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SUMMARIES OF CCP SECTION 231.7 OPINIONS
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***People v. Jaime*, 91 Cal. App. 5th 941 (Cal. Ct. App., Third Dist., 2023)**

Key Takeaway: There is no forfeiture for failure to object under 231.7 where the objection would have been futile.

Facts: The case was tried after the effective date of 231.7. During jury selection, Juror L. disclosed in chambers that her cousin had been convicted of murder "in this court" and that the current district attorney came to her class when she was a child and brought up her cousin's murder case before it had gone to trial. Juror L had also spoken with a lawyer about the district attorney's conduct. Over defense objection, the prosecutor struck her. The defendant asked to make a record under *Batson/Wheeler* and argued that juror was a member of a protected class because of her surname and the juror said she could be fair notwithstanding her personal experience. The prosecution argued that there was no prima facie showing. The court denied the *Batson/Wheeler* objection. The next day, after the jury had been impaneled, the prosecution asked to make a further record. He said that (1) he had since read 231.7, which requires a statement of reasons when a party makes a strike; (2) he had given reasons yesterday; and (3) his strike was based on the juror's highly sensitive experience that bothered her. The trial court again denied the defense objection for failure to make a prima facie case and based on "everything" the court heard and saw.

Holding: Reversed. CCP 231.7 (e)(1) and (3) apply. The peremptory challenge was presumptively invalid because it was based on the juror's negative experience with law enforcement and her close relationship with someone who had been convicted of crime, and the prosecution did not overcome the presumption. Ordinarily, the objection would have been forfeited because it was not based on 231.7. Here, an objection under 231.7 would have been futile because (1) the prosecution knew 231.7 applied and his original reason was given under *Batson/Wheeler*, but he did not revise his reason to address the new standard and (2) the trial court erroneously applied the *Batson/Wheeler* framework. The prosecution's argument that its initial

[1] Not for distribution without permission of the author. To date, all 231.7 opinions have been in non-capital cases.

reasons overcame the presumption fail because a party cannot use presumptively invalid reasons (the juror's negative experience/close relationship) to overcome the presumption.

***People v. Ortiz*, 96 Cal. App. 5th 768 (Cal. Ct. App., Sixth Dist., 2023)**

Key Takeaway: The decision (1) allows a prosecutor to parrot demeanor-based reasons offered by the trial court, which disregards (d)(1)'s prohibition on judicial speculation; (2) allows the trial court to supply the explanation under (g)(2) for why the observed demeanor matters; and (3) holds that "any" explanation satisfies (g)(2).

Facts: Over defense objection under 231.7, the prosecutor struck Juror S.H., a Black man and the only Black prospective juror. The prosecutor's initial reasons were that the juror: (1) left some answers on the questionnaire blank, indicating that he was unable to answer basic questions and was easily confused, and (2) was soft-spoken and timid. In response, the judge, although acknowledging S.H. was wearing double mask, noted S.H.'s failure to answer some questions on the questionnaire, his confusion about questions the court asked, his difficulty being heard, the fact that his answers were not straightforward, and the likelihood he would consider the consequences in deciding guilt. The judge said that although he wished he could have a diverse jury, the strike would have been justified even if the juror had been White. The defense argued that a demeanor-based reason is presumptively invalid under (g)(1), requiring confirmation by the court and, under (g)(2), an explanation by the prosecutor as why the juror's demeanor matters. The court confirmed the juror's demeanor but told the prosecutor she needed to explain why the juror's "evasiveness" (a reason the prosecutor did not give) matters. The prosecutor repeated that the juror failed to complete the questionnaire. The court interrupted, asking if the juror's "evasiveness: suggested the juror "might be hiding something." The prosecutor answered "yes," and for the first time, said that the juror "had evasive questioning" and might consider punishment. The court overruled the objection.

