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

987.7 PC MONEY - JURY CONSULTANTS

D.P. def's 987.9 request for money to hire jury consultant DENIED. UPHeld. It was not an abuse to discretion to find that def did not establish such a consultant was NECESSARY.

BELL P. v. () 5/2/2019 **CAL**

MOTIONS / RECUSAL

OFFICE - CO-DEF'S ATTORNEY BECOMES DDA

Co-def pleads guilty with deal to testify against def. Months later, before def's trial, co-def's atty is hired by DDA's office. --- HELD: Recusal motion properly denied given the appropriate precautions taken by the office.

BELL P. v. () 5/2/2019 **CAL**

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

352 STANDARD IS MARKEDLY DIFFERENT IN PENALTY PHASE

During guilt phase, audio portion of video showing robbery/murder of store clerk not played to jury under 352 due to sounds of victim groaning in death. HELD: Audio was PROPERLY played in Penalty phase to show circumstances of crime.

BELL P. v. () 5/2/2019 **CAL**

APPELLATE ISSUES / MISC APPELLATE ISSUES

INVITED ERROR - FAILING TO ASK FOR LESSERS

Merely failing to ask for lessers is NOT INVITED ERROR. Def atty must affirmatively state a desire to not have lessers for tactical reasons.

BELL P. v. () 5/2/2019 **CAL**

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

VICTIM IMPACT - VIDEO OF VICTIM'S WEDDING (60 DAYS BEFORE CRIME)

Victim was married two months before he was murdered. A four-minute clip of video taken at the wedding admitted as victim impact evidence. -- UPHeld.

BELL P. v. () 5/2/2019 **CAL**

MOTIONS / QUASH SUBPOENAS

DEF SUBS DDA TO BE CHARACTER WITNESS AGAINST DDA WITNESS

Witness X testifies against def. Def subs DDA who prosecuted X for unrelated crimes as a Character witness re: X's credibility. (DDA on record called X a liar.) HELD: Sub properly quashed. Def had other adequate ways available to impeach X.

DALTON P. v. () 5/16/2019 **CAL**

EVIDENCE / PRIVILEGES

ATTY/CLIENT - CONTINUES AFTER ATTY/CLIENT RELATIONSHIP ENDS

Co-def pleads guilty (then changes lawyers) and then testifies against def. HELD: Atty/client privilege lasts beyond the relationship. All conversations co-def had with his first atty are PRIVILEGED even if they might well help def impeach co-def.

BELL P. v. () 5/2/2019 **CAL**

TRIAL / WITNESS ISSUES

WITNESS TAKING FIFTH - IN FRONT OF JURY - ON-CROSS

Evid admitted that traces the murder gun to X, a friend of def. X testifies to friendship of X, but takes the 5th on any question re: the gun. HELD: friendship testimony stays in. Evid tracing gun to X stays in.

BELL P. v. () 5/2/2019 **CAL**

INSTRUCTIONS/ELEMENT / GENERALLY

SPECIALS - WEIGH EVID FROM DRUG ADDICTS WITH GREATER CARE

Defense special instructing jury that testimony of a drug addict must be weighed "with greater care" was properly DENIED.

BELL P. v. () 5/2/2019 **CAL**

TRIAL / MISC - TRIAL

DEF MISCONDUCT - COURT SHOULD MITIGATE / ADMONISH - NO MISTRIAL

Mid-trial, def has emotional breakdown after watching his mother testify. Def tries to flip table. Jury taken from courtroom and it takes many minutes to subdue def. Jury HEARS most of the scuffle. -- Court does lots of stuff as a consequence, but does NOT declare a MISTRIAL -- UPHeld.

BELL P. v. () 5/2/2019 **CAL**

EVIDENCE / CORPUS RULE

MAKING CORPUS BY HEARSAY - CO-DEF'S CONFESSION TO INFORMANT

At def's separate trial, a portion of co-def's jail cell confession to informant admitted as admission against penal interest. (all references to any co-perpetrator redacted out). Ev 1230. Admitted to show corpus for def's own admissions. UPHeld.

