



## **SUPREME COURT OF CALIFORNIA**

### **ORAL ARGUMENT CALENDAR SPECIAL SESSION — RIVERSIDE COUNTY OCTOBER 7 & 8, 2008**

The following synopses are provided for the cases placed upon the calendar of the Supreme Court for hearing at its Special Session at the Indian Wells Theater, located on the Palm Desert Campus of California State University, San Bernardino, 37500 Cook Street, Palm Desert, California, 92211, October 7 and 8, 2008. (*Each synopsis is provided to inform the public and the media of the general subject matter of the case. The descriptions do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.*)

#### **TUESDAY, OCTOBER 7, 2008 — 9:00 A.M.**

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

##### **1. *People v. Hernandez (George)* (S150038)**

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. These principles govern temporary detentions for investigation, such as ordinary traffic stops. A driver may be stopped if a police officer can point to specific facts providing an objective reason to believe that the driver is involved in criminal activity.

The suspected criminal activity in this case was driving a vehicle without valid license plates or a temporary operating permit. An officer saw Mr. Hernandez driving a truck without license plates. The officer also noticed a temporary permit in the truck's rear window. Nothing about the temporary permit suggested it was invalid and the officer observed no other traffic violation. Nevertheless, the officer stopped Mr. Hernandez. The reason the officer gave for doing so was that, in his experience, "apparently valid" temporary permits very often are in fact forged, have been issued for a different vehicle, or the vehicle itself has been stolen. Mr. Hernandez resisted arrest and was convicted of obstructing an officer in the performance of his duties, being under the influence of methamphetamine, and driving under the influence of drugs.

The question is whether the convictions should be reversed on the basis that the officer did not have sufficient particularized suspicion to justify the traffic stop.

2. *In re Raymond C.* (S149728)

This is a companion case presenting the same basic question as *People v. Hernandez*: whether the officer acted with sufficient particularized suspicion to justify a traffic stop.

The parties disagree as to whether the factual differences between this case and *People v. Hernandez* are legally significant. In *Hernandez*, the officer saw an apparently valid temporary permit in the rear window of Mr. Hernandez's truck, but disregarded it. In this case, minor Raymond C.'s car had neither license plates *nor* a temporary permit in the rear window. It did have a temporary permit in the front window, which is another place where a temporary permit may be legally displayed. From his position behind Raymond's car, however, the officer did not notice the permit in the front window before he made the traffic stop.

Raymond C. contends his conviction for driving under the influence of alcohol should be reversed because the officer stopped him without particularized suspicion — that is, without taking the measures necessary to determine whether his car had a temporary operating permit in one of the other places it might be validly displayed, other than the rear window.

**1:30 P.M.**

3. *Van Horn v. Watson (Torti, Respondent) (consolidated cases)* (S152360)

On Halloween night in 2004, plaintiff Alexandra Van Horn, defendant Lisa Torti, and some other friends were relaxing at Torti's home, where both Van Horn and Torti smoked some marijuana. The friends went to a bar at 10:00 p.m., where they consumed several drinks before leaving at 1:30 in the morning. On the way home, Van Horn and Torti were passengers in two different cars. The driver of the car carrying Van Horn lost control and crashed into a curb and light pole at about 45 miles per hour, causing the vehicle's front air bags to deploy. The car carrying Torti pulled over and the occupants got out to help.

Torti removed Van Horn from the car. There is a dispute about how she did so. Torti testified that she placed one arm under Van Horn's legs and the other behind Van Horn's back and lifted her out of the vehicle. Torti also testified that she believed the car might catch fire or "blow up." In contrast, Van Horn testified that Torti pulled her from the vehicle by grabbing her arm and yanking her out "like a rag doll." Other witnesses testified that there was no smoke or any other indication that the car might explode.

Emergency personnel arrived moments later. Plaintiff suffered various injuries, including injury to her vertebrae, and was permanently paralyzed.

