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INSTRUCTIONS/ELEMENT / DUI'S

CHEMICAL TEST - CONSENT - BOAT DUI - NO IMPLIED CONSENT

YOLO APPELLATE DIV: There is no "implied consent" law for boat owner/drivers. Therefore def, arrested for DUI/boat under Harbors & Navigation 655(b), was improperly told he HAD to consent to chemical test. Therefore, the consent obtained was INVALID. -- test results are SUPPRESSED.

GUTIERREZ P. v. () 2/14/2019 **SUPP**

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

CHALLENGE FOR CAUSE - STIPS - NOT REVIEWABLE ON APPEAL

After D.P. juror questionnaires are completed, but before any live questioning of jurors, both sides STIPULATE that certain jurors can be excused for cause. --- these STIPS are binding, regardless of whether or not CAUSE is shown in the questionnaires.

POTTS P. v. () 3/28/2019 **CAL**

APPELLATE ISSUES / MISC APPELLATE ISSUES

MISC - RIGHT TO APPOINTED ATTY - DEF IS RESPONDENT

Def, represented by Pub Def, wins 1538.5 motion in misd case. Case Dismissed. People Appeal. -- Does def get Pub Def on the appeal? -- YES. Court acknowledges statute and rules of court would say NO. But, they are trumped by Art I, section 15 of California Constitution.

GARDNER OTHER 3/28/2019 **CAL**

SENTENCING / DIVERSION

DIVERSION - MILITARY VETS - 1001.80 PC - DUI's

If the def otherwise qualifies for Military Diversion under PC 1001.80, court may not deny diversion solely on the basis of the seriousness or dangerousness of the crime. --- This case: def charged with DUI with B/A over 0.15.

WADE def v. SUP 3/28/2019 **6:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - UNFITNESS AGE CUT-OFF

SB 1391, effective 1/1/2019, takes transfer to adult court off-the-table for all crimes committed by minors under age 16. -- HELD: this is retroactive to all open cases.

CASTILLERO P. v. () 3/25/2019 **6:**

MISCELLANEOUS / RETROACTIVE

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

Prop 57 enacted AFTER def's appellate opinion filed, but BEFORE Remittitur issued. HELD: def gets a juvi unfitness hearing.

HARGIS P. v. () 3/20/2019 **5:**

EVIDENCE / HEARSAY

PAST RECOLLECTION RECORDED - NON CONTEMPORANEOUS RECORDING

Officer interviews witness; takes notes; writes report from notes the next day. Was the report a past recollection recorded, which requires recording "at the time the statement is made? --- Issue is DUCKED - any error is harmless.

POTTS P. v. () 3/28/2019 **CAL**

SENTENCING / RESTITUTION

RESTITUTION FINE - ABILITY TO PAY - DEATH ROW INMATES

Def is sentenced to death. He is NEVER going to work again, in or out of prison. But, def does have family that will give him money. --- Trial court could properly find that def had the ability to pay a \$10,000 restitution fine.

POTTS P. v. () 3/28/2019 **CAL**

INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

BURGLARY TOOLS, POSSESSION OF - 466 PC

Burglary tools under PC 466 are ONLY tools used to effectuate the ENTRY, not tools used only to assist in the theft once def gets inside. --- this case: minor possessed pliers that he used to remove security tags from items he was shoplifting. --- this is NOT a PC 466 violation.

H. W. In Re () 3/28/2019 **CAL**

JUVENILE / UNFITNESS

PROP 57 - UNFITNESS CRITERIA IS CHANGED BY PROP 57

Pre-Prop 57, def got an unfitness hearing for crimes committed at age 15. HELD: Prop 57 fitness hearing is significantly different (in ways that benefit the minor). Therefore, def entitled to a NEW unfitness hearing.

CASTILLERO P. v. () 3/25/2019 **6:**

APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - POST WAIVER CHANGES TO LAW

Def enters plea bargain, with appellate waiver, for specified number of years in prison. Def got her bargain. Def now appeals seeking new sentencing due to law change re: her enhancements. -- HELD: Appellate waiver applies. Def needs Cert of PC.

BARTON P. v. () 3/8/2019 **5:**

MISCELLANEOUS / RETROACTIVE

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

Def's conviction affirmed on appeal, but case remanded for Prop 57 juvi unfitness hearing. Before unfitness hearing completed, new legislation increased court's 1385 authority over gun enhancements. HELD: def gets new sentencing hearing re: gun enhancements.

