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bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - NO PRIMA FACIE CASE NEEDED

CRJA - CCP 231.7 - used to object to DDA preempt of juror X, the sole Black on the panel. -- (1) no prima facie case needed. (2) No Prejudice needs. Every improper preempt is Reversible error.

ORTIZ *P. v. ()* 6: 10/23/2023

bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - CT CAN'T VOLUNTEER NEW REASONS

CRJA - CCP 231.7 - used to object to DDA preempt of juror X, the sole Black on the panel. -- Appellate Ct can only consider reasons given by the DDA, but, this includes ADDITIONAL reasons cited by the DDA during and after a discussion with the judge, even if judge raised it first.

ORTIZ *P. v. ()* 6: 10/23/2023

bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - IN-COURT BEHAVIOR - CT MUST SEE

CRJA - CCP 231.7 - used to object to DDA preempt of juror X, the sole Black on the panel. -- If the DDA uses any demeanor type reasons, Court MUST state what the court observed.

ORTIZ *P. v. ()* 6: 10/23/2023

bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - OBJECTIVELY REASONABLE PERSON TEST

CRJA - CCP 231.7 - used to object to DDA preempt of juror X, standard: "if there is substantial likelihood (can be less than 50/50) that an objectively reasonable person would view [race and/or lots of other stuff] as a factor in the use of the preempt" DDA state-of-mind not relevant.

ORTIZ *P. v. ()* 6: 10/23/2023

bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - 231.7(e) PRESUMPTIVE INVALID REASONS

CRJA - CCP 231.7 - used to object to DDA preempt. CCP 231.7(e) list of presumptively invalid reasons are REBUTTABLE by Clear and Convincing evidence that an objectively reasonable person would view the reason was unrelated to [race].

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bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - 231.7(g) PRESUMPTIVE INVALID REASONS

CRJA - CCP 231.7 - object to DDA preempt. if CCP 231.7(g) list of presumptively invalid reasons re: juror's in-court demeanor/behavior are used: (1) Court must confirm it too observed behavior; and (2) the DDA must explain why behavior is relevant to the case. Then the objectively reasonable test applied.

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bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - APPELLATE REVIEW - DE NOVO

CRJA - CCP 231.7 - used to object to DDA preempt. Appellate review is DE NOVO. DCA should accept trial court's observations. The trial court's opinion re: how the objectively reasonable person would view the preempt is given NO weight.

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bd OTHER TRIAL ISSUES

WHEELER

RCJA - DDA PREEMPT - RCJA MAKES WHEELER OBSOLETE

CRJA - CCP 231.7 - object to DDA preempt. DCA states the obvious: since CRJA is much more def friendly than WHEELER, it is hard to imagine how a preempt could okay under RCJA, but NOT-OK under WHEELER. In other words, say good-bye to Wheeler.

ORTIZ *P. v. ()* 6: 10/23/2023

bb EVIDENCE

352 / RELEVANCE

REBUTTAL EVIDENCE - RETRACTION BY DEF CHARACTER WITNESS

Night after X testified as a character witness for def charged w/ PC 288, X's daughter tell's X that def molested her. X goes to DDA. Court allows X to say she retracts her earlier testimony, and WHY. Jury admonished that what X's daughter said is hearsay admitted to LIMITED purpose to explain retraction. UPHELD

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db APPELLATE ISSUES

MISC APPELLATE

APPELLATE REVIEW STANDARD - RCJA - DE NOVO

CRJA - CCP 231.7 - used to object to DDA preempt. Appellate review is DE NOVO. DCA should accept trial court's observations. The trial court's opinion re: how the objectively reasonable person would view the preempt is given NO weight.