Van Horn sued Torti, alleging that she had not been in need of assistance from Torti after the accident and that she sustained injury to her vertebrae only after Torti negligently dragged her out of the vehicle, causing permanent damage to her spinal cord and rendering her a paraplegic. Torti argued that she was immune from suit under Health and Safety Code section 1799.102, which provides “No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission.” The trial court ruled for Torti. The Court of Appeal disagreed, concluding that section 1799.102 applies only to the provision of medical care and that Torti had provided *non*-medical care.

The outcome of the case turns on the meaning of “emergency care” in section 1799.102. Van Horn argues that the Legislature intended to immunize only those persons who render emergency *medical* care at the scene of a *medical* emergency. Torti, on the other hand, argues that the phrase should be interpreted broadly to include both medical *and* non-medical care. The parties discuss the meaning of the statute’s language, the way the same or similar words are defined in other statutes, and the legislative history leading to the enactment of the statute and subsequent amendments.

#### 4. *People v. Mentch (Roger)* (S148204)

Roger Mentch was arrested for growing and possessing marijuana in his home. He was tried by a jury and convicted. Mentch claims that he should have been allowed to argue to the jury that he was growing marijuana only so he could provide it, as a “primary caregiver,” to other medical marijuana patients under the state’s Compassionate Use Act. The Supreme Court must decide who may qualify as a “primary caregiver” under the Act.

The Compassionate Use Act is a law that the state’s voters passed to allow Californians to use marijuana for medical purposes (under certain conditions) without fear of state criminal prosecution. The law applies to both individuals who use marijuana for medical purposes and to their designated “primary caregivers,” and it allows primary caregivers to grow and provide those individuals with marijuana. The law defines a primary caregiver in general terms as someone who consistently assumes responsibility for another’s housing, health, or safety. The Supreme Court must decide what that means in the present context.

The prosecution argues that a primary caregiver is someone who consistently assumes responsibility for a patient’s housing, health, or safety *separate and apart* from anything the caregiver does in connection with medical marijuana. The trial court agreed with the prosecution.

Mentch argues that a primary caregiver also includes someone who consistently assumes responsibility for a patient's health by providing medical marijuana upon a doctor's recommendation or approval, as well as counseling about medical marijuana use. He argues that he should have been allowed to show he was growing marijuana for five other medical marijuana patients, and was their primary caregiver because he counseled them concerning growing and using medical marijuana and because he took some of them to medical appointments. He argues the trial court was wrong to prevent him from presenting this defense. The Court of Appeal agreed with Mentch.

The Supreme Court will decide which of these interpretations of the Compassionate Use Act is correct.

5. *People v. Doolin (Keith Zon) [Automatic Appeal]* (S054489)

A jury found defendant murdered prostitutes Inez Espinoza and Peggy Tucker and attempted to murder four other prostitutes between November 1994 and September 1995 in Fresno. Each surviving victim identified defendant as her assailant. One murder victim's boyfriend testified that he saw the victim get into a car that was driven away. Sometime later, the boyfriend saw defendant driving the same car, alone. Ballistics tests, tire treads, incriminating statements and other evidence also linked defendant to the crimes. The jury set defendant's penalty at death. His appeal directly to the Supreme Court is "automatic" — hence the characterization, "automatic appeal." (In all other cases, appeals go from the trial court to the Court of Appeal — and then they continue to the Supreme Court only if that court decides the case is important enough to merit review.) Among the many issues defendant raises, the following are likely to be discussed at oral argument.

a. A criminal defendant has a constitutional right to competent counsel who is free from any "conflict of interest" that divides the lawyer's loyalty to his client. In this case, defendant was indigent and his appointed lawyer was paid according to a contract with the trial court. Under the contract, counsel was paid a flat amount to cover his fee and the cost of hiring investigators and experts to help the defense. Payments were made in installments. After trial, any unspent part of the contract amount was paid to counsel. Defendant argues that this agreement gave his lawyer a financial incentive to not fully investigate and prepare his case and that his lawyer, in fact, failed to fully investigate and prepare his case. As a result, defendant claims, his lawyer was working under a conflict that divided his loyalty between the lawyer's interests and those of the defendant. The Attorney General argues that the contract amount was based on counsel's initial estimate of what expenses would be necessary, but, as the preparations progressed, it became obvious that not all the expenditures would be required. He urges that, just as with other professional services, most fee agreements contain at least the potential for conflicting interests, but that courts can and should rely on an attorney's obligation to act ethically.

