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California CaseALERT

Riverside County District Attorney's Office
March 25, 2016

(1) DCA – *Batson/Wheeler* Reversal
(2) Proposition 36 – Unreasonable Risk Of Danger
(3) Probation Condition – Changing Residence

Additional information and hyperlinks:

(1) *People v. Arellano* (F068958) Defendant was convicted of possession of an assault weapon (PC 30605) and sentenced to prison for 12 years. During jury selection, the People used peremptory challenges to excuse all three black women from the panel, but the trial court found the prosecutor stated race-neutral reasons for doing so. Defendant appealed, and the Court of Appeal reversed, finding *Batson/Wheeler* error as to one juror: "A prospective juror's occupation may be a permissible, nondiscriminatory reason for exercising a peremptory challenge, and a prosecutor is entitled to believe that people involved in particular professions or with particular philosophical leanings are ill-suited to serve as jurors because they are not sympathetic to the prosecutor," but here "the prosecutor's stated reason for excusing the third prospective juror [she worked for a liberal political organization] is not supported by the record and contrary to the evidence presented at voir dire."

(2) *People v. Florez* (H040327) Defendant was serving a Three Strikes prison sentence and petitioned for resentencing under Proposition 36/PC 1170.126. Though he was facially eligible, the court denied the petition finding that resentencing "would pose an unreasonable risk of danger to public safety." Defendant appealed, and the Court of Appeal affirmed. The court disagreed with defendant's "interpretation that the 'shall/unless' construction used in section 1170.126, subdivision (f) creates a presumption in favor of resentencing" and "since the court's decision is rationally supported by factual findings that are in turn supported by sufficient evidence, our inquiry must end." Additionally, the court rejected defendant's argument that the more stringent definition of "unreasonable risk of danger to public safety" from Proposition 47 should apply in this context.

(3) *People v. Soto* (H042115) Defendant pleaded guilty to driving under the influence of alcohol (VC 23152) and was placed on formal probation with a condition that he obtain permission from his probation officer before moving to another county. Defendant appealed, arguing that the probation condition was not reasonably related to his crime or future criminality, and that it was unconstitutionally overbroad. The Court of Appeal agreed with the former contention under the facts of this case and struck the condition.

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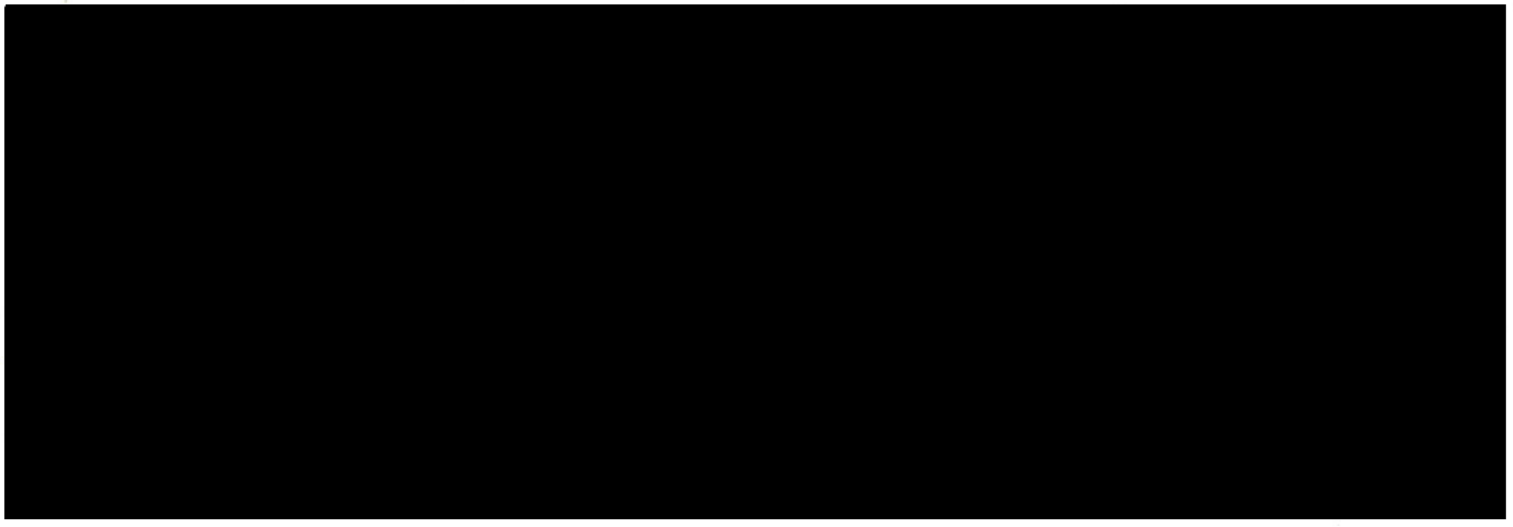

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California CaseALERT

Riverside County District Attorney's Office
February 9, 2015

(1) DCA – a prosecutor's preference for the next prospective juror is not a non-discriminatory reason for kicking the juror in question.

