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From: Dana Filkowski
Sent: Tuesday, January 12, 2021 3:56 PM
To: Kyle Baker
Subject: Law Changes impacting HT Ops - PC 745 (Racial Justice Act)
Attachments: HANDOUTS-AB-2542-PPT-SLIDES-CDAA-COLOR.pdf

Hey Kyle –

As you prepare to teach your next CNOA HT class, you may want to take a look at the new Racial Justice Act that goes into effect in 2021. Also good to make sure your Team is aware as you plan enforcement operations and provide expert opinions/testimony.

The Racial Justice Act creates PC 745 and expands habeas corpus relief.

It is intended to regulate the language and conduct of judges, attorneys, law enforcement officers, experts and jurors to prevent implicit bias as well as intentional discrimination in the charging, convicting and sentencing of a criminal case. It also applies to the use of racially charged or coded language throughout the entirety of a criminal case, including language that refers to animals or animal attributes. CDAA training highlighted examples particular to gang and HT cases, including terms such as gorilla pimp, bottom bitch, coyote, snake, brut, predator. The language could be actionable if used during an investigation, in police reports and search warrants and in testimony. Body cam evidence will certainly face particular scrutiny. I've attached CDAA's training slides for reference – see #34 & 35 in particular for practical tips.

PC 745 states that the state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity or national origin (AKA "RENO"). A violation is established if defendant proves to a preponderance of the evidence any of the following:

1. A judge, attorney, law enforcement officer, expert or juror exhibited bias or animus towards defendant because of RENO.
2. Any of the above used racially discriminatory language about defendant's RENO or otherwise exhibited bias or animus towards defendant because of defendant's RENO whether or not purposeful (i.e. implicit bias vs. explicit bias). Exception here is describing language used by another that is relevant to the case or giving a racially neutral and unbiased physical description of the suspect.
3. Defendant was charged or convicted of a more serious offense than others similarly situated and prosecution in this county more frequently seeks or obtains convictions for more serious offenses against people who share defendant's RENO.
4. Defendant got a longer or more severe sentence than other similarly situated individuals convicted of the same offense and longer/more severe sentences are frequently imposed for that offense on people that share defendant's RENO in this county.
5. Defendant got a longer/more severe sentence than other similarly situated individuals convicted of the same offense in cases with victims of one RENO than in cases with victims of other RENO.

The defense can file a discovery motion to build a case for a PC 745 violation. Like all discovery motions, the prosecutor is required to provide information in possession of the Prosecution Team which would extend to the investigating agencies that helped put the case together against the defendant. The court will grant the discovery motion on a showing of "good cause." If our office gets one of these, the procedure is to inform Chief Assistant Deputy Venus Johnson as there is a Committee working on this issue.

The defense can file a motion for relief in the trial court, or file a petition for writ of habeas corpus if the case is post-conviction. If the motion is supported by evidence showing a substantial likelihood of PC 745(a) violation, a hearing is required. At the hearing, the defense can present statistics and / or expert testimony and the prosecution has the opportunity to present witnesses/evidence to rebut. If a violation is found, remedies are applied to the particular case. If the violation occurs during trial, remedies could range from re-seating a juror to granting a mis-trial. If the violation occurs during the prosecution itself, the remedy could range from dismissing charges or enhancements, reducing charges, vacating a conviction/sentence; striking enhancements or re-sentencing.

I'd be interested to know if PPD has a policy or training for this!

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