient. (2) ATTEMPT, per the statute, is punished same a completed act.

KORWIN P. v. () 5/31/2019 4:1

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ROBBERY - FEAR - DEF IMPERSONATING POLICE OFFICER

Def ORDERS victim to give up his property while pretending to be a peace officer. HELD: evidence presented in this case supported finding that victim acted out of FEAR and not submission to authority. Therefore, ROBBERY conviction stands. -- No PER SE rule.

MONTALVO P. v. () 6/20/2019 3:

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 64 - MARIJUANA POSSESS IN PRISON - AFFECTED - 4573 PC

Under Prop 64, simple possession of MJ in PRISON is no longer a crime. BUT, (1) it is still a violation of prison regulations. and (2) the USE of MJ in PRISON is still a crime. --- this outcome is not ABSURD, therefore, plain language applies.

RAYBON P. v. () 6/11/2019 3:

MOTIONS / WITHDRAW PLEA / STRIKE

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

In 2018 Def seeks to withdraw guilty plea entered in 2012 under PC 1473.7. Trial court denies motion. UPHELD. DCA finds evid of guilt strong and def had no choice but to take plea bargain.

CHEN P. v. () 6/28/2019 1:3

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 64 - ELIGIBILITY - ACCESSORY PC 32 CONVICTIONS

In 2013, def was charged with felony MJ possession and sales. In plea bargain, def pled guilty to ACCESSORY - PC 32. PC 32 is NOT listed in Prop 64. HELD: def is eligible for Prop 64 relief anyway.

BOATWRIGHT P. v. () 6/25/2019 1:1