Holding: Affirmed. (1) "[R]egardless that the party did not articulate the reason when initially stating its reasons upon the objection and the trial court first suggested the reason," the prosecutor gave the "evasiveness" and might-consider-punishment reasons before the trial court ruled on the objection. This satisfied (c)'s requirement that each was the prosecutor's "actual reason," i.e., it does not matter that both reasons were supplied by the trial judge. The court acknowledged that "shifting explanations" may suggest bias, citing *Miller-El v. Dretke*, 545 U.S. 231 (2005) and *People v. Arellano*, 245 Cal. App. 4th 1139 (Cal. Ct. App. 2016), but found a factual basis for both reasons in the record. The court suggested that the better approach would be to require the striking party to state all their reasons at

the outset. (2) The prosecutor's offer of *any* explanation as to why the juror's demeanor matters satisfies (g)(2) and (j)'s substantial-evidence requirement on appeal without the need for the trial court to determine that the explanation is satisfactory. Subdivision (f)'s clear-and-convincing standard applies only to reasons that are presumptively invalid under (e). (3) Once the presumption of invalidity is overcome, the demeanor-based reasons are considered under (d)(1) as part of the totality of circumstances. "The two reasons that the prosecutor gave after the trial court suggested them are grounded in the record and do not evince a lack of genuineness or unlawful bias," and her other reasons are supported by the record. (4) Under (j), there is substantial evidence in the record to support the prosecutor's reasons, including "evasiveness" and the risk the juror would consider the consequences of a conviction

Note: California Supreme Court declined to depublish the opinion or grant review.

***People v. Martin*, 2023 WL 7145420 (Cal. Ct. App., Fifth Dist., Oct. 31, 2023) (unpublished)**

Key takeaway: The presumption of invalidity under (g) is not overcome unless the trial court confirms that it observed the demeanor. As a separate matter, where the prosecution relies on a juror's relationship with someone who has been arrested—e)(3)—the reason is presumptively invalid, even if the trial judge fails to treat it as such, and the presumption must be overcome by clear and convincing evidence under (f). Even if not presumptively invalid, the reason may be insufficient under (d)(1) because it shows implicit bias. Although the opinion is not citable, the reasoning and reliance on *Tesfasilasye* is useful. The opinion also contains a helpful discussion of the legislative history on presumptively invalid reasons.

Facts: Over defense objection, the prosecutor struck Juror A.R. who has a Spanish surname and whose husband had been arrested 20 years earlier (before the juror and her husband met) for a drug-related offense and whose adult nephew had a pending criminal case in the county. A.R. had been meeting with his social worker about the case but had not been to court with her nephew. The prosecution's reasons for strike were that: (1) A.R. was very soft-spoken and would not be able to deliberate and (2) A.R.'s involvement in her nephew's case suggests that she would be too generous towards the defense. In response to the objection, the court said that Juror A.R. had a "[r]really light complexion." The defense denied that she was soft-spoken and argued that even if so, she could deliberate and argued that the second reason was presumptively invalid. The trial court overruled the objection based on A.R.'s involvement in her nephew's case.

Holding: Reversed. The demeanor-based reason was presumptively invalid under (g)(1)(B). The court did not confirm that A.R. was soft-spoken and absent confirmation under (g)(2), the presumption was not rebutted. As to A.R.'s involvement in her nephew's case, the trial court did not consider this to be a presumptively invalid reason, but gave no explanation as to why it did not do so. The appellate court cited *People v. Tesfasilasye*, 200 Wash. 2d 345 (2022), which construed GR 37's similar provision. The Washington Supreme Court held that where the basis of an objection is a close relationship between the juror and someone who had a prior arrest, conviction, etc., the reason is presumptively invalid. Here, the prosecutor failed to overcome the (e)(3) presumption by clear and convincing evidence as required by (f), i.e., he knew nothing about the nephew's case and asked no follow up questions after A.R. said that the case would not affect her impartiality. Even if the reason was not presumptively invalid, there is a substantial likelihood an objectively reasonable observer would view ethnicity as a factor, especially because of implicit bias. While the prosecutor said that he did not think Juror A.R. was Latina by appearance, he knew she had Spanish surname, and there was no evidence that A.R.'s interactions with social worker bore on her ability to be fair.

