RJA on Direct Appeal

Recent Trends in the Courts of Appeal - Unpublished

See also OSPD RJA Sharepoint for up to date information

2024-2025 Unpublished Case Highlights Per District

How are the various districts approaching the RJA in the unpublished realm?

It depends.

First District Court of Appeal

People v. West, A164873, 5/15/24: defense trial counsel filed a sentencing disparity discovery motion under § 754(d), which the trial court found untimely. DCA affirmed, distinguishing *Garcia* since the trial attorney had 5 months (not one week) to develop the request.

People v. Hedgepeth, A161578, 4/4/24: On remand for resentencing under SB620 after the defendant's first appeal, the defendant filed an RJA motion based on the use of rap lyrics at his original trial. Trial court denied for lack of jurisdiction due to the limited scope of remittitur. DCA reversed and remanded holding that the RJA applies to all non-final cases (§ 745(j)(1)),which indicates Legislative intent for retroactively. "The defendant's right to relief under the RJA was not addressed in his first appeal and any RJA error is not subject to a case-specific harmless error analysis. The AG did not dispute the defendant's prima facie showing; he was entitled to an evidentiary hearing.

Encouraging (?) news from Division Four who have been taking an interest in the RJA. On two occasions, the court has ordered the Attorney General to file a preliminary opposition to a pro per habeas petition and asked the local project to submit a reply.

Second District Court of Appeal

People v. Clark (5/5/25) 2nd DCA, Div. 6 (B337387): HELD: Trial court did not abuse its discretion by denying the defense recall and resentencing petition because there was no prima facie showing of an RJA violation (defendant had alleged charged and sentencing disparities). No evidence was presented to support.

People v. Moreno (4/17/25) 2nd DCA, Div. 2 (B338007): On resentencing after AB 333 relief on appeal, the defendants moved for a new trial under the RJA. They argued that the use of "Mexican Mafia" was discriminatory. The trial court found no prima facie showing, finding the term was merely descriptive and used by both defendants. On appeal from resentencing, appellate counsel filed a no-issues *Wende* brief. DCA affirmed.

People v. Rogers (3/25/25) 2nd DCA, Div. 8 (B333858): Defendant was convicted of § 191.5(a) in 2012. Subsequent § 1172.6 petition was denied. The DCA affirmed rejecting a claim raised in a supplemental brief that he was entitled to resentencing under the RJA. "Rogers cites caselaw where defendants received lighter sentences than that imposed on him. However, there is no indication in these cases that the lighter sentences were in any way race-related. Put another way, we do not know if those defendants were sentenced more leniently because they were not African-American like Rogers."

People v. Jefferson (3/13/25) 2nd DCA, Div. 5 (B336478): HELD: § 1172.6 proceeding is not the proper vehicle for raising an RJA claim.

People v. Hart (1/14/25) 2nd DCA, Div. 4 (B331688): Defendant sentenced to LWOP claimed that the investigating officer (IO) and DA violated the RJA by using racial stereotypes of Black men as sexually promiscuous predators and liars. The appellate court rejected this claim on the merits, declining to address IAC or the AG's claim of forfeiture. HELD: The defendant's statements to the IO about his sexual relations with neighbors were voluntary, the defendant is not one of the actors listed in the RJA, IO's statement that the defendant was not being truthful was based on the evidence, DA did not elicit testimony from him that invoked these stereotypes because the defendant made the sexual relationships a key of his defense and cross examination was to demonstrate his lack of credibility, and DA calling defendant a "liar" in argument was based on the weight of the evidence.

People v. Gonzalez (12/31/24) 2nd DCA, Div. 5 (B328911): HELD: Claim that DA's characterization of the defendant as a "monster" was forfeited, citing *Lashon*. It was not racially discriminatory language; in context, DA was using the term to refer to "one who deviates from normal or acceptable behavior" rather than "an animal of strange or terrifying shape."

Third District Court of Appeal

People v. Fuller (3/7/25) 3rd DCA (C099595): Defendant claimed an RJA violation when his rap sheet was inadvertently sent in to the jury during deliberations. HELD: The RJA claim was forfeited and the IAC claim was denied.

People v. Grayson (1/30/25) 3rd DCA (C099468), review denied 4/16/25: DCA rejected appellant's claim that use by attorneys, witnesses, and trial court of the word "street" appealed to negative racial stereotypes about Black people's propensity for drug sales and "street" crimes. The claim was forfeited; argument that reaching the merits benefitted the public interest was rejected because then every RJA claim would be excused from forfeiture. IAC claim also rejected: the failure to object was a reasonable tactical decision since defense counsel did not see any racial overtones in repeated use of "street" and might not have wanted to draw attention to its use.

