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INSTRUCTIONS/ELEMENT / ENHANCEMENTS

BURGLARY - OCCUPIED DWELLING - 667.5(c)(21) PC

Enhancement to burglary due to people being present in the residence - PC 667.5(c)(21) - applies ONLY to completed burglaries. It does NOT apply to ATTEMPTS.

BEDOLLA P. v. () 10/22/2018 6:

SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - ABILITY TO PAY - SUA SPONTE DUTY TO FIND?

Def gets 8 years on prison and \$3,500 in fines. DCA declines to hold that def atty was incompetent for failure to object to fines based on def's inability to pay. Going to prison for 8 years is NOT, per se, inability to pay. --- DCA "encourages" trial court to make findings Sua Sponte.

ACOSTA P. v. () 10/25/2018 6:

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - SPECIFIC OVER GENERAL

VC 40504(b) makes it a misdemeanor to sign a traffic ticket with a phony name. PC 529(a)(3) make it a FELONY to impersonate someone else and by doing so exposes the other person to debt, lawsuit, or prosecution. -- Def signed a friend's name to a ticket. HELD: Specific trumps General. This is misd.

HENRY P. v. () 10/29/2018 6:

PRELIMS / 995 / MISC - PRE/995

995 - GROUNDS - MISJOINDER OF TWO SEPARATE CASES/PRELIMS

Two separate filings, two separate prelims, COMBINED into a single Information by the DDA without court permission. HELD: DDA may do so. If severance is appropriate, def may make a motion to sever. --- a PC 995 motion is NOT a proper way to contest joinder.

HENSON P. v. () 10/19/2018 5:

EVIDENCE / CASTRO

GENERALLY - FACTS UNDERLYING FELONY PRIOR - MAYBE

Def testifies. Def is properly impeached with a felony conviction of moral turpitude. Over def objection, court allows jury to hear some underlying facts of the conviction to establish that conviction specifically involved DISHONESTY. UPHELD.

GUTIERREZ P. v. () 10/10/2018 4:2

MENTAL HEARINGS / 1026

OUT-PATIENT STATUS - DEF HAS RIGHT TO ASSISTANCE IN PETITIONING

Defs in state hospital after an NGI conviction have a right to professional assistance in the preparation of any petition for out-patient treatment under PC 1026.2.

ENDSLEY P. v. () 10/10/2018 4:2

EVIDENCE / CASTRO

SPECIFIC CRIME - GUN, LOADED, IN A PUBLIC PLACE - 25850(a) PC

Carrying a loaded firearm in a public place - PC 25850(a) - is a crime of Moral Turpitude.

BEDOLLA P. v. () 10/22/2018 6:

SENTENCING / MISC - SENTENCING

PROTECTIVE ORDERS - UNCHARGED VICTIMS

Def molested X, while X's 5-year old sister watched. Although not charged, trial court concluded Sister was a "victim" of Child Endangerment - PC 273a(b) - and therefore, court imposed 10-year criminal protective order for both X and her Sister. --- UPHELD.

ACOSTA P. v. () 10/25/2018 6:

SENTENCING / STRIKE CASES

QUALIFYING PRIOR - 245 PC - LIMITS TO WHAT JUDGE MAY "FIND"

Def's 1991 PC 245 conviction is alleged as a STRIKE. Trial court used the 1991 prelim transcript to find that the 245 involved the use of a deadly weapon. REVERSED. The issue is if A JURY previously found def used a deadly weapon, or, if def ADMITTED using a deadly weapon. Prelim transcript not relevant.

HUDSON P. v. () 10/5/2018 5:

INSTRUCTIONS/ELEMENT / DUI'S

SUFFIC OF EVID - NO "EXPERT" OTHER THAN ARRESTING OFFICER

Refusal DUI case. Only witness was CHP. Trial court held that trained and experienced CHP officer could NOT qualify to give expert opinions re: def's intoxication and ability to drive based on driving pattern, FST's, appearance/odor, and Nystagmus. HELD: trial court is wrong.

RANDOLPH P. v. () 10/23/2018 5:

INSTRUCTIONS/ELEMENT / GENERALLY

READ-BACK OF TESTIMONY - DISCOURAGING IT

Although the trial court told the jury that read-backs of testimony was possible during deliberations, the court also discouraged the jury from asking, explaining that it would disrupt the case that was to immediately follow def's case. UPHELD.

GUTIERREZ P. v. () 10/10/2018 4:2

MENTAL HEARINGS / 1026

SANITY RESTORATION - DEF'S RIGHT TO ATTEND HEARING - HOUSING

Def asks to be transported from state hospital to court to testify on his 1026.2 restoration of sanity hearing, BUT, objected to being housed in Jail. HELD: In general, this is a REASONABLE request. Court should consider non-jail local alternatives for housing def.

ENDSLEY P. v. () 10/10/2018 4:2

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EVIDENCE / 1101 (b)

1109 EV - DOMESTIC VIOLENCE - CRIMES "INVOLVING" D.V.

Def assaults his live-in girlfriend, and her mother, at the same time. HELD: the assault on the mother is a crime "involving" domestic violence and therefore Ev 1109 evidence is admissible on the charge involving the mother.

MEGOWN P. v. () 9/24/2018 4:1

MOTIONS / DISCOVERY

GENERALLY - 1054 - PROSECUTION TEAM - WHO IS ON IT

For discovery purposes, the company that sells the crime lab DNA testing software/hardware is NOT part of the prosecution team. DDA does NOT have to fetch information from the company. Def must subpoena the information from the company itself.