Note: The defense claimed the juror was Latina based on her surname, the prosecutor argued that juror "did not appear to be Hispanic," the trial court commented on her "light" complexion and said, "We don't know." The trial court did not rule on whether the juror was a member of a protected group and overruled the objection on the merits.

***People v. Jimenez*, 99 Cal. App. 5th 534 (Cal. Ct. App., Fourth Dist., 2024)**

Key takeaway: The prosecution can overcome the presumptive invalidity of a strike based on a juror's negative views towards law enforcement where the juror acknowledges bias even when another reason the prosecution offered is unsupported by the record. This is one of several cases that highlight the value of laying a foundation for a cause challenge because under (e), the juror's ability to be fair and impartial is relevant to overcoming a presumptively invalid reason.

Facts: Over defense objection, the prosecutor struck Juror 8, a Latina school secretary who had never served on jury. During voir dire, Juror 8 said that the law can be affected by race and economic status, and although she could fairly consider police-officer testimony, implicit bias would be in the back of her mind. The prosecutor's reasons for the strike were: (1) her beliefs about police and racial bias in a case in which all the witnesses would be officers; (2) her employment by a school, so she would be more likely to give second chances; and (3) she had never served on jury. The trial court found that the prosecutor had overcome the

presumptively invalidity of the law-enforcement reason by clear and convincing evidence. It then considered all the factors under (d) and found no violation of 231.7 for various reasons, including no disparate questioning of Juror 8, the prosecutor struck a White male educator, and at least one of the prosecution's witnesses was Latinx.

Holding: Affirmed. Applying (j), the appellate court limited its review to the reasons given by trial court. Juror 8's statement that implicit bias might always be in the back of her mind would lead an objectively reasonable observer to conclude the explanation related to her ability to be fair, which overcomes the presumption of invalidity. In reaching its conclusion, the court gave weight to the prosecutor's earlier for-cause challenge to a White juror who expressed similar views. Under (d)(1), the appellate court found that although the prosecutor did not question Juror 8 about her employment, he did not question three other White jurors whom he struck and who were also employed by school districts. The court agreed that the juror's asserted lack of prior jury service was not supported by the record because the prosecutor retained other White jurors who had never served. Even disregarding that reason, there was no substantial likelihood that an objectively reasonable person would view race as a factor in the strike.

Note: The court also conducted a *Batson/Wheeler* analysis with the same result.

***People v. Ortiostegui*, 101 Cal. App. 5th 271 (Cal. Ct. App., Second Dist., 2024)**

Key takeaway: A statement that a juror "appears" to be Latinx and has a Spanish surname satisfies the requirement of "perceived" membership. A court should look at the stated reasons underlying the basis for a strike (here, "lack of life experience") to determine whether they constitute a presumptively invalid reason under (e), and if so, the striking party must overcome the presumption by clear and convincing evidence under (f). A demeanor-based reason is conclusively invalid if the trial judge (or opposing party) does not confirm the demeanor under (g)(2).

Facts: The defense objected to the prosecutor's peremptory challenge against Juror T.N. who the defense argued "appears to be Hispanic" and has Spanish surname. The prosecution's reasons were (1) her lack of life experience, stating that she was young, had worked at a Taco Bell and was now unemployed; (2) the juror had a "problematic demeanor, stating she was "timid" and "malleable" because she answered "yes" to closed-ended questions by both the prosecution and defense; (3) she had limited community ties; and (4) she did not fully understand the questions. The trial court overruled the objection. On appeal, the AG argued that (1) it was unclear the juror was Hispanic; (2) the defendant failed to establish the number of

Hispanic jurors in panel; and (3) "life experience" is not a presumptively invalid reason.

