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MOTIONS / FARETTA / PRO PER ISSUES

FLIP-FLOP-FLIP-FLOP DEF - HOW TO HANDLE

Def goes back and forth (Faretta / not Faretta). Def warned this can't go on. After atty is reinstated, Ct tells def that no more changes will be permitted. HELD: Warnings were fine, but preemptively denying a Faretta request before it is made is NOT fine.

GOMEZ P. v. () 11/29/2018 **CAL**

EVIDENCE / 352 / RELEVANCE

DEF REFUSAL TO LEAVE CELL TO COME TO COURT

During trial of D.P. case, def refuses to leave his cell and come to court. Trial court deems this analogous to attempt escape and can be considered consciousness of guilt evidence. Court encouraged the DDA to present it, and DDA does. HELD: ERROR, but harmless.

GOMEZ P. v. () 11/29/2018 **CAL**

EVIDENCE / HEARSAY

CRAWFORD - TESTIMONIAL - "IF I DIE" NOTES LEFT BY 187 VICTIM

Murder victim left note to this wife that he was on his way to meet the def and that if he didn't come back, def probably killed him. HELD: this was NOT testimonial. Note did not tell wife to go to police. Wife more likely was intended to go to Victim's gang for retribution.

GOMEZ P. v. () 11/29/2018 **CAL**

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

BURDEN OF PROOF - OTHER BAD ACTS - JURY HUNG ON SOME ACTS

D.P. case. Def charged with 5 murders. Jury convicts on 4 and hangs on 1. In penalty phase, jury told that those jurors who were convinced Beyond R.D. that def did 5th, can consider 5th as aggravating circumstance. Those jurors not convinced cannot. --- NOTHING HELD - any error was harmless.

GOMEZ P. v. () 11/29/2018 **CAL**

MENTAL HEARINGS / 1368

APPEALS - REMEDY FOR NOT HAVING ADEQUATE 1368 HEARING

Conviction reversed for failure of trial court to conduct 1368 eval. Opinion acknowledges that in some cases, the proper remedy might be a retroactive 1368 hearing re: def's competency at time of trial. But, not in this case. (All agree def is crazy. Issue was whether def was, or was not, taking his meds.)

RODAS P. v. () 11/26/2018 **CAL**

JUVENILE / UNFITNESS

PROP 57 - RETROACTIVE - CASE ON APPEAL

Pre-prop 57, minor pleads guilty to adult offenses and is sentenced. Minor then files an appeal raising only sentencing issues. Then Prop 57 happens. -- HELD: Minor may add issues to the appeal. Case REMANDED for unfitness review under Prop 57.

BALDIVIA P. v. () 11/5/2018 **6:**

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

SEVERANCE - CO-DEF HAS MORE MITIGATION THAN I DO

Death Penalty Def seeks severance from co-def because def's conduct and def's past is a lot worse than co-def and he will suffer by the comparison. HELD: this is NOT grounds for severance.

GOMEZ P. v. () 11/29/2018 **CAL**

EVIDENCE / EXPERTS

GANG EXPERT - PERMISSIBLE SUBJECTS

While Gang Expert had relevant and proper things to say, his tangential evidence regarding the origins and history of the particular Gang (Mexican Mafia) was NOT relevant and should have been excluded under EV 352.

GOMEZ P. v. () 11/29/2018 **CAL**

TRIAL / MISC - TRIAL

READ-BACK OF TESTIMONY - DISCOURAGING IT

In long D.P. trial, the court STRONGLY ENCOURAGED the jury to take good notes and to consult those notes before asking for read back of testimony. --- UPHELD.

GOMEZ P. v. () 11/29/2018 **CAL**

MENTAL HEARINGS / 1368

WHEN TO HAVE NEW PROCEEDINGS AFTER DEF FOUND COMPETENT

Def 1368. Meds work. def returns. Def quits meds. Mid trial, def atty renews 1368. Court asks def a few questions, def answers perfectly. 1368 denied. Def then takes stand and talks crazy gibberish. REVERSED. Def atty raised doubt of changed circumstances, Ct cannot short circuit the process by a mini-exam.

