



## SUPREME COURT OF CALIFORNIA

### ORAL ARGUMENT CALENDAR SPECIAL SESSION — SANTA BARBARA OCTOBER 3 & 4, 2006

The following synopses are provided for the cases placed upon the calendar of the Supreme Court for hearing at its Special Session in the Mural Room of the Santa Barbara Superior Court, 1100 Anacapa Street, Santa Barbara, California on October 3 and 4, 2006:

#### **TUESDAY, OCTOBER 3, 2006 — 9:00 A.M.**

##### *Opening Remarks: Historic Special Session*

#### 1. *In re Jaime P.* (S135263)

A minor currently on probation had agreed to allow a warrantless search of his person and property, including his car, at any time with or without probable cause. When a police officer who was unaware of this search condition and who was acting without reasonable cause stopped and searched a car driven by the minor, an illegal weapon was found. Is this evidence admissible against the minor in juvenile court proceedings?

Fairfield traffic officer Moody detained the minor, Jaime P., and three others, after Moody observed what he incorrectly thought were traffic violations that justified a stop. Upon questioning these persons, Moody noticed a box of ammunition in plain view on the car's floorboard. Because none of the car's occupants had a valid driver's license, the car was impounded. An inventory search of the car disclosed a loaded .44 caliber handgun beneath the rear passenger seat.

During the ensuing juvenile court proceedings, Jaime P. moved to suppress evidence of the gun, but the court denied the motion, relying on the consent-to-search probation condition. On appeal from the juvenile court's order continuing Jamie P. as a ward of the court, the Court of Appeal affirmed, relying on a California Supreme Court case, *Tyrell J.*, which allowed similar probation condition searches despite the searching officers' lack of knowledge of the condition. The court in *Tyrell J.* reasoned that juvenile probationers with consent-to-search conditions have no reasonable expectation of

privacy, and allowing such searches would discourage future misconduct and promote the special needs of the juvenile probation system.

Jaime P. petitioned the California Supreme Court for a writ of habeas corpus (one procedure for overturning a criminal conviction), claiming that *Tyrell J.* should be overruled as inconsistent with a more recent California Supreme Court case, *People v. Sanders*, which invalidated similar searches of adult parolees with search consent conditions unknown to the officers. *Sanders* reasoned in part that to allow officers to conduct unrestricted searches of adult parolees without knowing whether or not a search condition existed would legitimize unlawful police conduct. The Supreme Court will have to decide whether the rule in *Sanders* should apply to juvenile probationers such as Jaime P.

## 2. *City of Goleta v. Superior Court of Santa Barbara County* (S129125)

In this case a real estate developer, Oly Chadmar Sandpiper General Partnership (Sandpiper), challenges the City of Goleta's disapproval of a housing project that Sandpiper wants to build there. The City of Goleta was created out of land that had been in an unincorporated part of Santa Barbara County.

When Sandpiper originally started planning for the project, Goleta wasn't a city yet, so Sandpiper asked for approval from the County. After the County initially approved the project, Goleta became a city through an incorporation election. After Goleta was incorporated, it took the position that it had the authority to deny final approval of Sandpiper's project.

The Subdivision Map Act is a law that gives local agencies like cities and counties the power to control development within their boundaries. They exercise their power by reviewing *maps* of proposed subdivisions. First, an agency considers a *tentative* map. Later it usually has to approve a *final* map that substantially complies with the tentative map it has already approved and that meets the legal requirements that existed when the tentative map was approved.

The reason that agencies are usually required to approve these final maps is that builders have to spend large amounts of money at the beginning of a project for things like environmental studies and architect's plans. Potential investors want some assurance that projects will be allowed to go forward if they meet the conditions the agency sets when it gives the original tentative approval.

This case is complicated by the fact that after the County gave the tentative approval, the City of Goleta was incorporated and is now the agency that is being asked for final approval. The question here is whether Goleta is required to approve

Sandpiper's final map even though Goleta didn't give the tentative approval in the first place.

Sandpiper contends Goleta must approve its final map because, when Goleta became a city, it enacted local ordinances (laws) that give it no choice but to approve the map. Goleta argues that Sandpiper is wrong and that the ordinances Goleta passed require only that Goleta approve final maps when Goleta itself had approved the tentative map.