DALTON P. v. () 5/16/2019 **CAL**

EVIDENCE / IMPEACH/INCONSIS

WITNESS (DDA'S) - UNDERLYING ACTS OF PRIOR FELONIES

Witness X testifies against def. Def seeks to impeach X not only with X's felony convictions, but also with the underlying facts of the convictions. HELD: Ev 787's prohibition of such evidence NO LONGER APPLIES due to Prop 8. But, def must still deal with RELEVANCE and 352.

DALTON P. v. () 5/16/2019 **CAL**

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TRIAL / MISC - TRIAL

MISTRIAL - AVOIDING BY CURING NO-NO'S BY ADMONITION

Unprompted, a witness blurts out something highly PREJUDICIAL to def. Court immediately strikes it and admonishes jury. But, court denies motion for mistrial. UPHELD.

DALTON P. v. () 5/16/2019 **CAL**

EVIDENCE / ACCOMPLICE

ACCOMPLICE HEARSAY MADE TO FRIENDS - NO INSTRUCTION NEEDED

Def's jury heard Admissions against Penal Interest statements made by an accomplice. Statements where made to friends, not the police. Accomplice did not testify. -- NO NEED for accomplice instruction.

DALTON P. v. () 5/16/2019 **CAL**

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

OTHER VIOLENT ACTS - JUVENILE CONDUCT

Def's prior juvi "adjudications" are NOT ADMISSIBLE as prior "convictions" under 190.3(c). BUT, underlying facts of such adjudications may be admissible as prior violent acts under 190.3 (b).

RIVERA P. v. () 5/23/2019 **CAL**

TRIAL / ARGUMENT

DDA NO-NO - THE PRESUMPTION OF INNOCENCE IS OVER

DDA No-No: The Presumption of Innocence is now GONE, or, NO LONGER APPLIES. --- DDA Ok: The Presumption of Innocence has now been OVERCOME by the evidence.

JIMENEZ P. v. () 5/16/2019 **6:**

SENTENCING / PROBATION

TERMS - VAGUE / AMBIGUOUS - TERM REFERENCES ANOTHER CASE

Probation term said no contact with victims in Case #123456, and names X and Y. Later, a different court finds in Case #123456 that X was victim and Y was not a victim. HELD: Probation term is now ambiguous, and def can't be violated for contact with Y. (Y is def's GF)

AUSTIN P. v. () 5/3/2019 **5/24**

INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

MONEY LAUNDERING - 186.10 PC

Def convicted of money laundering -- PC 186.10. Illegal money was put into an account that also contained legal money. -- Precise and exact tracing of money is impossible. All 186.10 requires is proof that "some" of the money being laundered came from illegal activity.

BOLDING P. v. () 5/1/2019 **4:3**

TRIAL / ARGUMENT

DDA NO-NO - REASONABLE DOUBT ANALOGIES / EXAMPLES

Note to DDAs: Supreme Ct does NOT LIKE any cute, common sense, everyday life examples of REASONABLE DOUBT. They also DON'T LIKE charts or visual aids re: REASONABLE DOUBT.

-- Stick to the instruction.

DALTON P. v. () 5/16/2019 **CAL**

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

CONSTITUTIONAL CHALLENGE - NEED FOR EVIDENTIARY HRG

Following penalty verdict, but before sentencing, court holds multi-day evidentiary hrg on def's motion to dismiss death because jurors, generally, don't follow Furman v. Georgia. Motion denied. UPHELD.

ERSKINE P. v. () 5/23/2019 **CAL**

MOTIONS / BAIL / OR

BAIL - ADDING BEHAVIOR TERMS TO CASH BAIL

Even through def posted cash bail, court required def to submit to searches as a condition of pre-trial release due to concern for public safety. HELD: Court has authority for public safety conditions to cash bail release. --- NOT DECIDED whether this case was appropriate.

WEBB In Re () 5/23/2019 **CAL**

SENTENCING / ONE-STRIKE SEX CASES

ONE STRIKE - 667.61 PC - NEED FOR ALLEGATIONS/FINDINGS

Information alleged PC 667.61(b) and (c) and the jury convicted def of such. Sentencing ct finds the jury found facts supporting PC 667.61(j)(2) -- (based on age of victims). HELD: Def can only be convicted of what he was CHARGED with, and can only be sentenced on what he was CONVICTED of.