Holding: Reversed. The defendant's statement that Juror T.N. "appears to be Hispanic" and has a Spanish surname satisfied (a)'s provision that the statute applies to "perceived membership" in protected a group. Nothing in 231.7 requires the defendant to present a comparative juror analysis; therefore, he was not required to show the number of the number of Hispanic empaneled jurors. While "lack of life experience" is not itself a presumptively invalid reason, the prosecution's explanation was based in part on (e)(11), the juror's "lack of employment or underemployment." The judge failed to make the necessary finding under (f), that there was clear and convincing evidence the reason was unrelated to bias and specific to the juror's ability to be fair. An appellate court will not impute findings to the trial court. As to the juror's demeanor, for each stated description, the trial record either did not support it or the judge failed to confirm the demeanor as required under (g)(2). As to the juror's limited community ties, the court held that the prosecutor's failure to question T.N. about this subject, raised an inference of discrimination under (d)(3)(C)(i)(ii). As to T.N." inability to understand the questions, nothing in the record supports the reason, and the trial judge made no findings for the court to review under (j)'s "substantial evidence" standard.

***People v. Dominguez*, 2024 WL 2042935 (Cal. Ct. App., Fourth Dist. May 8, 2024) (unpublished)**

Key Takeaway: Applying (g), when the prosecution strikes a juror based on body language, a presumptively invalid reason, and explains the relevance of the body language by offering another presumptively invalid reason, inattentiveness, it has not offered a valid "explanation" under (g)(2).

Facts: Over defense objection, the prosecution exercised his first peremptory challenge against Juror E.C., who is Latino, and later struck R.D., who is Filipino. The prosecution denied striking E.C. based on race and gave these reasons: (1) there were six other Latinx jurors on the panel whom she did not intend to strike; (2) the juror's response to her single-witness hypothetical suggested he would require evidence from more than one witness; and (3) he "slouched" in his seat, which the prosecutor argued was a "not presumptively invalid" factor and can be acceptable if confirmed by the court. The trial court (1) agreed E.C. slouched but said that this was a "thin reed" on which to base a strike because it might show disinterest or just his natural way of sitting; (2) found that E.C.'s answers to the hypo were somewhat equivocal but that the hypo did not include all the factors jurors are to consider under the single-witness instruction; and (3) overall, E.C. seemed impartial. The judge said that this was his first 231.7 ruling, and he was struggling to do it

correctly. He then backpedaled, overruling the objection and finding (1) no substantial likelihood race was a factor in the strike; (2) the slouch suggested E.C. was disinterested; and (3) E.C.'s answers to the single-witness instruction questions were equivocal, but, again, the prosecutor's questions were incomplete.

Holding: Reversed. (1) On the questionnaire, E.C. said he could follow the single-witness instruction. What occurred during voir dire showed his confusion about the hypo because the instruction was new to him, not a reluctance to follow the law. The appellate court compared E.C. to two other jurors who were also confused by the prosecution's questions, one of whom sat on the jury, observing that the only one the prosecutor struck shared the defendant's ethnicity. (2) As to E.C.'s body language, the appellate court cited *Ortiz* (in these summaries), regarding (g)(2)'s two-step requirement. The trial court confirmed that E.C. was slouching, but when asked to explain why E.C.'s body language matter, the prosecutor said it showed E.C. was inattentive. Inattentiveness is also presumptively invalid reason under (g)(1)(A) and therefore is not "a permissible reason." Because the appellate court reversed as to Juror E.C., it did not reach the second peremptory challenge.

Note: It is difficult to reconcile *Ortiz*, which held that "any explanation" will suffice under (g)(2), with this opinion, which "consider[ed] the substance of the prosecutor's explanation in [its] de novo review and found it insufficient.