RODAS P. v. () 11/26/2018 **CAL**

APPELLATE ISSUES / MISC APPELLATE ISSUES

REMAND PROCEDURE - 1368 ERRORS - RETROACTIVE HRGS

Conviction reversed for failure of trial court to conduct 1368 eval. Opinion acknowledges that in some cases, the proper remedy might be a retroactive 1368 hearing re: def's competency at time of trial. But, not in this case. (All agree def is crazy. Issue was whether def was, or was not, taking his meds.)

RODAS P. v. () 11/26/2018 **CAL**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROP 57 - JUVI UNFITNESS

Pre-prop 57, minor pleads guilty to adult offenses and is sentenced. Minor then files an appeal raising only sentencing issues. Then Prop 57 happens. -- HELD: Minor may add issues to the appeal. Case REMANDED for unfitness review under Prop 57.

BALDIVIA P. v. () 11/5/2018 **6:**

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INSTRUCTIONS/ELEMENT / CHILD AS VICTIM CRIMES

288(a) PC - LEWD ACT - AMBIGUOUS TOUCHES

Def touches two 8 year old girls. The touching, alone, might raise doubt as to def's lewd intent, but, surrounding circumstances, including victim impression of def's intent, and def telling victims to keep quiet about the touching, is enough to support PC 288 conviction.

MORALES P. v. () 11/27/2018 **6:**

SENTENCING / PRIORS

667.5(b) PC - 5-YEAR WASHOUT PERIOD - EFFECT OF PROP 47

Not only does Prop 47 reduction nullify a past 667.5(b) prison prior, it ALSO prevents that past conviction from tolling, or restarting, the 5-year washout period.

KELLY P. v. () 11/1/2018 **5:**

MOTIONS / CI's

DISCLOSURE - REASONABLE POSSIBILITY TEST

The CI (at in camera hrg) did not say he saw Def do XYZ or that CI was present during XYZ. All the CI said was that he heard OTHERS say that Def said he did XYZ. Court denies CI disclosure motion. UPHELD: CI was not in position to give def any exculpatory evidence.

KELLY P. v. () 11/1/2018 **5:**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - SPEEDY TRIAL RIGHTS

1st SVP trial is hung. 2nd SVP trial is delayed for over a year, over def's objection, because DDA lost her expert and had to hire new expert to review def's records and try (unsuccessfully) to interview def for evaluation. --- def's motion to dismiss under speedy trial grounds denied. UPHELD.

McCLINTON P. v. () 11/30/2018 **4:3**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - DISCOVERY - DEF SEEKS EXPERTS WHO DDA TRIED TO HIRE

1st SVP trial hangs. DDA loses expert. DDA shops def's case around looking for new expert. DEF asserts some experts declined to take DDA's case because they think def is not SVP. Def wants names of such experts under BRADY. HELD: Such opinions (if exist) are NOT BRADY.

McCLINTON P. v. () 11/30/2018 **4:3**

MENTAL HEARINGS / SexVioPredator

TRIAL - INSTRUCTIONS - UNANIMITY re: WHICH MENTAL DISORDER

SexVioPredator def has multiple diagnosis' and experts disagree which disorder def has. JURY is instructed that they do NOT have to be unanimous as to which mental disorder makes def a danger to reoffend. UPHELD.

McCLINTON P. v. () 11/30/2018 **4:3**

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - DOES APPLY TO PAST ONE-YEAR PRIORS - WASHOUT PERIOD

Not only does Prop 47 reduction nullify a past 667.5(b) prison prior, it ALSO prevents that past conviction from tolling, or restarting, the 5-year washout period.

KELLY P. v. () 11/1/2018 **5:**

SENTENCING / 654

DRUG TRANSPORT IN CAR / POLICE PURSUIT 2800.1 VC

Def is transporting drugs in his car when police attempt to pull him over. Def accelerates and police give pursuit. HELD: the PC 2800.1 and the Drug Transportation charge are NOT 654 PC to each other. Def had separate intents.

KELLY P. v. () 11/1/2018 **5:**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - DISCOVERY - DEF'S RECORDS - NEW DDA EXPERT

After def's SexVioPredator trial is set for a re-trial after hung jury, DDA loses her expert. Over def's objection, court allows DDA to hire NEW expert and authorizes new expert to see ALL of def's medical and treatment records. UPHELD.