Additional information and hyperlinks:

(1) *People v. Cisneros* (DCA) a prosecutor's preference for the next prospective juror is not a non-discriminatory reason for kicking the juror in question. Here, a domestic violence defendant alleged that the prosecutor was discriminating against prospective male jurors (*Batson/ Wheeler* motion). The prosecutor explained that she had used peremptory challenges in order to seat more favorable men who were next in line. DCA reversed; if there is a prima facie showing of gender bias in striking a prospective juror, the prosecutor must offer a gender-neutral reason. The prosecutor's reason need not "make sense." It may be arbitrary or based on a hunch, so long as the reason does not deny equal protection to a protected class. Here, the prosecutor's failure to articulate anything about the excused jurors "did nothing to dispel the reasonable inference the prosecutor preferred women to men and was exercising her peremptory challenges to effect that preference."

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California CaseALERT

Riverside County District Attorney's Office
May 23, 2016

(1) USSC – Supreme Court Reversal On *Batson* Grounds
(2) CSC – Sexual Battery Not A Lesser Included Offense
(3) DCA – Reasonable Doubt Argument Harmless Error

Additional information and hyperlinks:

(1) *Foster v. Chatman* (14-8349) Defendant was convicted of capital murder and sentenced to death in a Georgia court. The State used peremptory challenges to strike all four black prospective jurors. The Georgia courts rejected defendant's claims that the strikes were racially motivated, and additional habeas petitions were also denied on procedural grounds despite new evidence from the prosecution file that these jurors were stricken because of their race. (Names highlighted in a color meaning the jurors were black, various lists designating the black jurors as "definite nos," and other similar material.) The Supreme Court found that defendant had demonstrated purposeful discrimination, the prosecution's reasons were not completely supported by the record, and the state courts erred in concluding no purposeful discrimination. "The Constitution forbids striking even a single prospective juror for a discriminatory purpose." The matter was reversed and remanded. (There were separate concurring and dissenting opinions.)

(2) *People v. Robinson* (S220247) Defendant was convicted of multiple counts of sexual battery *by misrepresentation of professional purpose*. (PC 243.4(c).) On appeal, it was conceded two counts were not supported by evidence the victims were deceived by defendant's misrepresentations, and those counts were reduced to misdemeanor sexual battery as a lesser included offense. (PC 243.4(e)(1).) The Supreme Court disagreed and reversed. "It is true that every defendant who commits sexual battery by misrepresentation of professional purpose also commits misdemeanor sexual battery: The victim has been touched for a sexual purpose without consenting. However, the victim's lack of consent arises from a particular circumstance created by the defendant's misrepresentation. If the evidence does not support that circumstance, the misdemeanor offense cannot stand on the same factual foundation."

(3) *People v. Cowan* (B258587) Defendant was convicted of serious sex offenses and sentenced to prison for 65 years to life. He appealed and challenged the prosecutor's statement in closing argument that the presumption of innocence does not apply after the evidence has been presented. The Court of Appeal found this to be a "grossly inaccurate definition of reasonable doubt [that] could likely have resulted in a reversal of the judgment," but found here the trial court's admonishment to the jury, the overwhelming evidence, and the court's proper instructions concerning reasonable doubt compelled an affirmance. In doing so, the court cautioned "prosecutors to accurately state the law and not rely on harmless error as a safety net to ensure a conviction. The integrity of our system of justice demands nothing less."