JIMENEZ P. v. () 5/16/2019 **6:**

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - NOT RETROACTIVE

After def is convicted and sentenced, legislature creates Mental Health diversion - PC 1001.36(a). HELD: PC 1001.36 is NOT retroactive to def's who have been tried and sentenced.

CRAINE P. v. () 5/23/2019 **5:**

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - BURGLARY OF A LOCKER ROOM

Minor enters the public locker room of a skating rink to steal. HELD: Prop 47 applies. The locker room was NOT a private place off-limits to the public. (It also was not a place where "merchandise" was on display, but that is not the test.)

E. P. In Re () 5/24/2019 **4:3**

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MISCELLANEOUS / WRITS

WRIT - MANDATE - SUPERIOR CT JUDGE CAN'T MANDATE A SUPERIOR CT.

A Superior Ct judge CANNOT issue a Writ of MANDATE ordering a different Superior Ct judge to do something. Def must petition for Writ from the DCA.

MOLINA def v. SUP 5/17/2019 4:3

MOTIONS / WITHDRAW PLEA / STRIKE

1437 PC - DELAYED IMMIGRATION MOTIONS - NEED FOR HRG / LAWYER

Trial court denies, W/OUT A HEARING, def motion under PC 1473.7 to set aside very old guilty plea based on bad Immigration advisement. --- REVERSED. Def is entitled to noticed hearing. DCA says an indigent def is also entitled to a Lawyer at the hearing.

FRYHAAT P. v. () 5/31/2019 4:2

CONSTITUTIONAL ISSUES / PREEMPTION

PREEMPTION - FED/STATE - IMMIGRATION COUNSELOR LICENSE

Federal Preemption does NOT prevent California from requiring people giving immigration counseling services in Calif to first get a LICENSE to do so issued by California.

SALCIDO P. v. () 5/2/2019 4:2

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - GREATER 1385 AUTHORITY

2018 legislation giving courts 1385 authority over gun enhancements and 5-year priors are RETROACTIVE to all cases not yet final. Therefore this case is remanded to give sentencing judge opportunity to exercise 1385 authority. (Def was convicted at trial - no plea bargain.)

ZAMORA P. v. () 5/14/2019 4:2

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - NEW DIVERSION PROGRAMS

After def is convicted and sentenced, legislature creates Mental Health diversion - PC 1001.36(a). HELD: PC 1001.36 is NOT retroactive to def's who have been tried and sentenced.

CAWKWELL P. v. () 5/1/2019 4:1

INSTRUCTIONS/ELEMENT / HOMICIDE

SELF DEFENSE - VICTIM'S PAST VIOLENT ACTS - UNKNOWN TO DEF

Def kills X and claims self-defense. Evidence of X's past violent acts admitted to show X was the aggressor in the event. HELD: Such evidence NOT admissible on subject of def's subjective state of mind UNLESS def had prior personal knowledge of X's violent past.

BATES P. v. () 5/7/2019 3:

JUVENILE / UNFITNESS

PROP 57 - RETROACTIVE - CASE ON APPEAL - DEF NOW OVER AGE 25

Def is entitled to a post Prop 57 unfitness hearing because his case is not final. BUT, def is now over age 25 and Juvi court has no jurisdiction. HELD: Juvi court holds fitness hearing anyway.

RAMIREZ P. v. () 5/8/2019 4:3

INSTRUCTIONS/ELEMENT / HOMICIDE

AID & ABET - NAT/PROB CONSEQS - CHUI vs. SB 1437

Def convicted of 1st degree 187 under aid/abet Natural & Probable Conseqs. DCA reduces it to 2nd degree under CHIU. Now def seeks total reversal under SB 1437. HELD: Yes, 1437 is broader than, and more lenient to def, than CHIU, but def was a major participant.

GENTILE P. v. () 5/30/2019 4:2

SENTENCING / PROBATION

TERMS - SEARCH TERMS FOR ELECTRONIC DEVICES

Probation term included permission of P.O. to search all of def's electronic devices, and requiring def to give P.O. all her passwords. Def's crime did NOT entail use of computers. -- TERM UPHELD as being no more intrusive than standard search terms.