McCLINTON P. v. () 11/30/2018 **4:3**

MENTAL HEARINGS / SexVioPredator

TRIAL - EVIDENCE - DEF IMPEACHMENT - PRIOR COMPELLED TESTIMONY

At 1st SVP trial, def called as DDA witness. Jury hangs. At 2nd SVP trial DDA does not call Def. Defense wishes to call def BUT ONLY if he cannot be impeached with his prior COMPELLED testimony. HELD: Compelled does NOT equal INVOLUNTARY. Def can be impeached.

McCLINTON P. v. () 11/30/2018 **4:3**

MOTIONS / DISCOVERY

EXCULPATORY - BRADY - DDA EXPERTS WHO DECLINED TO TESTIFY

1st SVP trial hangs. DDA loses expert. DDA shops def's case around looking for new expert. DEF asserts some experts declined to take DDA's case because they think def is not SVP. Def wants names of such experts under BRADY. HELD: Such opinions (if exist) are NOT BRADY. They are Work Product

McCLINTON P. v. () 11/30/2018 **4:3**

INSTRUCTIONS/ELEMENT / GENERALLY

UNANIMITY/DDA ELECTION - SexVioPredator TRIAL - MENTAL DISORDER

SexVioPredator def has multiple diagnosis' and experts disagree which disorder def has. JURY is instructed that they do NOT have to be unanimous as to which mental disorder makes def a danger to reoffend. UPHELD.

McCLINTON P. v. () 11/30/2018 **4:3**

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CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

EQUAL PROTECTION - SVP's / MDO's / NGL's

MDO's can petition for outpatient status IMMEDIATELY upon being found MDO. SVP's must wait a year. HELD: this does NOT violate Equal Protection.

McCLINTON P. v. () 11/30/2018 4:3

APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - OVERRIDES CERTIF OF PC

After making and losing a motion to suppress his admissions under Miranda, def enters into plea bargain that contained a waiver of appellate rights. Def then appeals Miranda ruling and gets a Certif of PC from trial court under PC 1237.5. HELD: The appellate waiver TRUMPS PC 1237.5.

CISNEROS- P. v. () 11/26/2018 4:3

SENTENCING / PRIORS

SERIOUS FELONY - 667 PC - POWER TO STRIKE

Effective 1/1/2019, PC 667(a) and 1385 amended to permit 1385 dismissals of 5-year priors. DCA affirms def's conviction and sentence on 11/1/2018 and remands to trial court for opportunity to use new 1385 authority. (Appellate decision would not become FINAL before 1/1/19.)

GARCIA P. v. () 11/1/2018 4:2

SEARCH & SEIZURE / AUTOS / CONTAINERS

DETAIN - AUTO - DURATION - PROLONGING FOR DOG SNIFF

Having police K-9 sniff def's car for drugs during a traffic infraction stop prolonged the stop, at worst, seconds (less than 2 minutes), at best, ZERO seconds. HELD: this is not unduly prolonged.

VERA P. v. () 11/5/2018 4:2

APPELLATE ISSUES / HARMLESS ERROR

HARMLESS ERROR - ALTERNATIVE THEORIES - FACTUAL / LEGAL

A "box cutter" is NOT an inherently Deadly Weapon. It is object that can be used in some circumstances to cause GBI. This case: one 245 PC conviction is reversed, but the other is affirmed as HARMLESS (beyond R.D.) ERROR. Both counts involved use of a box cutter.

STUTELBERG P. v. () 11/21/2018 4:1

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - SHOPLIFT INCLUDES STEALING FROM EMPLOYEES

Under Prop 47, "shoplifting" means what Prop 47 says it means, not what we all knew it meant before Prop 47. -- Def entered a "commercial establishment" (not a retail store) and stole the wallet of an employee. --- this is a Prop 47 shoplift.

FRANSKE P. v. () 11/1/2018 3:

MENTAL HEARINGS / SexVioPredator

PROCEDURE - EARLY RELEASE REQUESTS

MDO's can petition for outpatient status IMMEDIATELY upon being found MDO. SVP's must wait a year. HELD: this does NOT violate Equal Protection.