ORTIZ *P. v. ()* 6: 10/23/2023

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<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - SUMMARY DENIALS - USE OF FACTUAL BASIS EVID Def's written plea form included a place for a factual basis. Def signed the form. He admitted that the form was true. HELD: that factual basis can be used to SUMMARILY deny def's PC 1172.6 petition because it said def was the actual shooter.</p> <p>SAAVEDRA <i>P. v. ()</i> 9/20/2023 4:3</p>	<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - DEF'S RIGHT TO BE PRESENT Def in prison when his PC 1172.6 petition goes to hearing. HELD: Def has a RIGHT to be present, even if no new evidence is presented by either side. No def duty to object, court must take a waiver. (?by counsel alone?)</p> <p>QUAN <i>P. v. ()</i> 10/17/2023 4:3</p>
<p style="text-align: center;"><i>bd</i> OTHER TRIAL ISSUES</p> <p>MISC - TRIAL COVID - FINISHING TRIAL IN-PROGRESS W/ SOCIAL DISTANCING Trial was during COVID. Some Jurors were seating outside jury box and everyone wore masks. HELD: none of the covid measures deprived def of a fair trial.</p> <p>MOLINA <i>P. v. ()</i> 10/17/2023 4:3</p>	<p style="text-align: center;"><i>cd</i> MOTIONS</p> <p>SPEEDY TRIAL DELAY - NEED FOR PREJUDICE - LOST EVID Because def was in prison on charges from another county, this case gets started 5 years late. Officer's body cam recorded was destroyed. Trial court dismissal is REVERSED. It was pure speculation that loss of body cam tape was Prejudicial to def.</p> <p>MANZO <i>P. v. ()</i> 10/17/2023 4:2</p>
<p style="text-align: center;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>MISC - EXECUTIVE OFFICER, RESIST OR THREATEN - 69 PC - JUDGES Judges are NOT "executive officers" under PC 69. Executive Officers work for the Executive Branch of government. Threats made to a Judge need to be prosecuted under PC 76.</p> <p>HUPP <i>P. v. ()</i> 10/25/2023 4:2</p>	<p style="text-align: center;"><i>cd</i> MOTIONS</p> <p>WITHDRAW PLEA / STRIKE PRIOR 1473.7 PC - DELAYED IMMIGRATION MOTIONS - FEAR OF ADVERSE ACTS Def's PC 1473.7 mtn to vacate conviction due to misunderstood immigration consequences should have been DENIED because def presented no evidence she was currently in danger of suffering any negative immigration consequence. -- her crime was NOT a "aggravated felony"</p> <p>COCA <i>P. v. ()</i> 10/16/2023 4:2</p>
<p style="text-align: center;"><i>ab</i> CONSTITUTIONAL ISSUES</p> <p>MISC CONSTITUTIONAL ISSUES BEAR ARMS, RIGHT TO - POST-BRUEN - POSSESS GUN AND DRUGS Prohibiting the possession of a gun and illegal drugs at the same time - H&S 11370.1 - remains Constitutional after BRUEN.</p> <p>ALLEN <i>P. v. ()</i> 10/18/2023 4:2</p>	<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - POST GRANT - CASE NOW NOT-FINAL RE: OTHER CHANGES Def's PC 1172.6 petition is Granted and def is resentenced. HELD: this resentencing opens up the entire case, and now def's GANG conviction should be reversed due to AB 333's changes to PC 186.22</p> <p>TRENT <i>P. v. ()</i> 10/3/2023 3:</p>
<p style="text-align: center;"><i>ab</i> CONSTITUTIONAL ISSUES</p> <p>RETROACTIVE BENEFIT TO DEF - WHEN DOES CASE STAY FINAL? Def's PC 1172.6 petition is Granted and def is resentenced. HELD: this resentencing opens up the entire case, and now def's GANG conviction should be reversed due to AB 333's changes to PC 186.22</p> <p>TRENT <i>P. v. ()</i> 10/3/2023 3:</p>	<p style="text-align: center;"><i>de</i> SENTENCING</p> <p>RESTITUTION ITEM - COST TO ACQUIRE AN ITEM, OTHER THAN PURCHASE PRICE Def steals stuffed and mounted Ram's Head with large antlers. V shot the ram at \$7,000 hunting trip and paid taxidermist \$1,500. -- No current market value because it is illegal to sell. HELD: \$7,000 was for the experience, not the head. Restitution should be set at \$1,500.</p> <p>LaROCHE <i>P. v. ()</i> 10/25/2023 3:</p>

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dd PETITIONS TO RESENTENCE

cd MOTIONS

PETITIONS TO

1172.6 PC - SUMMARY DENIALS - USE OF FACTUAL BASIS EVID

At def's 2017 guilty plea, the court asked for a factual basis. The DDA then stated facts that included the def as being the actual stabber of the victim. (multi-def case). Court accepted it, but def never stip'd to it. HELD: SUMMARY denial of PC 1172.6 REVERSED.

DAS P. v. () 10/25/2023 3:

DISCRIMINATORY PROSECUTION

CRJA - NO CRJA VIOLATION IS HARMLESS

The DAG concedes that DDA's cross of def and One Sentence in DDA's closing argument was RACIST and in violation of CRJA. (read it for yourself - see if you agree) HELD: Per CRJA itself, there is no such thing as a HARMLESS CRJA violation. Conviction MUST be reversed.

