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From: Dana Filkowski
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To: Alexis Bartley
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Attachments: Calhoun_text messages and HT V statements of coconspirator.rtf; Moses.PDF; People v Guyton.pdf; People v Oliver.pdf

Det. Bartley – thanks for the call this morning on several of your developing cases.

As promised – I am sending you some of the recent case law that impacts how the courts will view PC 236.1(b) and 236.1(c) cases. Guyton you're familiar with as it identifies factors that the court will consider under the totality of circumstances in finding a violation of personal liberty. Oliver follows Guyton and extends it much further – explaining that consent is not an element or affirmative defense, even if the victim is an adult. Further, Oliver also explains that the force, fraud, fear, etc. list of liberty deprivation factors is inclusive, rather than exclusive. In other words, its more of a "including but not limited to" type of list and other factors can also suffice. Moses is the new CA Supreme Court case finding that we have a completed 236.1(c) even if the person that the suspect was encouraging to engage in commercial sex was an adult under cover police officer – so long as the evidence shows that the suspect had the specific intent to encourage a minor to engage in commercial sex. There is great language there to explain why these UC Ops are so important and counters the typical defense argument trivializing these cases because there's "no real victim." You're also familiar with Calhoun but it has great strategic guidance for ensuring that your digital evidence can be admitted at trial.

Finally - you may want to take a look at the new Racial Justice Act that just went into effect 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 RPD has a policy or training for this!

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