People v. Lark (10/18/24) 3rd DCA (C097702) CSC denied PFR: On direct appeal, an AB 1118 motion for stay and remand was filed with the AOB, alleging an RJA violation in the traffic stop that led to recovery of a firearm and submitted a report with policing statistics. AG argued that the RJA claim was forfeited under *Lashon,* DCA agreed. DCA addressed the IAC claim based on trial counsel's failure to raise an RJA claim. It found no prima facie showing of implicit bias in the stop evidence and declined to take judicial notice of the report offered (it was not part of the trial record and could thus not be considered on appeal).

People v. Kishor (10/08/24) 3rd DCA (C100492) PFR denied 12/11/24: Defendant's conviction for attempted murder and robbery became final in 2001. In early 2024, motion filed in the trial court alleging an RJA violation. The trial court dismissed the motion for lack of jurisdiction because the conviction was final. Defendant appealed. HELD: DCA dismissed the appeal because the denial order was nonappealable, explaining that, "The only reason a defendant would need to stay the appeal and request remand in order to file a motion under section 745 is that the trial court would otherwise lack jurisdiction to entertain such a motion while the appeal was pending."

Fourth District Court of Appeal

People v. Stewart, et al. (9/5/24) 4th DCA, Div. 2 (E078408): Direct appeal, no RJA claim below. Held: Court declined to decide whether RJA claims were forfeited finding instead that if they were not forfeited, they are not supported by the record. If they were forfeited, there was not IAC as counsel may have had tactical reasons for failing to raise RJA objections. There was "no evidence" on the record of racially disparate use of Perkins operations, DA's repeated use of the n-word came within the exception of repeating statements by witnesses and the defendants, and the DA's use of slang terms, dehumanizing terms, and rap videos did not violate the RJA.

In re Adam Y. (5/28/24) 4th DCA, Div. 1 (D081540): Defendant from Libya and his first language is Arabic. Sex offense case. Defendant was interrogated in English, although an Arabic-speaking officer was present for translating. Defendant denied accusations. At the jurisdictional hearing, the interrogating officer testified that suspects who are not telling the truth show physical mannerisms, such as fidgeting, and if they speak a different language, "often they will appear to have a command of English but then if the questions become more accusatory, they will act as if they don't understand the question …." The officer alleged the defendant had done this. The trial court denied an RJA (a)(2) motion based on this testimony, finding that the officer was referring to the defendant's body language rather than his ability to speak English. In the AOB, counsel only argued that the body language testimony was an RJA violation. In the ARB and in oral argument, counsel shifted toward the language as a basis for relief. HELD: Appellate counsel forfeited the language issue, and although the body language issue was arguably preserved, it was unmeritorious.

People v. Buggs (2/23/24) 4th DCA, Div. 3 (G061456): § 745(a)(1) violation due to DA Spitzer's comments during a Special Circumstances Committee meeting is conceded by AG. "Sole issue" was whether DA's decision not to seek death was sufficient or whether trial court was required to impose an additional remedy. DA's steps to remedy the harm were sufficient; there is no miscarriage of justice under art. VI, sec. 13. On appeal defendant claimed trial court could have imposed an additional remedy such as a new trial, dismissal or concurrent sentences. HELD: Because defendant did not seek those remedies at trial, forfeited and no additional remedy was necessary.

Fourth District Court of Appeal

Continued . . .

In re Covarrubias (4/28/25) 4th DCA, Div. 1 (D083996): Defendant filed a pro per habeas petition and discovery motion under the RJA seeking trial transcripts and statistical data re charging and sentencing. He appealed the denial of the discovery motion. The trial court denied the habeas petition and dismissed the discovery motion for lack of jurisdiction. He appealed both rulings. The Court of Appeal dismissed the appeal of the habeas denial but ordered briefing re *Montgomery* and *Serrano*. It then dismissed the appeal because the denial order is not appealable.

People v. Ibarra (4/8/25) 4th DCA, Div. 2 (E083336): Defendant was sentenced in 2008. In 2024, he brought a freestanding motion under PC 745(d), which the trial court denied. Court affirms, finding he "does not meet any of the criteria for applying section 745" so the trial court could not have granted the motion. It disagrees with *Serrano*. And even if *Serrano* permits a freestanding (d) motion, the denial is not appealable

People v. Swan (3/10/25) 4th DCA, Div. 2 (E084614). Defendant filed a pro per RJA motion, which the trial court denied as not making a prima facie showing. Court of Appeal affirmed denial of relief under RJA and SB 600.

People v. Tiebout (4/3/25) 4th DCA, Div. 1 (D082238). Defendant, who is Black, claimed the trial court violated the RJA during sentencing when it stated that he was "essentially living, what I'll refer to as the gangster lifestyle." Court agrees with *Lashon* and *Corbi*, disagreeing with his argument that AB 1118 would be a nullity. His claim is forfeited for failure to object & the Court rejects his argument that there are grounds for excusing the failure to object. Held: the defendant did not establish IAC. Court did not dispute that "'gangster' may be suggestive of race, or used in a racially charged manner, in certain contexts" but claims "the term itself appears to be race neutral. Merriam-Webster defines 'gangster' as a 'member of a gang of criminals.'" Defendant did not cite authority suggesting "gangster" is typically associated with a particular race or denotes Black criminality. Court also denied the request to stay and remand so that the record may be developed, since the claim was forfeited.