***People v. Smith*, 2024 WL 2843095 (Cal. Ct. App. Fourth Dist., June 5, 2024) (unpublished)**

Key takeaway: The record here came close to making out a cause challenge against a juror who expressed sympathy for someone in the defendant's situation based on her occupation, but her occupation was not one of those enumerated in (e)(10).

Facts: The case involved a homeless defendant who was charged with kidnapping and making criminal threats against two men to get them to take him to obtain food. Over defense objection on the basis of gender, the prosecutor struck Juror 103, a woman, who said that she was the CEO of company representing retail grocers involved in distributing food. She also said that her company does a lot of work with people who are food-insecure and would be sympathetic to the defendant, but said, "I think I can be fair" and that she would decide the case on the facts. The prosecutor's reasons were the juror's uncertainty about whether she could be fair, given her sympathy for people who do not have food and her inherent bias toward the defendant. The trial court (erroneously) stated "the analysis . . . is not whether a juror can be fair," and asked for a further explanation. The prosecutor replied that the juror's bias toward the defendant was related to her occupation. The court

(erroneously) stated that "occupation" was no longer a basis for a peremptory challenge, but overruled the objection, finding that juror's sympathy for food-insecure people had nothing to do with gender.

Holding: Affirmed. On appeal, the defendant argued for the first time that the reason was presumptively invalid because the juror was employed in a "nurturing" profession under (e)(10). Nothing in the record suggests the juror was employed in a field or by a company disproportionately occupied by or serving members of groups identified in (a). The court also rejected the defendant's argument that the trial judge coached the prosecutor to get to a valid reason, finding that from the outset the prosecutor's reason was the juror's inherent sympathy for people like the defendant who are food-insecure.

***People v. Caparrotta*, 103Cal. App. 5th 874 (Fourth Dist. 2024)**

Key Takeaways: (1) When the striking party relies on a mixture of reasons that are presumptively invalid and not presumptively invalid, the trial court must begin with the presumptively invalid reasons. If the striking party fails to overcome the presumption as to any presumptively invalid reason, the court must grant the objection. (2) Although we lost on appeal, the appellate court's reasoning will help us in most cases because it relies extensively on the legislature's intent to make it easier to prove discrimination and, in most instances, the defense should be the objecting party under 231.7. (3) When you have a question about a juror's statement, ask for a readback of the transcript before you exercise a peremptory challenge. If your assertion conflicts with the judge's notes, you will lose.

Facts: Over the prosecution's objection, the defense struck White female Juror 17. The defense's reasons were: (1) her body language when answering questions about judging witness credibility; (2) her stated unwillingness to answer one question; and (3) her "law enforcement connections." The judge granted the prosecution's objection because she thought defense counsel's questions would have been difficult for any juror to answer; she did not observe the juror's body language; and she thought Juror 17 seemed fair. Over the prosecution's objection, the defendant also struck White female Juror 19. The defense reasons were that the juror (1) did not understand the presumption of innocence because the juror did not say that she would vote not guilty if required to vote now, which (2) showed she was inattentive. The trial court granted the prosecution's objection because it recalled the facts differently: Juror 19 said that she would follow the law and vote not guilty if she had to vote now.

Held: Affirmed. Because the trial court did not confirm observing the demeanor of Jurors 17 and 19, the inquiry ended at (g)(1). Citing *Jimenez* and *Ortiz* (above), per

the statutory language, the reasons listed in (g)(1) start as presumptively invalid and remain so unless rebutted. If the striking party gives a mixture of reasons that are and are not presumptively invalid, the analysis begins with the presumptively invalid reason. Only if all presumptions are overcome does the court conduct an analysis of reasons under (d) (totality of the circumstances). If even one reason is conclusively invalid, it is a foregone conclusion that an objectively reasonable person would view race as at least *a factor* in the strike. Relying on the legislature's intent, the court of appeal interpreted 231.7 to mandate that the objection be sustained if there is at least one conclusively invalid reason. The court pointed to: (1) the legislature's statement that the statute shall be "broadly construed" to effectuate the elimination of discriminatory peremptories; (2) the goal of making it easier to prove discrimination; and (3) the passage of the RJA during same legislative session, which included similar goals as 231.7 and a provision that would have incorporated 231.7 if it did not pass. Although the defendant offered one reason for striking Juror 17—"law enforcement connections" —that was not presumptively invalid, the trial court correctly did not conduct an analysis under (d) because the defendant did not overcome the presumption of invalidity under (g).