HARGIS P. v. () 3/20/2019 **5:**

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MOTIONS / WITHDRAW PLEA / STRIKE

W/DRAW GROUNDS - BAD ATTY ADVICE - I.N.S. CONSEQUENCES

On habeas, def permitted to w/draw 2014 guilty plea due to incompetence of atty to fail to seek a plea deal for crime with less certain ICE consequences - including pleading guilty to a more serious crime than the crime charged. --- TAHL waiver said def "will" be deported.

HERNANDEZ In Re () 3/26/2019 4:3

TRIAL / ARGUMENT

DEF ATTY - MAY NOT CONCEDE GUILT OVER DEF OBJECTION

No matter how tactically stupid it might be, if a def tells his atty that he wishes to go for complete acquittal, and not concede to jury his guilt of a lesser offense, the atty MUST honor the decision. --- conviction REVERSED

EDDY P. v. () 3/26/2019 3:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - APPELLATE DECISIONS - DUENAS - ABILITY TO PAY
DUENAS decision - finding that ALL fees/fines require a finding of ability to pay - is RETROACTIVE to all open cases. Therefore, the case is remanded for new sentencing hearing re: all imposed fees and fines.

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

MISCELLANEOUS / RETROACTIVE

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

New PC 12022.53(h) - giving judges PC 1385 authority over gun enhancements does NOT apply retroactively to cases that are FINAL. Trial courts have no jurisdiction. Appeal dismissed.

JOHNSON P. v. () 3/4/2019 2:6

MENTAL HEARINGS / MDO

QUALIFYING CRIMES - FORCE/VIOLENCE - 314 PC

While the woman that saw def masturbating might have reasonably FELT threatened, def did not make an explicit or implied threat to use force on anyone. THEREFORE, def's PC 314 conviction could NOT support an MDO petition.

WARREN P. v. () 3/28/2019 2:6

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ROBBERY - FORCE - PURSE TUG-OF-WAR

Victim resists a pick-pocket and a brief tug-of-war over wallet ensues. Def wins tug-of-war. --- Def commits a ROBBERY.

JOSEPH P. v. () 3/5/2019 2:5

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - IDENTITY THEFT - 530.5(c) PC - NO

Identity Theft violations of PC 530.5(c) are NOT subject to Prop 47. --- DCA's are in conflict.

WEIR P. v. () 3/29/2019 4:1

SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

CONSENSUAL CONTACT v DETENTION - OBJECTIVE TEST

During street encounter, officer SUBJECTIVELY asks questions of def with intent of finding a reason to arrest def. Def, SUBJECTIVELY senses officer wants to arrest him. BUT, OBJECTIVELY, officer did nothing a reasonable person would interpret as Detaining def. -- HELD: consensual encounter.

CHAMAGUA P. v. () 3/29/2019 2:8

JUVENILE / PROCEDURE

PROCEDURE - DIVERSION / MENTAL HEALTH - PC 1001.35

Mental Health Diversion under PC 1001.35 et seq does NOT apply in juvenile court.

M. S. In Re () 3/11/2019 2:6

APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - POST WAIVER CHANGES TO LAW

Def enters plea bargain, with appellate waiver, for specified number of years in prison. Def got her bargain. Def now appeals seeking new sentencing with judge having new authority to strike 5 year priors. -- HELD: Appellate waiver applies. Def needs Certif of PC.

KELLY P. v. () 3/6/2019 2:6

MOTIONS / MISC - MOTIONS

EXPUNGEMENT - 1203.4 PC

A year after completing his sentence, def seeks PC 1203.4a dismissal. Court DENIED request because def could not show he lived "honest and upright life". -- Def spent the entire year in ICE custody awaiting deportation. UPHeld under abuse of discretion standard.

MAYA P. v. () 3/21/2019 2:6

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - SPECIFIC OVER GENERAL

VC 10501 makes it a specific crime to falsely report a stolen car. --- HELD: this specific crime MUST be used if applicable. PC 118 - perjury, and PC 148.5 - false police report, may NOT be used.