Fifth District Court of Appeal

People v. Perez (3/13/25) 5th DCA (F087344): First time on direct appeal, challenged the DA's closing rebuttal argument that that began with ""I want to choose my words very carefully because we live in such a racially charged environment," and continued from there to imply that the defendant was intentionally accusing the sole white officer of beating him and not the non-white officers. The defendant argued this was as an improper racially biased argument under the RJA and due process, and that if forfeited, IAC. Held: RJA claim is forfeited. There is no exception here; this is not a pure issue of law and does not implicate the public interest exception. No IAC because record does not support the claim that the trial court would have found that DA's remarks violated the RJA.

People v. Leiva (10/29/24) 5th DCA (F084427) PFR denied; Justice Liu voted for review but unclear of the ground (RJA issue or the CCP 231.7 issue). Citing *Lashon*, the Court of Appeal found that the claim that excusal of prospective juror violated the RJA is forfeited because the defendant did not raise it below. It also lacks merit "because nothing in the record suggests the trial court acted with racial bias or animus." The trial court excused the only Black prospective juror "based on a finding of actual bias, not because of her views on the criminal justice system." Nor did the prosecutor act with racial bias or animus in challenging her.

People v. Martinez (7/3/24) 5th DCA (F085615) Citing *Lashon*, claim forfeited even though AG conceded it was preserved. Although the defense objected below, he did not re-object after trial court reversed itself and issued a ruling favorable to him. Held: Claim fails on the merits; trial court's concerns about playing 2 hour recorded statement in Spanish, DA's argument and court's ruling did not constitute RJA violations.

Sixth District Court Of Appeal

And see published decisions in *People v. Stubblefield* (2024) 107 Cal.App.5th 896; *People v. Howard* (2024) 104 Cal.App.5th 625

See the summary of ***People v. Johnson & Williams*** (earlier slide)

People v. Fitch (2025 Cal.App.Unpub.LEXIS 1792): judgment reversed for multiple reasons including IAC under the RJA. Among other remedies, the DCA directed that the defendant on remand be afforded the opportunity to bring an RJA motion, and to follow §745 regarding the applicable procedure and appropriate remedy should a violation be found.

People v. Pacheco (3/6/25) 6th DCA (H052328). The defendant was convicted in 2016, and subsequently petitioned for resentencing under § 1172.6, which the trial court denied. On appeal, he raised an RJA claim. Held: Nothing in PC 745's plain language authorizes defendant raise a violation on appeal from a 1172.6 denial, and the defendant cites no evidence to support a disparity claim.

People v. Huynh (3/5/25) 6th DCA (H052275). Defendant was convicted in 2002. He filed a pro per motion raising an RJA claim arguing the gang enhancement statute was disproportionately applied to people of color. The trial court denied the motion, finding it failed to make a prima facie showing under *Finley*. The Court of Appeal affirmed.

RJA on Direct Appeal

Other Considerations

§ 745(c) Prima Facie Showing

- If the defendant makes a prima facie showing of a violation of subd. (a), the trial court **shall** hold a hearing.
- "Prima facie showing" means a **substantial likelihood** that a violation of subd. (a) occurred.
- A "substantial likelihood" requires **more than a mere possibility**, but less that a standard of more likely than not.
- [§ **745(a) – preponderance of the evidence to establish violation**]

Finley v. Superior Court (2023) 95 Cal.App.5th 12

[August 30, 2023]

- D must "fully and with particularity" state facts that are the basis of the claim and include "reasonably available documentary evidence" in support.
- Court should not:
  - weigh defense evidence against contrary evidence
  - make credibility determinations
- Lower than usual habeas standard

Finley v. Superior Court (2023) 95 Cal.App.5th 12

Continued . . .

- Court should accept the truth of D's claims, including expert declarations and statistics, unless allegations are:
  - conclusory
  - unsupported by evidence D presented
  - demonstrably contradicted by court records.
- DA's race-neutral explanations are for the evidentiary hearing

Evidentiary Hearing (§ 745, subd. (c))

- § **745** (**c**)(**1**)
  - At the hearing, evidence may be presented by either party, including, but not limited to, **statistical evidence**, **aggregate data**, **expert testimony**, and the sworn testimony of **witnesses**.
  - The court may also appoint an independent expert.

Evidentiary Hearing (§ 745, subd. (c))

(**c**)(**2**) The defendant shall have the burden of proving a violation of subd. (a) by a **preponderance of the evidence**.

(**c**)(**3**) … the court **shall** make findings on the record.