The Attorney General also argues that defendant has failed to show that his lawyer's performance was in any way effected by the fee arrangement.

b. In a death penalty case a judge has discretion to appoint a second attorney for an indigent defendant, so long as the defendant shows that a second lawyer is needed. Approximately one month before trial, defendant asked for a second lawyer but the court refused his request. Defendant now claims the court erred because his was a complicated death penalty case involving scientific evidence with numerous crime scenes and witnesses. The Attorney General asserts the trial court acted within its discretion because defendant made no showing that an extra lawyer was necessary — and in any event, evidence of guilt was overwhelming, and hence the verdict would not have been different even if a second attorney had been appointed.

c. Even though an indigent defendant has the right to appointed counsel, the defendant may also choose to represent himself at trial or at the sentencing hearing. On the day set for sentencing, defendant asked the court to appoint a different lawyer and to postpone his sentencing for two weeks. The court refused that request. Defendant then asked to represent himself and to have the court appoint an “assistant” to draft motions for him. The court denied his requests, in part, because they were made very late in the proceedings. Defendant argues that his request was late because his lawyer was deficient and he needed more time to challenge his sentence. The Attorney General argues that the requests were properly denied because defendant was simply trying to delay his sentencing when he asked for a different lawyer or to represent himself.

**WEDNESDAY, OCTOBER 8, 2008 — 9:00 A.M.**

6. *Episcopal Church Cases* (S155094)

The Supreme Court must decide this question: When a local church that had been a member of a national religious body leaves the national church (the technical term is to “disaffiliate” from the church), who owns the local church building and the property on which it sits — the local church or the national church?

The St. James Parish in Newport Beach had been a member of the Protestant Episcopal Church in the United States of America within the Los Angeles Diocese. But it has recently disaffiliated from the national church due to a dispute over church doctrine. The Episcopal Church ordained an openly gay man as a bishop in New Hampshire in 2003. The majority of the members of St. James Parish disagreed with that action and, as a result, voted to disaffiliate from the national church and join the Anglican Church of Uganda. In this litigation, both St. James Parish and the national Episcopal Church (supported by the Los Angeles Diocese) claim to own the church property in Newport Beach.

St. James Parish claims ownership because the deeds to the property are in its name and the property was always locally owned and managed. The national Episcopal Church argues that St. James Parish has always promised to remain a part of the national church and to abide by the national church's rules. Those rules provide that the local church owns church property only so long as it remains a member of the national church, and if it leaves the church, the property reverts to the national church. The trial court ruled in favor of the local church; the Court of Appeal ruled in favor of the national church. The dispute has now arrived at the Supreme Court.

More generally, the court must decide how the civil courts of this state should approach the resolution of church property disputes like this one without getting entangled with religion or violating the freedom of religion that the First Amendment to the United States Constitution guarantees. In this regard, two United States Supreme Court decisions are particularly important and will probably be mentioned at oral argument: (1) *Watson v. Jones*, decided in 1871; and (2) *Jones v. Wolf*, decided in 1979. *Watson v. Jones* said that when it comes to questions of church *doctrine*, courts must accept as binding the decision of the highest "church authority" that ruled on the question. *Jones v. Wolf* permits, but does not require, state courts to use "neutral principles of law" when deciding church *property disputes*. In other words, courts may use the same principles of law they use to resolve property disputes in general. The intermediate Courts of Appeal in California have generally been using the neutral principles of law approach, but the California Supreme Court has not yet decided the point — and might do so in this case.

