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August 25 ◆ 31, 2023

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August 25 ◆ 31, 2023

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P v. Castaneda-Prado (1st Dist., Div. 4, August 30, 2023, A164897, Sonoma) Evidence that a child victim believed that accusing the defendant of molestation would help her mother obtain a U visa was improperly excluded. This exclusion violated the right of confrontation and in this case, a two-victim molestation case, the exclusion was not harmless. The opinion discusses the difference between a limitation on an impeachment confrontation, generally evaluated for abuse of discretion, and a denial of the opportunity for cross-examination, and decides this issue should be evaluated de novo, with any error evaluated for harmlessness under *Chapman*. The trial court excluded the evidence under Evidence Code section 352. But impeachment is relevant, the defendant had little other impeachment evidence, and the convictions turned almost entirely on the credibility of Does 1 and 2. There was no physical evidence of the alleged sexual offenses, and investigators in this case had no ability to seek to obtain physical corroboration of the historical disclosure[s] by the two victims. The absence of proof of any application for a U visa, was not a prerequisite for admissibility, given that the victim testified at the preliminary hearing that she thought that testifying would help her mother get a U visa. The opinion distinguishes *People v. Villa* (2020) 55 Cal.App.5th 1042 on the grounds that case had extensive corroboration, an inquiry would have devolved into that victim's understanding of U visas since she initially did not know about them, and the victim in *Villa*'s testimony was consistent while the victim's testimony here grew more detailed and incriminating over time. The opinion concludes there wasn't a risk of substantial prejudice to mentioning the U visa program since it wasn't the victim who was undocumented but her mother.

P v. Njoku (3rd Dist., August 31, 2023, C093672, Sacramento) (1) The standard of review of the denial of a petition under Penal Code section 1172.6 is substantial evidence, even when the trial court's inquiry was limited to a cold record. (2) The prosecution is not required to rely on live testimony to meet its burden at a section 1172.6 evidentiary hearing.

P v. Doron (4th Dist., Div. 1, August 31, 2023, D079799, San Diego) The amendment of Penal Code section 1001.36 operative January 1, 2023, by Senate Bill 1223, applies retroactively to nonfinal cases. The amendment changed the eligibility criteria to broaden the availability of mental health diversion. Remand is required so the trial court may reconsider diversion under the new standard.

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