§ 745 (d) Motion for Relevant Evidence

- A defendant may request **all evidence relevant to a potential violation** of subd. (a) in the possession or control of the state.
- Upon a showing of **good cause**, the court shall order the records to be released.
- Whether defendant makes a plausible case, based on specific facts, that any of the four enumerated violations of § 745 (a) could or might have occurred. (*Young*)
- Appealability: *In re Montgomery* (2024) 104 Cal.App.5th 1062; *People v. Serrano* (2024) 106 Cal.App.5th 276

Retroactivity (§ 745, subd. (j))

- (1) To all cases in which judgment is not final.
- (2) Commencing January 1, 2023: all cases in which petitioner is sentenced to death or to cases in which a motion to vacate under section 1473.7 because of actual or potential immigration consequences.
- (3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.
- (4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.
- (5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

Use of Research Studies/Papers (e.g., Social Science)

- https://sdap.org/research/criminal-law/ - Using Social Science in Your Appeal (or How to Bring the Court Back to Reality) (from the 2021 SDAP Seminar)
- "[A]n appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration." (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) "It is settled that matters not presented to the trial court and hence not a proper part of the record on appeal will not be considered by an appellate court." (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 711.) Thus, a "defendant cannot challenge a lower court's ruling and then 'augment the record' with information not presented to (or withheld from) the lower court." (*People v. Brown* (1993) 6 Cal.4th 322, 332.)
- One Court of Appeal noted almost fifty years ago that the Brandeis Brief, "which brings social statistics into the courtroom, has become a commonplace." (*Rivera v. Division of Industrial Welfare* (1968) 265 Cal. App. 2d 576, 589, fn. 20.)
- Brandeis brief - Do you want the court to use the information to **enhance the persuasiveness** of your argument or do you want it to take the information as a **supporting fact** to find in your client's favor? Because that's roughly the difference between what you can and can't use in your brief.
- **If you are stumped on how to approach the statute – argue for its broad application**

Use of Research Studies/Papers (e.g., Social Science)

- See *People v. Hardin* (2024) 15 Cal. 5th 834 at page 891, dis. opn. Liu, J. [pointing out that the majority's dismissal of a published empirical study erroneously ignored that it was a "peer reviewed" journal].)
- This discusses the importance of peer review over non-peer reviewed studies/papers: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4975196/.
- SDAP has some articles on the use of social science more broadly in our briefing (see our website)

RJA on Direct Appeal

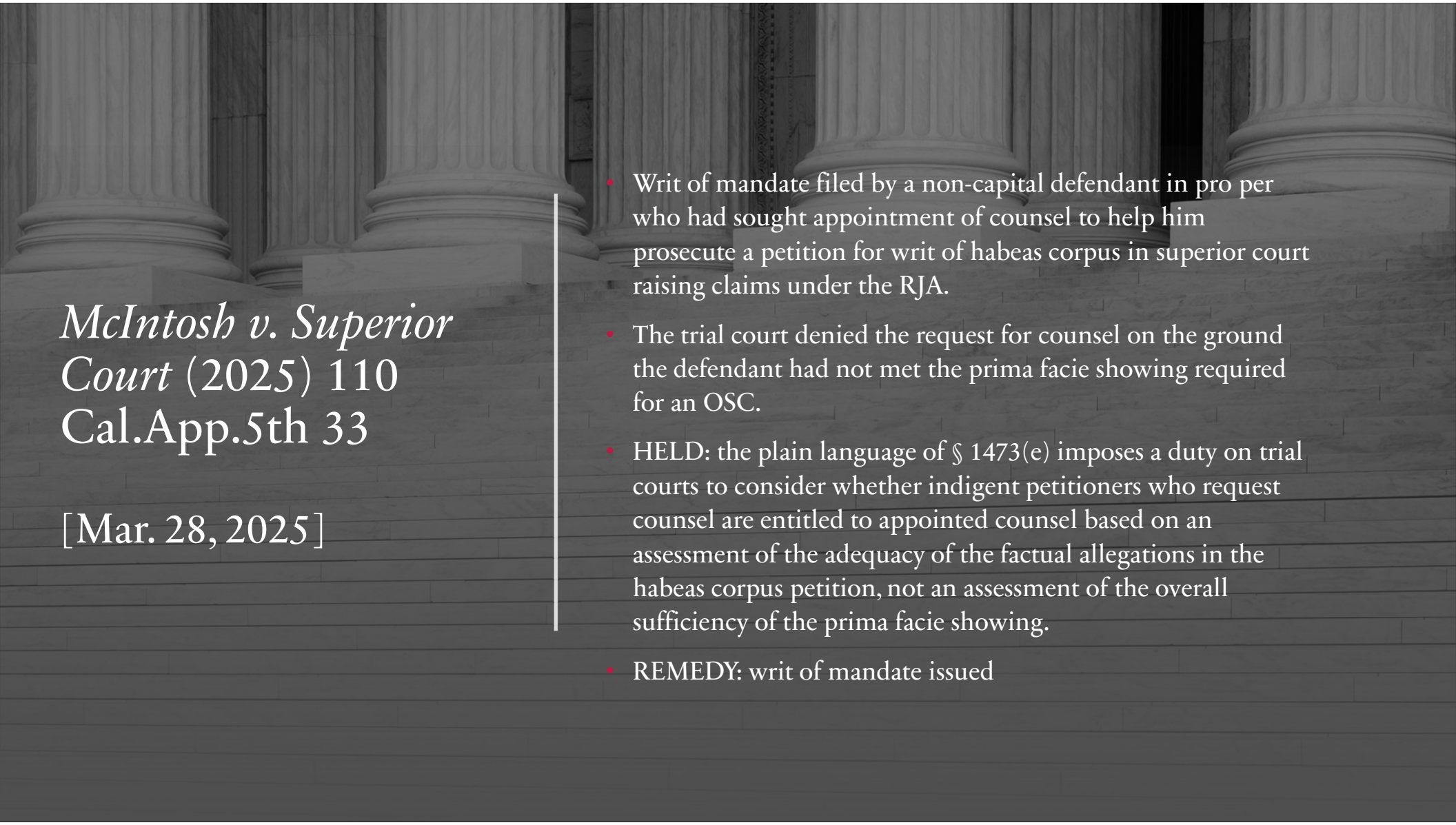
Case Law Summaries
Chronological new to older