SALCIDO P. v. () 5/2/2019 4:2

SENTENCING / MISC - SENTENCING

SENTENCING HRG - RIGHTS OF 3RD PARTIES AFFECTED BY CT ORDERS

Def tricks Victim into signing Deed of Trust on Victim's home saying X loaned \$\$\$ to victim. X and Victim had no contact. Victim got no \$\$\$ from anyone. (Maybe Def got \$\$\$ from X). Def convicted of PC 115. Criminal Ct VOIDS the Deed of Trust. -- X appeals. HELD: X loses.

ASTORGA-LIDER P. v. () 5/2/2019 4:1

SENTENCING / RESTITUTION

ITEM - GOVT COST TO CLEAN UP GRAFFITI

Def convicted of vandalism/graffiti - PC 594. Def ordered to reimburse City for money it spent painting over def's work. The amount was a generic formula for City costs based on square footage of area painted. UPHELD.

HURTADO P. v. () 5/29/2019 4:1

TRIAL / MISC - TRIAL

DEF ATTY / DEF TACTICAL CONFLICT - DEF MUST OBJECT

In argument, Def Atty admits def did the act, but argues def lacked the necessary intent. On appeal, def says he never gave atty permission to admit the act. HELD: burden on def to show he EXPRESSLY OBJECTED BEFOREHAND to def atty.

FRANKS P. v. () 5/29/2019 3:

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SENTENCING / RESTITUTION

GENERALLY - HEARING REQUIREMENTS - DELAYED DECISIONS

At sentencing, def objects to P.O. recommended restitution amount. Court completes sentencing, asks probation to gather more info re: restitution amount. Later, court gets new info and orders restitution w/out a new hearing. REVERSED. Court must conduct a new hearing w/ def present.

FRANKS P. v. () 5/29/2019 3:

MENTAL HEARINGS / 1368

TERMINATING PROCESS W/OUT HRG

Def atty declares a doubt as to def's competence and court starts PC 1368 process. Later, def atty requests to withdraw his doubt. HELD: Once started, 1368 process can ONLY end with a finding that def is or is not competent. --- without a finding, the trial that follows is VOID.

GONZALES P. v. () 5/2/2019 2:6

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

HABEAS PETITIONS - PROP 66 - ROLE OF DCA

D.P. def files Habeas w/ Cal Supreme Ct. - Supreme Ct refers to Superior Ct for fact finding. Then Prop 66 passes, Supreme Ct refers def's Habeas to Superior Ct for DECISION. Superior Ct makes decision. WHERE does appeal go? Answer: DCA per Prop 66.

ROBINSON In Re () 5/16/2019 2:2

APPELLATE ISSUES / WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - UNFORESEEABLE LAW CHANGES

The DUENAS case placing an ABILITY to PAY prerequisite on ALL fines and fees, was NOT foreseeable. Therefore, failure to object in the trial court does NOT preclude an appeal based on DUENAS.

JOHNSON P. v. () 5/10/2019 1:4

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - SHOPLIFTING - BLOWING UP ATM's

Def blows up ATM on exterior wall of bank to get to money inside ATM. The bank was closed, but the ATM was "open". HELD: (after remand) The "inside" of the ATM was NOT a place open to the public. Prop 47 does NOT apply to the Burglary charge.

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

EVIDENCE / 352 / RELEVANCE

DEF'S SOCIAL MEDIA

Evid that def read a SNAPCHAT post of a friend about a particular type of gun and magazine is evidence that def knew about the nature of the particular gun and magazine. (That def was charged with possessing.

REYES P. v. () 5/17/2019 1:2

INSTRUCTIONS/ELEMENT / HOMICIDE

ATTEMPT 187 - KILL ZONE

Def fires many shots into crowded dance floor at intended victim A. Hits victim B. Kill Zone instruction given. -- UPHELD, but only because DCA says evidence supports theory that A actually meant to kill B and everyone else in close proximity to A. - reckless indifference is NOT enough.

WARNER P. v. () 5/7/2019 3:

JUVENILE / MISC - JUVENILE

SB 1437 PETITIONS RE: AID/ABET 187 ADJUDICATIONS

In 2018, SB 1437 tweaked Nat/Prob Consequences as it relates to 187's. It included PC 1170.95 which permits old 187 def's to petition for relief. --- Does PC 1170.95 apply to JUVI's who were found guilty of 187 in Juvi court? YES.