JOSEPH P. v. () 3/5/2019 2:5

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PAROLE / PAROLE DECISIONS

PROP 57 - DEPT OF CORRECTIONS REGULATIONS

DCA strikes down portion of Dept of Corrections regulations re: Prop 57's early parole provisions. Regulations said ANY prior conviction of PC 290 register offense made def ineligible. -- DCA says only commitment offenses that make def a 290 registrant render def ineligible.

GADLIN *In Re ()* 1/28/2019 2:5

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.

J. C. *In Re ()* 3/28/2019 1:5

INSTRUCTIONS/ELEMENT / CHILD AS VICTIM CRIMES

288.5 PC vs MANY 288(a)'S - CHARGING BOTH - MUST BE ALTERNATIVE

When DDA chooses to allege BOTH PC 288.5 and multiple counts of PC 288 for the same acts, then they must be plead IN THE ALTERNATIVE. -- Jury may not convict on BOTH.

WILSON *P. v. ()* 3/27/2019 1:4

MOTIONS / QUASH SUBPOENAS

SUB DT - MUST TO TIED TO A PENDING HEARING

Def was committed to state hospital behind a NGI plea in 2008. He has no petitions or hearings pending. But, he has new lawyer, who issues a SUBPOENA DT to the hospital for every imaginable document re: def. HELD: Sub DT is quashed. It is not relevant to anything pending.

ALVAREZ *P. v. ()* 3/12/2019 1:3

EVIDENCE / EXPERTS

GANG EXPERT - HEARSAY, CASE-SPECIFIC - SANCHEZ / CRAWFORD APPLIED

Good summary case of what a GANG expert can and cannot say regarding case-specific hearsay post-SANCHEZ. --- Hearsay re: long-standing feud between two gangs is NOT case-specific even though that feud was the motive for this case.

ANTHONY *P. v. ()* 3/8/2019 1:2

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 64 - MARIJUANA POSSESS/USE IN PRISON UNAFFECTED - 4573 PC

Prop 64 has no effect on the pre-existing prohibitions on the use and possession of MJ in the prison setting under PC 4573.6.

PERRY *P. v. ()* 3/1/2019 1:2

INSTRUCTIONS/ELEMENT / HOMICIDE

MISC FACT PATTERN - KILL ZONE INSTRUCTIONS - WHEN TO GIVE

Kill Zone case. Exposing everyone in the Zone to the RISK of death is NOT enough. Def must INTEND that everyone in the zone DIES. Firing 3 shots into a crowd of 10 people can never justify KILL ZONE instruction. --- this DCA finds all KILL ZONE instructions unnecessary.

MEDINA *P. v. ()* 3/19/2019 2:1

EVIDENCE / MISC - EVID

SCIENTIFIC STUDIES RE: % ACCURACY OF CERTAIN KINDS OF EVID

For many reasons, the results of "scientific" studies purporting to show what % of child sex abuse allegations are "false" are NOT admissible.

WILSON *P. v. ()* 3/27/2019 1:4

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - 10851 VC - AUTO THEFT

Def objects that under Prop 47 decisions, he can go to prison for DRIVING a stolen car, but he would get a misd if he were convicted of STEALING the same car. --- DCA finds no due process or equal protection problem.

MORALES *P. v. ()* 3/28/2019 1:4

DEFENDANT'S / MIRANDA

POST INVOKÉ - COP RE-INITIATING RE: SEPARATE (BUT RELATED) CASE

Def's friend killed. Def is witness. Def then commits revenge killing. Is arrested, INVOKES. Def then talks to police investigating friend's 187. HELD: this interview was "really" intended to get admissions from def re: his motive for his own murder case. No intelligent waiver. SUPPRESSED.

ANTHONY *P. v. ()* 3/8/2019 1:2

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - SB 1437 - SPECIAL PROCEDURE

SB 1437 changed aid/abetter law re: felony murder. -- It is retroactive, BUT, it spelled out it's own special procedure as to how to apply it to old cases. THEREFORE, DCA is not permitted to apply SB 1437 to a case on appeal when SB 1437 became effective.

ANTHONY *P. v. ()* 3/8/2019 1:2

TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - DELIBERATIONS - HOLDOUT JURORS

Trial court dismisses holdout juror after other jurors say he won't follow the law of Reasonable doubt. --- DCA reverses. Unless the holdout admits to misconduct, court should be VERY RELUCTANT to excuse a known holdout based on accusations of other jurors.

SALINAS-JACOBO *P. v. ()* 3/28/2019 1:2