Sandpiper has another argument. It asserts that Goleta should be "estopped" or *barred* from refusing to approve the final map. Sandpiper claims this is a question of *equity* or *fairness*. It argues that Goleta did certain things during the process that led Sandpiper reasonably to believe that it would be given the final approval. Based on that belief, caused by Goleta's conduct, Sandpiper invested a significant amount of money in the project. Sandpiper argues that it would not have spent that money if it had believed that the project would not be approved. And so, Sandpiper argues, it would now be unfair for Goleta to refuse to approve the final map.

Goleta replies that its conduct did not mislead Sandpiper, and instead let Sandpiper know that Goleta had legitimate concerns about the project and might disapprove it.

### 3. *People v. Williams (Bob Russell)* (Automatic Appeal) (S056391)

The defendant in this case is appealing his death penalty conviction. Unlike most appeals, death penalty appeals go directly to the Supreme Court, bypassing the Court of Appeal. A death penalty trial is divided into a guilt phase and a penalty phase. The present case is unusual because defendant pleaded guilty to first degree murder with various "special circumstances." He therefore skipped the first phase of the death penalty trial and went directly into the penalty phase.

During the penalty phase, the jury must decide whether the defendant should be sentenced to life imprisonment without possibility of parole or to death. The jury arrives at that decision by weighing evidence of various aggravating and mitigating circumstances presented by the prosecutor and the defense attorney. The fact that defendant tortured his victim, or that he has a prior record of convictions for serious crimes, are examples of aggravating factors. The fact that a defendant was young when he committed the murder, or that he was abused as a child, or that he was under duress at the time he committed the murders, are examples of mitigating factors.

During the trial, the District Attorney of Kern County presented evidence of the details of the murder. Defendant admitted in earlier statements to a police detective to

burglarizing the home of Mary Breck, a wife, mother, and business owner. He also admitted raping and murdering her in her home, and to stealing her car and several other possessions. Defendant was 18 years old at the time. The prosecutor also put on evidence of other burglaries defendant had committed, and presented testimony of members of the victim's family regarding the impact her death had on them. Defense counsel put on evidence that the defendant had been abused by his stepmother and neglected by his natural parents, and that the murder was an impulsive reaction to his earlier abuse. The prosecution sought to counter with evidence and argument that the murder was calculated.

The defendant and his counsel in a death penalty appeal typically raise numerous issues, and this case is no exception, with over 20 issues presented. Defense counsel has indicated in a letter to the court that he will be focusing on one issue: jury misconduct.

The jury misconduct issue is based on the circumstance that one juror brought photocopies of biblical verses into the jury room and read them to other jurors while the jury was attempting to reach a verdict. Jurors are not supposed to use outside sources like the Bible, but are instead required by law to stay focused on the facts of the case and the law as explained by the trial judge. Because some parts of the Bible contain views about the death penalty that differ from California law, the reading of the Bible during jury deliberations could interfere with the jury playing its proper role. The Attorney General admits there was juror misconduct but argues it was not prejudicial. For the misconduct to be prejudicial, it must be serious enough to make the court doubt that the jury would have come to the same result without the misconduct. The death penalty judgment will not be reversed unless the misconduct is prejudicial. In determining prejudice, a court can look to what was said and done in the jury room, but not to testimony from jurors regarding their own mental processes.

#### **1:30 P.M.**

#### *4. Philadelphia Indemnity Insurance Co. v. Monte-Harris (S130717)*

Arizona resident Alric Burke rented a car in California from Budget Rent-A-Car. As part of the transaction, Burke presented what appeared to be a valid Arizona driver's license, but the license had in fact been suspended more than two months earlier. At the time he rented the car, Burke purchased an insurance policy issued by Philadelphia Indemnity Insurance Company that provided \$1 million in third-party liability coverage, which was in "excess" of (or over) the minimum limits required by California's Financial Responsibility Law (\$15,000 per person and \$30,000 per accident for bodily injury or death). This so-called "excess liability policy," however, excluded coverage for injury arising out of the use of a rental car obtained through fraud or misrepresentation. Four days later, Burke got in a car accident that injured several people.