McCLINTON P. v. () 11/30/2018 4:3

APPELLATE ISSUES / POST GUILTY PLEA APPEALS

POST GUILTY PLEA - CERTIF OF PC - CANNOT OVERRIDE WAIVER

After making and losing a motion to suppress his admissions under Miranda, def enters into plea bargain that contained a waiver of appellate rights. Def then appeals Miranda ruling and gets a Certif of PC from trial court under PC 1237.5. HELD: The appellate waiver TRUMPS PC 1237.5.

CISNEROS- P. v. () 11/26/2018 4:3

MOTIONS / 1385

LIMITS ON - 5-YEAR PRIORS UNDER 667(A) PC

Effective 1/1/2019, PC 667(a) and 1385 amended to permit 1385 dismissals of 5-year priors. DCA affirms def's conviction and sentence on 11/1/2018 and remands to trial court for opportunity to use new 1385 authority. (Appellate decision would not become FINAL before 1/1/19.)

GARCIA P. v. () 11/1/2018 4:2

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - DEADLY WEAPON - BOX CUTTER

A "box cutter" is NOT an inherently Deadly Weapon. It is object that can be used in some circumstances to cause GBI. This case: one 245 PC conviction is reversed, but the other is affirmed as HARMLESS ERROR. Both counts involved use of a box cutter.

STUTELBERG P. v. () 11/21/2018 4:1

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - 1108 EV - CALCRIM 1191 AND 224

Both charged and uncharged acts were presented as 1108 evidence in child molest case. HELD: CALCRIM 224 and 1191 do NOT mislead the jury as to when and how they apply the Preponderance Standard and the Beyond a Reasonable Doubt Standard.

PHEA P. v. () 11/28/2018 3:

INSTRUCTIONS/ELEMENT / DEFENSES GENERALLY

CLAIM OF RIGHT - AUTO REPO'S, TRYING TO STOP WRONGFUL

Even if the auto reposessor failed to follow all the procedural steps required by Commercial Code 9609, that is NOT a defense to the defendant using VIOLENCE against the repo guy to prevent him from taking def's car. -- this includes vandalism of the tow truck.

BONILLA P. v. () 11/29/2018 3:

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SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - 496 PC - POSSESSION OF CREDIT CARD

What is the "value" of a stolen credit/debit card? Answer: the market value of the card in the black market. --- The credit balance on the card(s) is RELEVANT evidence on that subject. -- The value of items actually OBTAINED using the card is HIGHLY RELEVANT.

CARRETTO *def v. SUP* 11/1/2018 **2:8**

INSTRUCTIONS/ELEMENT / DUI'S

CHEMICAL TEST - BLOOD - DEF BURDEN - UNREASONABLE MANNER

When the circumstances of a DUI blood draw were typical and routine, then the DEF has the burden of proof to show it was NOT obtained in a "reasonable manner". This case: typical and routine meant drawn by a medical professional from a conscious def who saw everything.

FISH *P. v. ()* 11/27/2018 **2:6**

MOTIONS / MISC - MOTIONS

FACTUAL INNOCENCE FINDING - APPELLATE REVIEW

After his case is dismissed, def files a PC 1485.55 motion for a finding of factual innocence. Motion denied. Question: is such a denial APPEALABLE? YES. DCA finds that seeking a finding of factual innocence is the pursuit of a "substantial right" under PC 1237.

CALDWELL *P. v. ()* 11/15/2018 **1:3**

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - DOES APPLY TO PAST ONE-YEAR PRIORS

When Prop 47 reduces a past felony/prison case to a misd, that case is NO LONGER a Prison Prior under PC 667.5(b).

ACOSTA *P. v. ()* 11/13/2018 **2:6**

APPELLATE ISSUES / MISC APPELLATE ISSUES

APPEALABLE ORDERS - FACTUAL INNOCENCE - 1485.55 PC - DENIAL OF

After his case is dismissed, def files a PC 1485.55 motion for a finding of factual innocence. Motion denied. Question: is such a denial APPEALABLE? YES. DCA finds that seeking a finding of factual innocence is the pursuit of a "substantial right" under PC 1237.

CALDWELL *P. v. ()* 11/15/2018 **1:3**

SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - PROB COSTS

Sentence reversed and remanded because sentencing court "implied" that Probation Officer was going to get FINAL word on def's ability to pay for cost of probation supervision under PC 1203.1b. --- P.O. gets FIRST word, but the COURT gets the FINAL word.

NEAL *P. v. ()* 11/30/2018 **1:2**