Note: *Caparrotta* was the first opinion to decide whether the trial court erred in sustaining a 231.7 objection. Subdivision (j) addresses the standard on appeal where the trial court denied an objection, including the standard for review of the trial court's factual findings. Because the only question here was limited to whether the trial court applied an incorrect legal standard, the appellate court conducted de novo review.

***People v. Gonzalez*, 104 Cal. App. 5th 1 (Second Dist. 2024)**

Key Takeaway: There will be instances when a juror's experience with law enforcement or the criminal legal system will have inflicted sufficient pain that the prosecution can overcome the presumption of invalidity.
Facts: After unsuccessfully challenging Juror 1589 for cause, over defense objection, the prosecutor struck Juror 1589, a Black man whose cousin had been murdered about 20 years earlier. Juror 1589 said that law enforcement's delay of the investigation and its treatment of the family left him frustrated, though the person responsible for the murder had been prosecuted and sentenced to prison. He said that he was unsure whether he could be fair to law enforcement, but after closed-ended questions by court, agreed that he could. Juror 1589 also said that at about age 12, he was playing basketball with friends when police detained and beat them; the experience made him somewhat bitter. He was unsure whether he could be impartial towards police. The trial court initially commented that the juror's answer "really derived from his racial makeup," and suggested that the strike was related to juror's attitude toward law enforcement, i.e., it was presumptively

invalid. The prosecutor responded that some jurors could put those feelings aside, but this juror could not. Under (f), the court found by clear and convincing evidence that an objectively reasonable person would view the prosecutor's reason as unrelated to the juror's race.

Held: Affirmed. Citing J*imenez, Uriostegui,* and *Ortiz* (in these summaries), the court of appeal held that the juror repeatedly stated he would have difficulty setting his bias aside and his bias was the direct result of how police treated his family and him. While a juror's views may be directly related to their race, the question is whether the strike was based on the juror's race. The court held that the prosecutor had overcome the presumption by clear and convincing evidence as required by (f). The court declined to analyze the peremptory challenge under (g) because demeanor was not an independent basis for the strike. The prosecutor referred to the juror's emotional upset in answering the questions to show how negative his feelings were, i.e., they were a reflection of his inability to be impartial. Analyzing the strike under (d), the court held none of the enumerated circumstances that would show race was a factor in the strike applied.

***People v. San Miguel*, 105 Cal. App 5th 880 (Second Dist. 2024), review granted Dec. 18, 2024, but still citable per the California Supreme Court's order granting the petition for review.**

Facts: Juror S.M. had a Spanish surname and was studying film at UC Santa Barbara. He had no prior jury experience. The prosecutor struck J.M. over defense objection that S.M. was the only Latino left in the panel. The prosecutor's reasons were: (1) Hispanic on Hispanic crime so he had no reason to kick a Latino juror; (2) the juror's answers were brief; (3) he would prefer other jurors; (4) he did not strike a Latina juror; and (5) striking a juror who "happens to be Hispanic" does not violate 231.7. When the judge asked for clarification, the prosecutor added: (1) S.M. did not make eye contact with the prosecutor and (2) he did follow the court's instructions and left courtroom with the questionnaire during breaks, which indicated he was less attentive than others. The trial judge overruled the objection after confirming the prosecutor's demeanor-based observations and agreeing that the juror had left the courtroom, which showed he was not paying attention to directions.