In a federal lawsuit, the district court entered judgment declaring that Philadelphia Indemnity had no liability for damages arising out of Burke's accident because: (1) Burke made at least a negligent misrepresentation to Budget that he had a valid driver's license; and (2) the excess liability policy excluded coverage for rentals obtained through misrepresentation. To help resolve the federal appeal of that judgment, we granted the Ninth Circuit Court of Appeals' request that we address the following question of California law: Does the duty of an insurer to investigate the insurability of an insured, as recognized in the California Supreme Court decision of *Barrera v. State Farm Mut. Automobile Ins. Co.* (1969) 71 Cal.2d 659 (*Barrera*), apply to an automobile liability insurer that issues an excess liability policy in the context of a rental car transaction?

Normally, California law allows an insurer to rescind an insurance policy if the person purchasing the policy (the insured) made misrepresentations in obtaining the policy. When the insurer is allowed to rescind an insurance policy, that means the policy may be declared void and unenforceable — as if it never existed — and the insurer does not have to pay the benefits owed under the policy. *Barrera* was a case that recognized an exception to this law. The *Barrera* decision essentially held that, even if misrepresentations were made, important public policy reasons justify limiting the right to rescind in cases involving automobile liability insurers, who issue policies that pay benefits when automobile drivers get in accidents that injure other persons using the streets and highways. For example, California's enactment of the Financial Responsibility Law demonstrates the state has a strong public policy favoring the compensation of persons injured in automobile-related accidents. Because of this and other public policy considerations, an insurer who sells this type of insurance cannot rescind a policy unless it conducted a timely and reasonable investigation of the "insurability" of the insured. Here, the persons injured by Burke argue that Philadelphia Indemnity should not be allowed to avoid its obligations to pay insurance benefits under the excess liability policy it issued to Burke, because Philadelphia failed to undertake a timely and reasonable investigation (for example, through a DMV check) that would have led to the discovery of Burke's suspended driver's license.

In the present case there is a disagreement over whether, as in the *Barrera* case, the insurer should have an obligation to investigate insurability. Philadelphia Indemnity argues the *Barrera* rule should not apply in this case because unlike here, *Barrera* did not involve a rental car transaction or an accident that occurred only days after the policy's purchase. Moreover, the automobile liability policy in *Barrera* involved insurance benefits that fell within the minimum requirements of California's Financial Responsibility Law, while the policy here involves benefits that are in excess of that law's required amounts of \$15,000 per person and \$30,000 per accident. (Philadelphia claims the persons injured by Burke received the legally required monetary amounts from the company that rented the car to Burke.) Conversely, the persons injured by Burke argue the *Barrera* rule should apply because, as *Barrera* recognized, it would be unfair to allow insurers who did not investigate insurability to keep the money they received in

payment for such policies but to not compensate the people injured by the drivers they insure.

5. *People v. Trujillo (Manuel)* (S130080)

This case presents two issues: (1) May the prosecutor appeal if the trial court rules that a prior conviction is not a “Strike”? (2) May a trial court rely upon a defendant’s statement in a probation report to determine whether a prior conviction is a Strike?

A jury found Manuel Trujillo guilty of assault. The trial court then considered whether Trujillo had suffered two prior convictions for “serious” felonies under the “Three Strikes Law.” If both of Trujillo’s prior convictions were for “serious” felonies, his latest conviction would be his Third Strike and he would be sentenced to life in prison.

Trujillo admitted that one of his prior convictions was a Strike, but argued that his other prior conviction, for inflicting corporal injury on his live-in girlfriend, was not a Strike. (“Corporal injury” means bodily injury.) But a conviction for inflicting corporal injury is not always a Strike; it depends upon how the crime was committed. For instance, any felony is a Strike if the defendant used a deadly weapon. What the trial court had to decide, therefore, was whether Trujillo had used a deadly weapon when he injured his girlfriend.

When Trujillo was prosecuted for the prior conviction, the prosecutor had claimed that Trujillo had used a knife in inflicting corporal injury on his girlfriend, and also charged that Trujillo committed an assault with a deadly weapon. But the prosecutor and Trujillo reached a plea bargain; Trujillo pleaded guilty to inflicting corporal injury and the charges involving the knife were dismissed.

Before Trujillo was sentenced, he spoke to a probation officer and admitted that he had stabbed his girlfriend during an argument, stating: “I stuck her with the knife.” This statement is in Trujillo’s probation report.