See also OSPD RJA Sharepoint for up to date information

McDaniel v. Superior Court (May 19, 2025, No. A171858)

___Cal.App.5th___ [2025 Cal. App. LEXIS 313].)

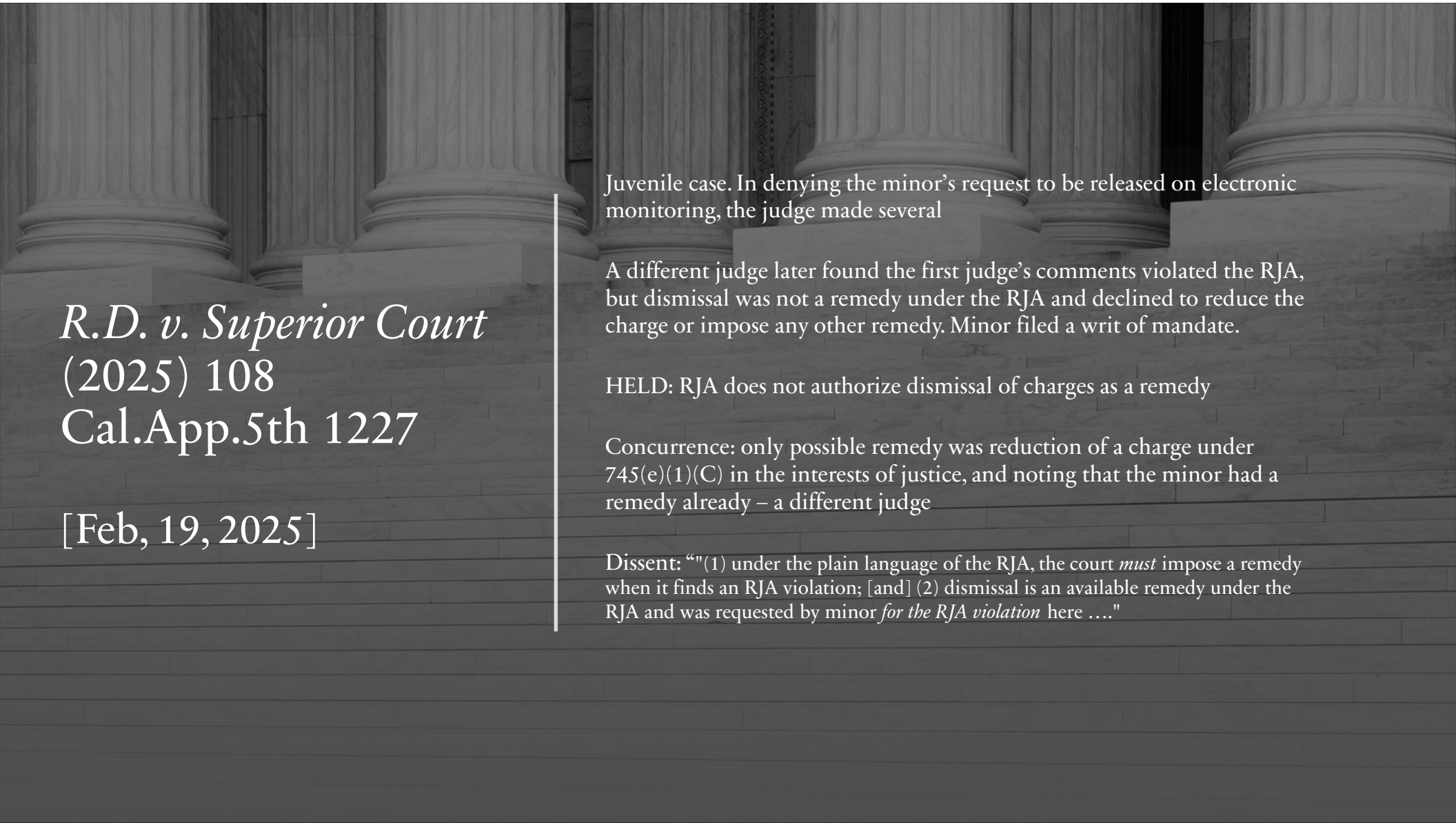
- This published win in the 1st DCA, Div. 3
- HELD: while case-specific facts may be considered in determining good cause under § 745, subdivision (d), they are not necessarily required; a proffer of statistical evidence alone may be enough.