Held: Affirmed. The majority acknowledged that some of the prosecutor's reasons—the juror being less attentive based on lack of eye contact and leaving the courtroom with the questionnaire—were presumptively invalid and that (g)(2) requires both "confirmation" of the demeanor/conduct and an "explanation" why it matters. It held, however, that "S.M.'s lack of attention alone was a sufficient reason for his dismissal" and "overcomes the presumption of invalidity." The

opinion also stated that "no capable attorney would fail to challenge the juror unless the attorney had what is known in the trade as a dead-bang loser."

Justice Cody, dissenting: Citing *Caparrotta* (in these summaries), Justice Cody wrote that the presumption can only be overcome by satisfying both (g)(1) and (2). He agreed with the majority that the trial judge had confirmed the demeanor—showing inattention. But the prosecutor never explained why the demeanor mattered to case under (g)(2). He wrote, "One may wonder why behaviors like inattentiveness would require further explanations," but it is not the court's role to evaluate the legislative decision. Reviewing the other reasons, the dissent found them unsupported by the record. E.g., the prosecutor's general preference for other jurors is implicit in every strike; not all S.M.'s answers were brief and even if brief, the prosecutor did not explain why brevity made S.M. undesirable; and the prosecutor's decision not to strike another Latinx juror does not explain why he challenged S.M.

***People v. Barnes*, 2024 WL 5164637 (Fourth Dist., Dec. 18, 2024) (published)**

Key Takeaway: Subdivision (d)(1) precludes the trial court from speculating on or assuming reasons not given by the striking party. The prohibition applies even where the court can find reasons in the record upon which the prosecution might relied upon but did not.

Facts: The defendant is Black. Over defense objection, the prosecution struck Juror 15, a Black woman who was then the only Black juror in the box. Juror 15 supervised several hundred Disneyland employees. The prosecutor's reasons were: (1) her responses were terse; (2) her response to a question about following the law was that the jury does not decide the law; (3) she will not work well with other jurors because she described the employees she supervises as working "underneath" her; and (4) he struck four non-Black jurors before striking Juror 15. After taking the objection under submission, the trial court announced a tentative ruling. The judge stated that he thought the prosecutor would strike the juror based on a reason he had in mind but the prosecutor did not give, which the court thought it could not consider under (d)(1), specifically, Juror 15 was the only juror who required proof "beyond a shadow of a doubt" and might not convict without fingerprint or DNA evidence. He took a recess because he was "struggling" to decide whether he could consider these reasons, which would justify overruling the 231.7 objection, but was inclined to sustain the objection because the reasons the prosecutor gave regarding Juror's 15's lack of rapport with other jurors and problematic attitude fell under (g)(1). The judge gave the prosecutor another opportunity to explain. The prosecutor admitted missing Juror 15's comments about the burden of proof, reiterated his reliance on the juror's terse answers and

her "superiority complex." The court overruled the 231.7 objection based on the two reasons it had identified, stating that it did not find the juror's "terse demeanor" was the basis for the strike.

Holding: (1) On appeal, the AG argued that the prosecutor struck Juror 15 based on the answers that caused the trial judge to doubt whether she would follow the law and was concerned with the "substance" of her answer, not her demeanor. The appellate court rejected the argument, finding the record clear that (a) the prosecutor acknowledged he had not challenged Juror 15 on that basis and (b) the prosecutor's concern was the juror's demeanor and attitude ("terse" and "underneath"). Citing *Caparrotta* (in these summaries), the prosecutor's reasons triggered (g)(1) and (2), which the trial court failed to apply—proceeding erroneously under (d)(1). To the limited extent the judge addressed the juror's "terse" demeanor, he disagreed with the prosecution's observation. At that point, the court should have sustained the objection. (2) The trial court improperly denied the objection based on reasons it found in the record, not those on which the prosecutor relied, which contravened (d)(1)'s prohibition against judicial speculation and reliance on explanations other than those given by the striking party.