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California CaseALERT

Riverside County District Attorney's Office
June 8, 2016

(1) Ninth Circuit – Federal Habeas Relief Granted On *Batson* Grounds
(2) DCA – Violent Felony Conviction Prevents Prop 47 Relief Regardless Of Timing Of Conviction

Additional information and hyperlinks:

(1) *Currie v. McDowell* (13-16187) The Ninth Circuit continues its agenda of granting habeas relief to convicted murderers on *Batson* grounds, this time identifying the trial prosecutor by name. Defendant shot, killed, and robbed a drug dealer. Defendant is Black; the victim was Hispanic. A jury convicted defendant of a number of crimes, including second degree murder. The convictions were upheld on appeal in the state courts, but the Ninth Circuit granted habeas relief on *Batson* grounds—concluding that the prosecutor improperly excused prospective Black jurors from the venire—and remanded for a retrial. The same prosecutor handled the retrial and defendant was again convicted. Those convictions were again upheld on appeal in the state courts. The federal District Court denied habeas relief and defendant appealed to the Ninth Circuit. The Ninth Circuit again granted habeas relief, concluding the prosecutor's stated reasons for excusing the juror in question—that she had close family members prosecuted for drug offenses, she provided inconsistent answers on her juror questionnaire, and she stated she was unaware what the defendant was accused of even though the court had read the charges—were not valid race-neutral reasons for excusing the prospective juror. Judge Bea dissented.

(2) *People v. Montgomery* (G051812) In 1989, defendant was convicted of felony possession of cocaine and, on a separate charge in another case, attempted murder. In the present case, the trial court denied defendant's request to have his cocaine possession conviction reduced to a misdemeanor under Prop 47 because his attempted murder conviction qualified as a "prior conviction" rendering him ineligible for relief. Defendant argued on appeal that his attempted murder conviction was not a "prior conviction," but was a "contemporaneous conviction," and therefore did not prevent Prop 47 relief. The DCA disagreed, holding that a person convicted of a violent felony is not entitled to Prop 47 relief, regardless of when that conviction occurred.

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California CaseALERT

Riverside County District Attorney's Office
June 17, 2015

(1) DCA – a prosecutor's peremptory challenges of one or two minority jurors generally does not establish a prima facie case of bias.

Additional information and hyperlinks:

(1) *People v. Allen* (DCA) a prosecutor's peremptory challenges of one or two minority jurors generally does not establish a prima facie case of bias. Here, a female African-American defendant was charged with attempted murder. After the prosecutor used peremptory challenges against two female African-American prospective jurors, the court denied defendant's *Batson/Wheeler* motion. DCA affirmed; prosecutors cannot use peremptory challenges to remove prospective jurors based solely on race. There is a three-step inquiry: 1) defendant must make a prima facie showing of bias; 2) if the showing is made, the prosecutor must state race-neutral reasons; 3) the court then determines whether *defendant has proven* purposeful discrimination. "The ultimate burden . . . rests with, and never shifts from, the opponent of the strike." Here, the judge found defendant had failed to make even a prima facie case, though the prosecutor stated race-neutral reasons to preserve the record. "This is the preferred practice but not required."

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California CaseALERT

Riverside County District Attorney's Office
July 9, 2013

(1) CASC – a court can reseat an improperly discharged prospective juror when the defendant impliedly consents.

Additional information and hyperlinks:

(1) *People v. Mata* (CASC) a court can reseat an improperly discharged prospective juror when the defendant impliedly consents. Here, defendant was charged resisting arrest and related crimes. During jury selection, defense counsel objected to the prosecutor's use of a peremptory challenge. The court found that the prosecutor did not have a race-neutral justification and ordered the juror to remain seated. Defense counsel did not object or ask the court to dismiss the remaining prospective jurors. CASC affirmed; trial courts are not limited to dismissing the entire remaining jury venire as a remedy for a *Wheeler/Batson* violation. With the 'assent' of the complaining party, a trial court can reseat any improperly discharged jurors if they are able to serve. And the 'assent' can be found on the basis of implied consent. Here, "defense counsel waived the right to the default remedy of dismissing the jurors already selected and quashing the remaining jury venire."

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California CaseALERT

Riverside County District Attorney's Office
July 17, 2013

(1) Ninth Cir. – a prosecutor's honest mistake in removing a prospective juror does not violate a defendant's constitutional rights.

Additional information and hyperlinks:

(1) *Aleman v. Uribe* (Ninth Cir.) a prosecutor's honest mistake in removing a prospective juror does not violate a defendant's constitutional rights. Here, a jury convicted defendant of attempted murder and related crimes. During jury selection, the prosecutor offered an erroneous explanation for exercising a peremptory challenge against a Hispanic potential juror. The trial court accepted the prosecutor's explanation that he was mistaken about which person said what. Ninth Circuit affirmed; a *Batson/Wheeler* motion is designed to prohibit purposeful discrimination, not honest, unintentional mistakes. Once a defendant makes a prima facie showing of a race-based peremptory challenge, the trial court must evaluate the persuasiveness of the prosecutor's race-neutral justification. The trial court must consider whether, based on the facts of the case, the mistake indicates purposeful discrimination instead of innocent error. Here, the record "supports the trial court's finding that the prosecutor's mistake was credible, honest, and unintentional."