R. G. In Re () 5/1/2019 2:6

MOTIONS / SPEEDY TRIAL

1381 PC DEMAND - DEF ON "PROCEEDINGS SUSPENDED" PROBATION

In County X, def gets probation on a "proceedings suspended" sentence. Then def gets arrested in county Y and makes a PC 1381 demand. --- Does 1381 apply? NO.

SMITH P. v. () 5/16/2019 2:2

SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - ABILITY TO PAY - STATE PRISON EARNINGS

A sentencing court may assume that Def has the ability to make some money IN PRISON and that such money can be used to pay Restitution and/or Fees and Fines.

JOHNSON P. v. () 5/10/2019 1:4

JUVENILE / PROCEDURE

PROCEDURE - DIVERSION / MENTAL HEALTH - PC 1001.35

Mental Health Diversion under PC 1001.35 and 1001.36 does NOT apply to juvenile delinquency proceedings.

J. M. In Re () 5/31/2019 1:3

EVIDENCE / HEARSAY

AGAINST PENAL INTEREST - RELIABILITY/CONTEXT - CLEARING OTHERS

Gun found in X's car. X was driver, def was passenger. Gun found by def's feet. After it was clear X was going to prison anyway, X confesses that gun was his and that def knew nothing. -- Trial court finds this UNRELIABLE and excludes from def's trial. REVERSED. Ev 1230.

REYES P. v. () 5/17/2019 1:2

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EVIDENCE / 1101 (b)

FACT EXAMPLE - GUN POSSESSION. PRIOR GUN POSSESSION

Def charged with possessing gun in a car with other people in the car. Defense was "Not my gun". HELD: Prior gun possession conviction involving a different gun is NOT 1101(b) evidence and is NOT RELEVANT.

REYES P. v. () 5/17/2019 1:2

APPELLATE ISSUES / POST GUILTY PLEA APPEALS

POST GUILTY PLEA - CAN'T APPEAL - SENTENCE W/IN BARGAIN

Def plead guilty with bargain for a specific sentence - 19 years. Then SB 1393 passes giving courts 1385 authority over 5-year priors. HELD: Def does NOT have a grounds to appeal seeking a remand to let court exercise new 1385 authority. --- DCA's in conflict.

GALINDO P. v. () 5/22/2019 1:1

INSTRUCTIONS/ELEMENT / GENERALLY

CALCRIM - 361 - DEF'S FAILURE TO EXPLAIN OR DENY

CALCRIM 361 - testifying def's failure to explain - should NOT be given when def fails to explain something he has no control of, or first hand knowledge of, such as WHY a co-def or other person did of did not do something.

GRANDBERRY P. v. () 5/21/2019 1:1

SENTENCING / RESTITUTION

INDIRECT VICTIMS - PARENTS OF CHILD SEX VICTIMS

Def commits sexual assault on child. HELD: PC 1202.4(k)(1) and (k)(4) authorizes sentencing court to order RESTITUTION for non-economic damages suffered by child's PARENTS.

MONTIEL P. v. () 5/16/2019 1:1

APPELLATE ISSUES / POST GUILTY PLEA APPEALS

POST GUILTY PLEA - CAN'T APPEAL - SENTENCE W/IN BARGAIN

Def plead guilty with bargain for a specific sentence - 15 years. Then SB 620 passes giving courts 1385 authority over gun enhancements. HELD: Def does NOT have a grounds to appeal seeking a remand to let court exercise new 1385 authority. --- DCA's in conflict.

FOX P. v. () 5/3/2019 1:1

INSTRUCTIONS/ELEMENT / GENERALLY

CALCRIM - 361 - DEF'S FAILURE TO EXPLAIN OR DENY

CALCRIM 361 - testifying def's failure to explain - should NOT be given when def gives an explanation, but the explanation is incredible, unbelievable, or bizarre.

GRANDBERRY P. v. () 5/21/2019 1:1

INSTRUCTIONS/ELEMENT / GENERALLY

CALCRIM - 361 - DEF'S FAILURE TO EXPLAIN OR DENY

CALCRIM 361 - testifying def's failure to explain - can be given when def fails to explain something relevant to his testimony -- even though he was not directly asked to explain.

GRANDBERRY P. v. () 5/21/2019 1:1