McIntosh v. Superior Court (2025) 110 Cal.App.5th 33

[Mar. 28, 2025]

- Writ of mandate filed by a non-capital defendant in pro per who had sought appointment of counsel to help him prosecute a petition for writ of habeas corpus in superior court raising claims under the RJA.
- The trial court denied the request for counsel on the ground the defendant had not met the prima facie showing required for an OSC.
- HELD: the plain language of § 1473(e) imposes a duty on trial courts to consider whether indigent petitioners who request counsel are entitled to appointed counsel based on an assessment of the adequacy of the factual allegations in the habeas corpus petition, not an assessment of the overall sufficiency of the prima facie showing.
- REMEDY: writ of mandate issued



R.D. v. Superior Court (2025) 108 Cal.App.5th 1227

[Feb, 19, 2025]

Juvenile case. In denying the minor's request to be released on electronic monitoring, the judge made several

A different judge later found the first judge's comments violated the RJA, but dismissal was not a remedy under the RJA and declined to reduce the charge or impose any other remedy. Minor filed a writ of mandate.

HELD: RJA does not authorize dismissal of charges as a remedy

Concurrence: only possible remedy was reduction of a charge under 745(e)(1)(C) in the interests of justice, and noting that the minor had a remedy already – a different judge

Dissent: "'(1) under the plain language of the RJA, the court *must* impose a remedy when it finds an RJA violation; [and] (2) dismissal is an available remedy under the RJA and was requested by minor *for the RJA violation* here …."

Bemore v. Superior Court (2025) 108 Cal.App.5th 1125

[Feb 18, 2025]

- PC 987.2, which relates to the process of the appointment of counsel, continues to govern selection of counsel in postconviction proceedings, including for RJA claims.
- PC 987.2 did not give the defendant the right to counsel of his choice, but the trial court erred in ruling he did not establish "good cause" for the selection of counsel who had previously represented him for years in the event the public defender was unavailable.
- Remand for determination of whether the public defender was available was unnecessary, however. The court further held that the public defender was disqualified from representing the defendant and therefore "unavailable" under 987.2.
  - "By intervening as a real party in interest and asserting a position diametrically adverse to Bemore while maintaining he was a client, the Public Defender has breached its duty of loyalty."

People v. Lawson
(2025) 108
Cal.App.5th 990

[Feb. 13, 2025]

On direct appeal, the defendant challenged his conviction for second degree murder on various grounds including that certain trial court's evidentiary rulings violated the RJA by emphasizing his criminality while minimizing that of the White decedent. Lawson, who was Black, admitted killing the female decedent but claimed self-defense.

There was no RJA motion brought in the trial court, nor was there a request to stay and remand the appeal under the RJA.

The court independently reviewed the record to determine if the defendant demonstrated an RJA violation by a preponderance of the evidence.

HELD: based on the trial record, the challenged rulings were "ordinary evidentiary rulings" or "judgment calls" that were not reflective of racial bias. Evidence of Lawson's rap lyrics was admissible because they were about the shooting at issue. Other evidence was relevant to his credibility.

Declined to address forfeiture: but referenced *Lashon* at length, and noted an additional reason to first bring a claim in the trial court "Asking a trial court to consider whether its proposed ruling reflects the court's own implicit biases, or could have the unintended consequence of playing to jurors' implicit biases, serves an important purpose in raising the court's consciousness of the biases the Racial Justice Act is intended to eliminate."

Jackson v. Superior Court (2025) 109 Cal.App.5th 372

[Feb. 28, 2025]

RJA Motion filed based on the preliminary hearing transcript on the grounds that the arresting officer's actions and speech demonstrated racial bias against him, and that the traffic stop was the result of mistaken assumptions based on the defendant's neighborhood and clothing.