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CaseALERT

Riverside County District Attorney's Office
Rod Pacheco - District Attorney
February 19, 2010

(1) DCA – shooting a firearm from a motor vehicle at another person is a general intent crime.
(2) Ninth Cir. – no prima facie case of discrimination where prosecutor did not recognize struck juror as a minority.

Executable links and (in some cases) additional details:

(1) *People v. Hernandez* (DCA) held shooting a firearm from a motor vehicle at another person is a general intent crime. Here, in a drive-by shooting, defendant/driver was convicted as an aider and abettor of discharging a firearm at another person [PC 12034 (c)] and related crimes. Defendant argued that, because greater punishment is imposed on those who shoot from a car at another person—as opposed to those who merely shoot from a car—the crime requires a specific intent to fire "at" another person. DCA rejected claim; the fact that the crime "requires that the perpetrator shoot 'at' a particular target does not transform the crime into a specific intent offense." It was sufficient to instruct the jury that the shooter needed only to have acted willfully and maliciously (general intent) and that defendant intended to aid and abet him.

(2) *United States v. Guerrero* (~~DCA~~ Ninth Cir.) held no prima facie case of discrimination where prosecutor did not recognize struck juror as a minority. Here, prosecutor peremptorily challenged female juror. Later, defense claimed that she was excluded because she "may have some native American or Hispanic background." Prosecutor said: "I didn't pick up on the minority aspect of it at all." Judge found no inference strike was motivated by race (*Batson*). Ninth Circuit affirmed: "The conversation between the court and the attorneys makes clear that no one knew the race/ethnicity of" the struck juror.

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CaseALERT

Riverside County District Attorney's Office
Rod Pacheco - District Attorney
February 22, 2010

(1) US Supreme – justification for striking juror does not necessarily have to be observed by judge.
(2) US Supreme – claim of excessive force against prisoner is based on nature of force and not extent of injuries.
(3) DCA – defendant can pursue post-conviction discovery without being represented by counsel.

Executable links and (in some cases) additional details:

(1) *Thaler v. Haynes* (US Supreme) held justification for striking juror does not necessarily have to be observed by judge. Here, in death penalty trial, judge accepted prosecutor's race-neutral explanation that a prospective juror was struck because of her "somewhat humorous" demeanor. The appellate court granted habeas relief because the judge that ruled on the *Batson* challenge was not the same judge that presided over jury selection. USSC reversed; there is no blanket rule that "in the absence of a personal recollection of the juror's demeanor, the judge could not have accepted the prosecutor's explanation."

(2) *Wilkins v. Gaddy* (US Supreme) held claim of excessive force against prisoner is based on nature of force and not extent of injuries. Here, prisoner alleged that corrections officer slammed him onto concrete floor; hit, kicked, and choked him. Because prisoner's injuries were "*de minimis*," court dismissed civil rights suit based on excessive force in violation of the Eighth Amendment [42 U. S. C. § 1983]. USSC reversed; "An inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury." However, on remand prisoner will have to prove assault and nature of injuries may affect any damage award.

(3) *Burton v. Superior Court* (DCA) held defendant can pursue post-conviction discovery without being represented by counsel [PC 1054.9].

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CaseALERT

Riverside County District Attorney's Office
August 11, 2010

(1) DCA – judge properly assessed prosecutor's race-neutral reasons for exercising peremptory challenges.

Executable links and (in some cases) additional details:

(1) *People v. Cox et al.* (DCA) held judge properly assessed prosecutor's race-neutral reasons for exercising peremptory challenges. Here, three defendants were charged with murder. During voir dire, the defense made five *Batson/Wheeler* motions. Each time, the judge found that the defense had made a prima facie showing that the prosecutor had exercised peremptory challenges based on race. But after the prosecutor provided race-neutral reasons for excusing nine African-Americans from the venire, the judge denied each motion. The judge said both sides can "excuse for any reason they want to. Fat, bad breath or bad personalities, any number of reasons, as long as it's not based on race." On appeal, defendants argued that the judge had simply acceded to the prosecutor. DCA affirmed; "the trial court understood its duty to consider the plausibility of the reasons given by the prosecutor in light of all the evidence it had observed."

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