The prosecutor in the present case tried to use Trujillo’s statement in the probation report to show that Trujillo’s prior conviction for inflicting corporal injury was a Strike because he had used a knife, but the trial court disagreed because the charges involving the knife had been dismissed under the plea bargain. The trial court concluded that Trujillo had accepted the plea bargain “with the understanding the knife allegation would not be used. It went away. The defendant relied on that.” The trial court found that the prior conviction was not a Strike and sentenced Trujillo to 7 years in prison.

The prosecutor filed an appeal in the Court of Appeal. The Court of Appeal disagreed with the trial court and concluded that Trujillo’s prior conviction for inflicting corporal injury was a Strike, because he had admitted to the probation officer that he had used a knife.

The California Supreme Court must first decide whether the prosecutor may appeal the trial court's ruling that the prior conviction is not a Strike. The *prosecutor* (contrasted with the defendant) usually may not file an appeal and may do so only if a statute specifically allows it. Allowing the prosecutor to appeal might force a defendant to face two trials, which could violate the rule against double jeopardy. Here, the prosecutor relies upon a statute (Penal Code section 1238) that allows an appeal from an order "setting aside" or "terminating" part of the case, or from an "unlawful sentence." The prosecutor argues that Trujillo's prior conviction was set aside or terminated, and argues that Trujillo's sentence of 7 years was unlawful because Trujillo should have been sentenced to life in prison. Trujillo answers that his prior conviction was not "set aside" or "terminated"; the trial court simply found that his prior conviction was not a Strike. Trujillo also argues that his sentence was not "unlawful"; the trial judge ruled that his prior conviction was not a Strike and imposed the proper sentence.

If the Supreme Court decides that the prosecutor may appeal, then it also must decide whether the trial court should have considered Trujillo's statement in the probation report in deciding whether Trujillo's prior conviction was a Strike. In deciding whether the prior conviction was a Strike, the trial court was allowed to "look to the entire record of the conviction." The prosecutor argues that the trial court should have looked at the probation report, which included Trujillo's statement that he stabbed his girlfriend, because the probation report was part of the record of the conviction. Trujillo argues that the trial court reasonably found that the prior conviction was not a Strike, and that the Supreme Court should respect the trial court's conclusion.

### **WEDNESDAY, OCTOBER 4, 2006 — 9:00 A.M.**

#### *6. Agua Caliente Band of Cahuilla Indians v. Superior Court of Sacramento County (Fair Political Practices Commission Real Party in Interest) (S123832)*

This case addresses the question whether the Fair Political Practices Commission (FPPC) may file a lawsuit in superior court against the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian Tribe, based on the Tribe's alleged failure to comply with the reporting requirements for campaign contributions under California's Political Reform Act (PRA).

The PRA is an initiative measure that regulates numerous aspects of the election process on the state and local level. In addressing this novel issue the court must determine whether the Indian Tribe is immune from lawsuit under the long standing principle of Indian Sovereign Immunity.

Generally, as a matter of federal law, a tribe is subject to lawsuit in the United States when Congress has authorized the suit or the tribe has waived its immunity. The state, however, has the power to regulate its political campaign contributions under the

PRA and to protect its election process. May the state sue the Tribe to enforce those regulations without a waiver of the Tribe's sovereign immunity? Although the Tribe agrees that the state does have the power to regulate political campaigns or create campaign contribution disclosure rules within its borders, the Tribe asserts that the state has been divested of the power to sue a federally recognized Indian tribe because the United States Supreme Court has declared sovereign tribal immunity a matter of federal law. (*Kiowa Tribe of Oklahoma v. Manufacturing Tech.* (1988) 523 U.S. 751, 754-755.) The Tribe contends that although Congress has, in limited circumstances, authorized classes of suits against Indian tribes, when Congress has not done so, the tribes' historical immunity from suit remains.

By contrast, the FPPC asserts that the doctrine of tribal sovereign immunity is a federal doctrine that does not give the Tribe the power to interfere with state sovereign power over state elections. The FPPC relies on the Tenth Amendment and article IV, section 4 of the United States Constitution (the Guarantee Clause), to give the FPPC the authority to enforce the PRA against the Tribe, including bringing suit against it.

