



Wheeler/Batson
Related Materials

Presented by the
Habeas Corpus Litigation Team

Saturday Seminar

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CAPITAL CASE COMPENDIUM



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PREFACE

This Capital Case Compendium was compiled by Deputy Attorney General Robin Urbanski and Supervising Deputy Attorney General Holly Wilkens.¹

The Compendium contains case updates pertaining to decisions issued through February 26, 2017.

The organization of the Compendium follows the chronological order of a capital prosecution.

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(*People v. Davis* (2009) 46 Cal.4th 539, 582; *People v. Alfaro* (2007) 41 Cal.4th 1277, 1314).

§ 4.55.3.1 Restricted Death-Qualification

Voir Dire

Error in restricting death-qualification voir dire does not require reversal if the defense was permitted to use general voir dire to further explore the prospective jurors' responses to facts and circumstances of the case or if the record otherwise establishes that none of the jurors had views about the circumstances of the case which would disqualify them. (*People v. Cash* (2002) 28 Cal.4th 703, 722.)

In order to demonstrate error by the trial court in declining to allow an appropriate death-qualification question, the defense must seek to ask the omitted question during general voir dire. (*People v. Vieira* (2005) 35 Cal.4th 264, 286.)

In order to demonstrate prejudice from a trial court's erroneous restriction of voir dire, the defendant must explain what additional inquiry was necessary for an intelligent exercise of peremptory challenges in light of the responses to questions the court did permit. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1158.)

§ 4.55.4 Erroneous Exclusion for Cause

Erroneously excluding a juror for cause based on his views on imposition of the death penalty requires the reversal of the death sentence, even where the prosecutor was wrongly forced to use peremptory challenges on properly excludable jurors, and even where the prosecutor had peremptories remaining. (*Gray v. Mississippi* (1987) 481 U.S. 648 [107 S.Ct. 2045, 95 L.Ed.2d 622]; *Davis v. Georgia* (1976) 429 U.S. 122, 123 [97 S.Ct. 399, 50 L.Ed.2d 339]; *People v. Covarrubias* (2016) 1 Cal.5th 838, 866; *People v. Zaragoza* (2016) 1 Cal.5th 21, 41; *People v. Leon* (2015) 61 Cal.4th 569, 724-725; *People v. Pearson* (2012) 53 Cal.4th 306, 333; *People v. Whalen* (2013) 56 Cal.4th 1, 26, disapproved on other grounds, *People v. Romero & Self* (2015) 62 Cal.4th 1, 44, fn. 17.) However, the erroneous exclusion of a juror for cause based on his death penalty views does not require reversal of the guilt judgment or special circumstances findings. (*People v. Pearson* (2012) 53 Cal.4th 306, 333; *People v. Clark* (2011) 52 Cal.4th 856, 895; *People v. Tate* (2010) 49 Cal.4th 635, 672.)

V. PEREMPTORY CHALLENGES [§ 4.60]

"Peremptory challenges are intended to promote a fair and impartial jury, but they are not a right of direct constitutional magnitude." (*People v. Webster* (1991) 54 Cal.3d 411, 438, citing *Ross v. Oklahoma* (1988) 487 U.S. 81, 88-89 [108 S.Ct. 2273, 101 L.Ed.2d 80, 90].)

There is a presumption that peremptory challenges are properly exercised. A challenger must rebut the presumption of constitutionality before the other party is required to state reasons for exercising peremptories. (*People v. Crittenden* (1994) 9 Cal.4th 83, 114; *People v. Clair* (1992) 2 Cal.4th 629, 652.)

The trial court's jury selection method of calling prospective jurors in groups of 18 and requiring the parties to exercise challenges for both cause and peremptory challenges before a new group was called did not violate the defendant's right of peremptory challenge. "[A]lthough knowledge of the composition of the entire panel can be relevant to the exercise of a peremptory challenge against an individual juror, the fact that a particular procedure used might have made exercising initial peremptory challenges less informed does not in itself require reversal." (*People v. Covarrubias* (2016) 1 Cal.5th 838, 867-868 [internal quotation marks and citations omitted].)

A. NUMBER OF PEREMPTORY CHALLENGES [§ 4.61]

In a retrial, the defendant was not entitled to greater number of peremptory challenges because, at time of his first trial, Code of Civil Procedure section 1070 provided for 26 peremptory challenges in a capital case, but subsequently enacted Code of Civil Procedure section 231(a) entitled him to 20 peremptory challenges in a capital case. Laws governing the conduct of trials are prospective in application when applied to a trial occurring after the effective date of the statute, regardless of when the underlying crime was committed. (*People v. Ledesma* (2006) 39 Cal.4th 641, 663-664.)

Code of Civil Procedure section 231, subdivision (a), does not entitle each defendant in a multi-defendant capital case to 20 individual peremptory challenges. (*People v. Lewis* (2008) 43 Cal.4th 415, 493, overruled on other grounds, *People v. Black* (2014) 58 Cal.4th 912, 919.) Likewise, under the former rules, Code of Civil Procedure sections 1070 and 1070.5, the 26 challenges allotted to the defense were to be exercised jointly, not individually. (*People v. Hardy* (1992) 2 Cal.4th 86, 129.)

The requirement of joint use of peremptory challenges in multi-defendant cases does not violate due process, equal protection, the right to an impartial jury, or the right to a reliable determination of penalty. (*People v. Pinholster* (1992) 1 Cal.4th 865, 911, overruled on other grounds, *People v. Williams* (2010) 49 Cal.4th 405, 459.)

"To establish a constitutional entitlement to additional peremptory challenges, defendant must at least show that he is likely to receive an unfair trial before a biased jury if the request is denied." (*People v. DePriest* (2007) 42 Cal.4th 1, 23; see also *People v. Ledesma* (2006) 39 Cal.4th 641, 665.)

The defendant was not deprived of a state-created liberty interest in 20 peremptory challenges (see Code of Civil Procedure, § 231) because he was required to use peremptory challenges to cure "error" in the court refusing to remove a prospective juror for cause. (*People v. Clark* (2011) 52 Cal.4th 856, 902, citing *People v. Weaver* (2001) 26 Cal.4th 876, 913, and *People v. Gordon* (1990) 50 Cal.3d 1223, 1248, fn. 4 [use of