#### 7. *People v. Olguin (Alejandro)* (\$149303)

Defendant pleaded guilty to two counts of driving under the influence of alcohol, and admitted allegations that he had suffered prior drunk driving-related convictions. He was sentenced to more than three years in state prison. Pursuant to a plea agreement, the prison sentence was suspended and defendant was placed on three years of supervised probation under conditions that, among other things, he keep his probation officer "informed of place of [his] residence, cohabitants and *pets*, and give written notice to the probation officer twenty-four (24) hours prior to any changes." In this proceeding, defendant challenges only the "pet-notification" condition.

When granting probation to a defendant, a trial judge has authority to impose any reasonable condition that is designed to accomplish justice and rehabilitate the probationer. When the Court of Appeal or the Supreme Court reviews the validity of probation conditions, it does so under an "abuse of discretion" standard — meaning, in essence, that the reviewing court will not find that the trial court erred unless there is no legal basis for the trial court's decision. Under this deferential standard, a reviewing court generally will *uphold* a probation condition unless the condition (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct that

is not in itself criminal, *and* (3) requires or forbids conduct that is not reasonably related to future criminality. All three parts of this test must be satisfied before a reviewing court will invalidate a probation term.

All parties agree that the pet-notification condition has no relationship to driving under the influence of alcohol, and of course pet ownership is not itself criminal. Defendant contends, however, that the pet notification condition is not reasonably related to future criminality, that it improperly limits his ability to keep a pet, and that the condition is overbroad.

The trial court denied defendant's request to eliminate the pet-notification condition. The Court of Appeal, with three justices hearing the case, affirmed that determination in a split decision. The Court of Appeal majority (two justices) held that the condition is reasonably related to deterring future criminality because it provides information that is useful for effective probation supervision. For example, a pet might threaten a probation officer's safety during a probation visit, distract an officer attempting to conduct a probation search, or prevent the officer from entering a probationer's residence in the first place. One Court of Appeal justice disagreed, concluding that the pet-notification condition should be limited to dogs and/or pets that pose a risk of injury to individuals entering the premises.

In addressing this dispute, the Supreme Court will resolve conflicts that have arisen concerning the same issue in other Court of Appeal cases.

#### 8. *Club Members for an Honest Election v. Sierra Club* (S143087)

The Sierra Club is the nation's largest environmental organization and is governed by a board of directors. Club Members for an Honest Election (CMHE) sued the Club, generally challenging the results of the Club's board of directors election.

In 2003, the Club's board of directors was divided between a majority supporting the leadership of its executive director and a minority faction seeking changes in the Club's direction.

The board held a special meeting to consider issues related to the upcoming election and took two actions that led to this litigation. The board approved a request to circulate in chapter newsletters an article asserting that, because of traditionally low member participation in its elections, the Club was vulnerable to take-over efforts by people with agendas differing from a majority of the Club's membership. The board also approved that an "urgent election notice" be attached to the front of election materials. The notice warned of outsiders trying to influence the election.

When the election was over, CMHE argued that the board acted improperly at its special meeting. It sought various forms of relief, including replacing certain board members with directors that CMHE favored.

The Club responded by filing a “special motion to strike” (also known as an “anti-SLAPP motion”). Special motions to strike are used *by defendants* early in a lawsuit to dismiss actions that generally are filed to stifle a defendant’s First Amendment free speech rights. Ruling that voting by the board was a protected activity under the First Amendment, the trial court partially granted the Club’s special motion to strike and ordered CMHE to pay the Club attorneys’ fees and costs.

Both parties appealed. The legal issue in this case concerns attorneys’ fees and costs. When a lawsuit is dismissed because of an anti-SLAPP motion, the party that sued can be ordered to pay the other side’s attorneys’ fees and costs. CMHE argues that the motion should not have been granted and they should not have to pay the Club’s attorneys’ fees and costs.