#### 7. *Fair v. Bakhtiari (Stonesfair Financial Corp. et al.)* (S129220)

Sometimes people involved in a lawsuit try to resolve their dispute by meeting with a mediator before going to court. Mediation is an informal process that depends on the parties' willingness to "put all their cards on the table" to see if they can reach a compromise. Of course, the parties would not want to do that if they thought that what they said in mediation might be used against them later in court, if the mediation is not successful. And so, the Legislature passed a law making confidential everything that is said or written down for purposes of mediation. If the parties do reach a compromise, however, it may be necessary for their settlement agreement to be brought to court in order to enforce it. Therefore, the law makes exceptions to the rule of confidentiality so that settlement agreements can be "admissible," meaning they can be disclosed in court.

This case involves a business dispute. After two days of mediation the parties and the mediator signed a one-page handwritten memorandum briefly outlining the terms of a settlement. One of these terms said that "any and all disputes" would be subject to arbitration. (Arbitration is another way to resolve a case outside of court, but it is more formal than mediation and the arbitrator makes a decision that the parties have to accept.) At first, the parties told the court they had settled the case. But then disagreements arose, the defendants refused to go through with the settlement, and the plaintiff asked the trial court to send the case to arbitration. That court refused, deciding the settlement memorandum was confidential and therefore could not be enforced.

The Court of Appeal disagreed. It concluded the agreement was not confidential because Evidence Code section 1123(b) makes a signed written settlement agreement admissible if it "provides that it is enforceable or binding or words to that effect." The

Court of Appeal reasoned that because arbitration is a way of enforcing a settlement, the agreement in this case included words “to the effect” that it was “enforceable.” The Supreme Court will decide whether an arbitration clause qualifies as “words to that effect” under section 1123(b).

8. *In re Burton (Andre) on Habeas Corpus (S034725)*

Andre Burton was convicted and sentenced to death for the murder of Gulshakar Khwaja. The evidence at trial showed that Burton and a confederate, Otis Clements, trailed Anwar Khwaja (Gulshakar’s son) as he emerged from a Bank of America branch carrying a money bag and followed Anwar until he parked in front of his mother’s house. Burton approached Anwar’s car and demanded the bag. Anwar told Burton to take it but Burton shot him anyway, in the forehead and through the eye, and then took the money. When Gulshakar came out of the house and approached the car to help her son, Burton shot her, fatally, in the chest.

Burton was identified as the shooter by Anwar Khwaja, who survived the shooting and testified at trial, and by a neighbor, who saw Burton running down the street and carrying a gun and a white canvas bag. During a police interview, Burton confessed to these crimes as well as to robbing two women at gunpoint a short time before the murder. One of the robbery victims also identified Burton. During a second police interview, however, Burton denied any knowledge of or involvement in these offenses.

A capital trial in California is divided into two parts. During the *guilt phase*, the factfinder (usually a jury) decides whether the defendant has committed the charged crimes. If the jury finds the defendant has committed a capital crime, the case proceeds to a *penalty phase*. During the penalty phase, the jury decides whether a defendant should be sentenced to life in prison without the possibility of parole or sentenced to death. Based on the strength of the evidence against Burton, Burton’s trial attorney, Ronald Slick, decided not to offer a defense during the guilt phase and instead to concentrate his efforts on saving Burton’s life at the penalty phase.

After Burton’s conviction was affirmed on appeal by the Supreme Court of California, Burton petitioned the court for a writ of habeas corpus (one procedure for overturning a criminal conviction), claiming that Slick overrode his clearly expressed desire to present a defense at the guilt phase, a right first recognized by the court in *People v. Frierson* (1985) 39 Cal.3d 803. The Supreme Court asked a lower court judge (a “referee”) to hear witnesses and answer a number of questions relating to whether Attorney Slick had overridden Burton’s clearly expressed desire to present a guilt phase defense and whether, even if Burton had clearly expressed such a desire, there was credible evidence to support a guilt phase defense. After a hearing, the referee found that Slick had discussed his intended trial strategy with Burton, that Burton did not object to this strategy (and, in particular, did not clearly express a desire to present a defense), and that the defense Burton claims he wanted was not supported by credible evidence.

The Supreme Court will decide whether Slick overrode Burton's clearly expressed desire to present a guilt phase defense and, if so, whether such a defense was supported by credible evidence. The court ordinarily gives great weight to a referee's findings but does not have to accept them. The court's decision will determine whether Burton's conviction and death sentence should be overturned. If reversed, the case could be retried if the prosecutor's office so chooses.