SIMMONS P. v. () 10/12/2023 2:6

db APPELLATE ISSUES

ab CONSTITUTIONAL ISSUES

HARMLESS ERROR

HARMLESS ERROR - RCJA VIOLATIONS - NEVER HARMLESS

HELD: Per CRJA itself, there is no such thing as a HARMLESS CRJA violation. Conviction MUST be reversed. --- Dissent says this part of CRJA violates CALIF Constitution Art. VI Sec. 13 and it violates Separation of Powers doctrine.

SIMMONS P. v. () 10/12/2023 2:6

COLLATERAL

LAW OF THE CASE DOCTRINE - RELATION TO PC 1172.6

Def's early 1172.6 petition Summarily Denied / Affirmed because his Conspiracy to Commit 187 conviction established malice. Then AB 775 expanded 1172.6 eligibility. HELD: AB 775 did not affect def. No new facts, no new (relevant) law, def's 2nd petition is denied under Law of the Case Doctrine.

MEDRANO P. v. () 10/30/2023 2:6

de SENTENCING

dd PETITIONS TO RESENTENCE

STRIKE CASES

MISC - OLD GANG STRIKES - EFFECT OF AB 333 CHANGES TO 186.22

Per Prop 36, a "strike" is determined by the law that existed on the day of conviction and 11/6/2012. Therefore, old GANG strikes remain strikes even after AB 333 changed the elements of PC 186.22.

AGUIRRE P. v. () 10/16/2023 2:6

PETITIONS TO

1172.6 PC - HEARING - DEF'S YOUTH AS FACTOR RE: MALICE

After full hearing, court denies def's PC 1172.6 petition. DCA reverses and remands with direction that trial court expressly consider and evaluate the def's YOUTH at the time of the crime (age 21). -- How youth impacted def ability to form MALICE.

PITTMAN P. v. () 10/13/2023 1:4

db APPELLATE ISSUES

de SENTENCING

WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - SENTENCING - ABILITY TO PAY - DUENAS

Def cannot raise a DUENAS -- inability to pay -- argument to reduce Restitution Fine for the first time in the DCA. It must be raised at trial court. --- Def's attempt to use PC 1237.2 to get 2nd chance to raise issue is NOT appropriate.

EVERS P. v. () 10/4/2023 1:4

RESTITUTION

GENERALLY - USE OF 186.11 REMEDIES TO SECURE RESTITUTION

Once PC 186.11 allegations are found true, the court has jurisdiction to use 186,11 remedies to secure Restitution for as long as it takes to secure Restitution. This case: court ordered property seized and sold 8 years after def was sentenced.

SHAH P. v. () 10/24/2023 1:23

de SENTENCING

cd MOTIONS

ENHANCEMENTS - SENTENCING

EXCESSIVE TAKINGS - 186.11 PC - NO TIME LIMIT ON REMEDIES

Once PC 186.11 allegations are found true, the court has jurisdiction to use 186,11 remedies to secure Restitution for as long as it takes to secure Restitution. This case: court ordered property seized and sold 8 years after def was sentenced.

SHAH P. v. () 10/24/2023 1:23

1385

ENHANCEMENTS - 1385(c) - SHALL IS NOT REALLY SHALL

Amended PC 1385 re: enhancements does NOT mandate a dismissal if certain findings are made. The "shall" does not mean shall. Court retains discretion to deny 1385 request in the interest of justice. Public Safety is merely ONE of the factors court can use.

PONDER P. v. () 10/26/2023 1:2

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bd OTHER TRIAL ISSUES

JUROR/VERDICT ISSUES

MISC - CAN COVID JUROR DELIBERATE BY ZOOM?

During deliberations, a juror gets COVID. Participated in the last day of deliberations via ZOOM. Issue ducked because all that was discussed that last day was and enhancement that the jury ultimately HUNG on.

HAMPTON *P. v. ()* 1:1
10/25/2023

ad ATTORNEY /JUDGE DUTIES & ETHICS

JUDICIAL DUTIES & ETHICS

JUDICIAL ETHICS - EX PARTE COMMUNICATIONS - TALKING TO JUDGES

Judge X baby-sits jury for Judge Y because Y had to leave during deliberations.

Issue comes up and X consults with Y without counsel being present. HELD:

This is not improper Ex Parte Communication. Such private judge-to-judge communication is expressly permitted.

HAMPTON *P. v. ()* 1:1
10/25/2023

ab CONSTITUTIONAL ISSUES

RETROACTIVE

BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

After plea bargain, def's sentence includes a ONE-Yr prior under PC 667.5(b).

Later, case returns for request to strike the 667.5(b) prior. HELD: Def CAN ask for benefit of other NEW sentencing laws, BUT, he risks DDA calling off the plea deal.

CODDINGTON *P. v. ()* 1:1
10/17/2023