Court rejected the DA's argument that writ relief was not appropriate because an adequate remedy on appeal was available. The RJA is still a "fairly new piece of legislation" and there are few appellate cases interpreting it. Here, if the RJA motion is successful, the gun will be suppressed, the charge dismissed, and Jackson will not have to stand trial.

No "bright line test": case-by-case approach to implicit bias

Although statistical evidence alone is insufficient to prove officers acted with himplied bias, ""the data provided a lens through which the trial court should have viewed the other evidence provided by Jackson, especially at the prima facie stage."

This other evidence included: testimony that Jackson and his brother had been repeatedly pulled over for tinted windows but never issued a citation; when pulled over, officers asked about tattoos and gang affiliation; police were engaged in "saturation" policing in what they viewed as a "high crime area"; they speculated that because Jackson's brother was wearing red pants, he might be a gang member; Jackson lived in a "violent apartment complex"; officer did not understand that a Black man pulled over by police might be nervous and shaking

People v. Quintero (2024) 107 Cal.App.5th 1060

[Dec. 31, 2024]

On direct appeal from a jury trial, one appellate issue was whether the prosecutor committed misconduct and violated the RJA in closing argument by referring to the defendants as "predators" and "monsters" and attempted to evoke the jury's sympathies. In the alternative, whether the failure to object was IAC.

HELD: (1) Prosecutorial misconduct claim was forfeited and without merit;

(2) RJA claim forfeited citing *Lashon*; no IAC because the defendants failed to show a timely motion would have been granted or that there was prejudice. The court also noted:

- Prior to RJA, CSC has held use of terms like "monster" and "predator" were permissible in the context of heinous crimes, citing cases. Court "agree[s] that in certain contexts the term 'monster' maybe suggestive of an animal or beast and that prosecutors should refrain from describing defendants as 'monsters'." But DA's use of it twice here "was more akin to stating that the defendants' action were extremely cruel. The term itself is race-neutral and its use here does not suggest either implicit or explicit bias …."
- Terms like "predator" and "prey" are "commonly used in reference to human behavior" as well as to animals. Our own laws use the terms, including SVP. DA's use "undoubtedly referred to defendants' conduct …. Characterizing defendants' conduct as predatory was justified based on the evidence, and we do not find that an objective observer would conclude that the prosecutors' comments appealed to racial bias either explicitly or implicitly."

People v. Hodge (2024)
107 Cal.App.5th 985

[Dec. 27, 2024]

Notice of appeal filed from the denial of (a) an RJA motion; and (b) a request for section 1172.1 resentencing.

HELD: appeal dismissed as the order was nonappealable.

Re the RJA, the court found that the trial court had no jurisdiction to file a motion, as the statute requires a habeas corpus petition, citing *Montgomery* (postjudgment discovery motion related to habeas petition raising RJA claims was not appealable, rev. granted) and *Serrano* (postjudgment request for discovery under the RJA was not appealable).

People v. Stubblefield (2024) 107 Cal.App.5th 896

[Dec. 26, 2024]

Appellant was charged with rape with the use of a firearm, and even though the complaining witness had reported the incident the day it was alleged to have occurred, the police never searched the defendant's house for a gun. At trial, the prosecutor argued that in fact the police could not have searched the house for the gun, because appellant was a famous African American man, and a "storm of controversy" would have ensued. This argument was made two months after George Floyd was murdered, while the protests that followed Mr. Floyd's death were still gripping the nation.

JUDICIAL NOTICE: The Court took judicial notice, on its own motion, of Floyd's murder and the post-killing conflict, under EC 451 & 459. These were facts of generalized knowledge and universally known

HELD: judgment was reversed under the RJA. The Court of Appeal found that the prosecutor's argument constituted a "potent appeal to racial bias" and therefore violated § 745, subd. (a)(2).

"Objective observer" – plain language of the statute offers guidance – defines scope of objective observer to include that the trial court must (1) neutralize any racial biases the court might have; (2) ignore whether the speaker intentionally used the language for a racially discriminatory purpose; (3) proceed to determine whether the language is racially biased, either explicitly or implicitly; and (4) the statute's inclusion of the word "appeals" necessarily requires the "objective observer" to consider the potential effect of the language on a person hearing it—i.e., whether the language **appeals** or **implicitly appeals** to a person's racial bias.

PREJUDICE: Section 745, subdivision (k) – applies by its plain terms only to "petitions" and so no harmless error analysis was required.