DOMINGUEZ P. v. SUP 10/17/2018 4:1

INSTRUCTIONS/ELEMENT / DUI'S

PERMISSIBLE INFERENCES v. PRESUMPTIONS - CALCRIM 590

CALCRIM 590 instructs the DUI jury re: the permissible inferences they are draw regarding blood alcohol level and intoxication. These are not Presumptions (rebuttable or otherwise). 590 is proper even if def presents evid why inference should not apply in this particular case.

YUSHCHUK P. v. () 10/12/2018 3:

DEFENDANT'S / MIRANDA

OVERCOMING TAINT - 2ND CONFESSION AFTER TAINTED 1ST

While in custody, def makes UNMIRANDIZED, but VOLUNTARY, admissions. Def is then MIRANDIZED and he repeats the admissions. HELD: unless the original failure to give Miranda was intentional and systematic, the post-Miranda admissions are admissible.

DELGADO P. v. () 10/1/2018 3:

DEFENDANT'S / CUSTODY

STATION INTERVIEW - TOLD FREE TO GO IF DEF MEETS A CONDITION

Detective 1 tells def (in the station interview room) that he is NOT under arrest and is free to leave. Later: Detective 2 tells def that he is NOT free to leave UNTIL his gives detective his passcodes to his phone (which the police have). HELD: def is in custody for Miranda purposes.

DELGADO P. v. () 10/1/2018 3:

TRIAL / ARGUMENT

NO-NO FOR DEF ATTY - CONCEDED DEF'S GUILT ON SOME COUNTS

Even if the tactical reason is obvious and sound, def atty may NOT tell the jury that the defense CONCEDES def is guilty to certain counts UNLESS the def gives his ON-THE-RECORD voluntary and intelligent consent.

LOPEZ P. v. () 10/26/2018 2:4

EVIDENCE / 1101 (b)

1109 EV - DOMESTIC VIOLENCE - ABUSIVE ACTS OVER 10 YEARS OLD

Def's acts of abuse against victim were frequent and continuous for over 16 years. Trial court properly found the acts beyond 10 years old were nonetheless probative and admissible under EV 1109.

MEGOWN P. v. () 9/24/2018 4:1

MOTIONS / DISCOVERY

ITEM - THIRD PARTIES - RIGHT OF 3RD PARTIES TO A HEARING

Def seeks discovery of Proprietary information in possession of crime lab, but owned by DNA testing company. HELD: Owner of information MUST be given opportunity to appear in court and argue any privileges it may have.

DOMINGUEZ P. v. SUP 10/17/2018 4:1

DEFENDANT'S / CUSTODY

STATION INTERVIEW - 1 COP SAYS FREE TO GO, 1 SAYS OTHERWISE

Detective 1 tells def (in the station interview room) that he is NOT under arrest and is free to leave. Later: Detective 2 tells def that he is NOT free to leave UNTIL his gives detective his passcodes to his phone (which the police have). HELD: def is in custody for Miranda purposes.

DELGADO P. v. () 10/1/2018 3:

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 64 - HEARING - DDA'S BURDEN

Def makes petition for Prop 64 resentencing. DDA opposes it on DANGEROUSNESS grounds. (1) DDA has burden of Preponderance. (2) DDA must present EVIDENCE (e.g. proof of prior convictions; old transcripts/reports)

SAELEE P. v. () 10/26/2018 3:

SENTENCING / ONE-STRIKE SEX CASES

ONE STRIKE - 667.61 PC - IN COMMISSION OF - KIDNAP - STAY 209(b)

Def's act of kidnapping the victim for the purpose of rape violated PC 209(b) and violated PC 667.61 (one-strike sex). Pursuant to PC 209(d), the One-Strike indeterminate sentence should be imposed and the 209(b) sentence should be STAYED.

ADAMS P. v. () 10/4/2018 2:5

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

GASSING - 243.9(a) PC

In-custody Def spits on courtroom deputy in the courtroom. PC 243.9(a) - (Gassing) requires the crime be done inside a "local detention facility". HELD: in this context, the courtroom qualifies as a local detention facility.

VALDEZ P. v. () 10/17/2018 2:3

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MENTAL HEARINGS / MDO

MISC - EFFECT OF PROP 47 REDUCTION OF UNDERLYING CRIME

The underlying charge behind which Def was committed as an MDO was reduced to a misd under Prop 47 while def was in the state hospital. Is the MDO commitment still valid? --- DCA says this is a VERY GOOD QUESTION, and then dismisses appeal as moot since def was released during appeal.

PIPKIN *P. v. ()* 10/2/2018 **1:4**

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - 1101(b) EV - USING CHARGED ACTS TO 1101(B) EACH OTHER

Def is charged with 5 different auto burgs that would qualify as 1101(b) to each other. Jury instruction as to how jury should consider 1101(b) in this context is criticized by the DCA as confusing, but, any error is harmless.

JONES *P. v. ()* 10/17/2018 **1:2**

INSTRUCTIONS/ELEMENT / DUI'S

SEIZING BLOOD - CONSENT GIVEN ONLY DUE TO FEAR OF DMV

DUI arrestee is told he must chose between a breath test or a blood test. He CHOOSES a blood test. Question: is a search warrant needed? Answer: No. (this is not to say the CHOICE was not coerced. DCA did not rely on consent. It relied on "incident to arrest".)

GUTIERREZ *P. v. ()* 10/2/2018 **1:4**

MISCELLANEOUS / RETROACTIVE

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

A statute change applied to all cases not FINAL at date of enactment. Def was serving a SPLIT sentence (part jail, part Mandatory Supervision) at time of enactment. HELD: Def's case was FINAL. Statute change did not apply to def EVEN THOUGH he was resentenced after change due to V/P.

GRZYMSKI *P. v. ()* 10/31/2018 **1:1**