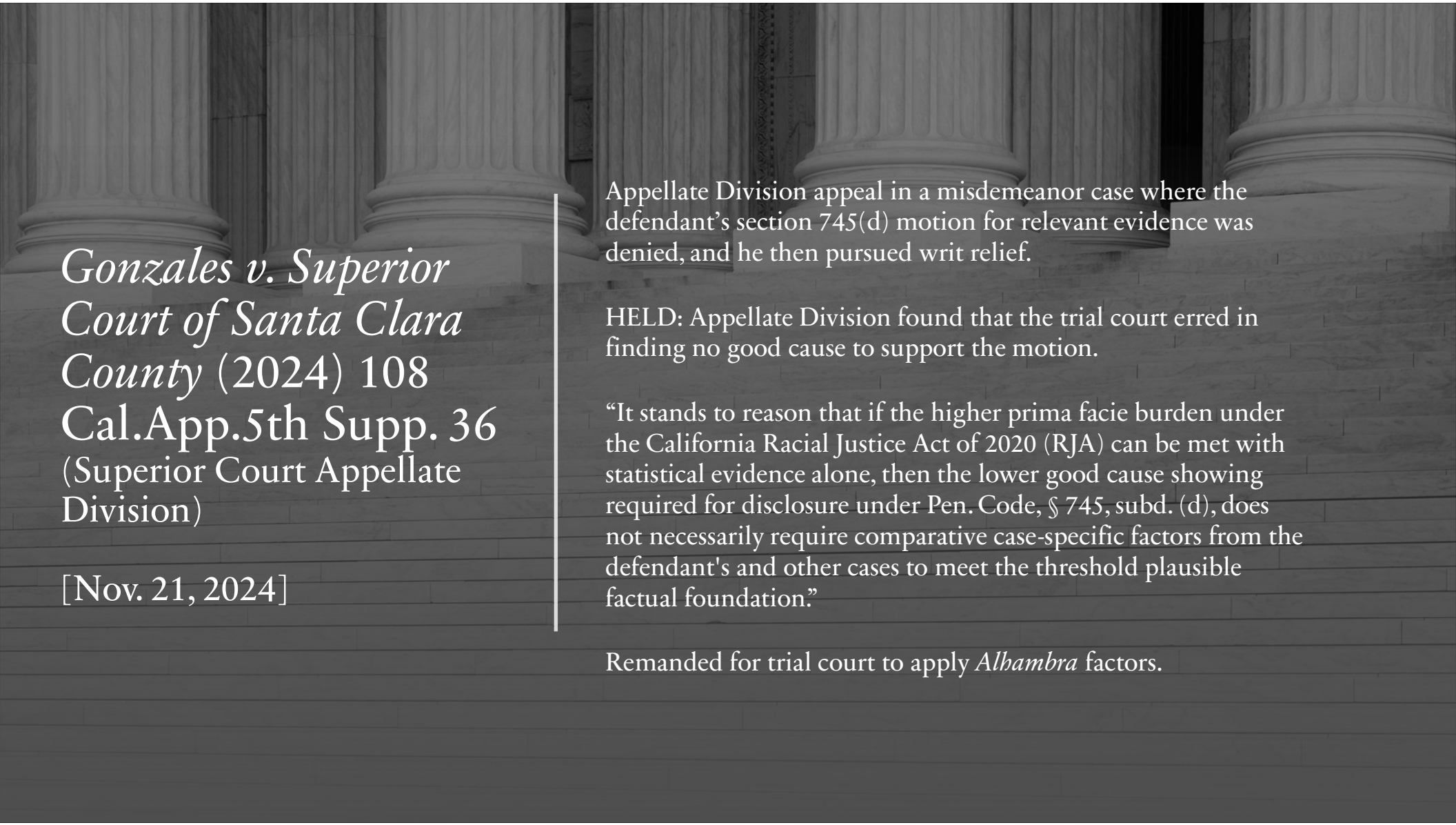
People v. Stubblefield (2024) 107 Cal.App.5th 896

[Dec. 26, 2024]

Current Statue:

Attorney General's petition for review was on a narrow issue –whether harmless error review under § 745, subd. (k) is confined exclusively to RJA claims brought via habeas. The California Supreme Court granted review and deferred the matter pending the decisions in two capital appeals: (1) *People v. Bankston* - direct appeal claim under §745(a)(2) for DA's calling the defendant a "Bengal tiger," a "thug" and "killing machine," and "expert" testimony from a gang officer about the violence-prone nature of Black "hardcore gang members." Oral Argument was on May 7, 2025; (2) *People v. Barrera* – direct appeal claim concerning the use of anti-Latinx racialized language throughout voir dire and trial when prospective jurors expressed bias against non-European immigration ("illegal immigrants"), Latino prospective jurors were singled out for questioning, emphasis of the irrelevant fact that the defendant's children helped him sell corn on the streets, and the DA's use of racialized and dehumanizing language {defendant was lower than an animal) and otherized immigrants, and by defense expert's testimony that being an illegal immigrant made it more likely that the defendant abused his children.

See earlier slides for a more in depth summary of the Court of Appeal's useful analysis of the RJA claim.



Gonzales v. Superior Court of Santa Clara County (2024) 108 Cal.App.5th Supp. 36

(Superior Court Appellate Division)

[Nov. 21, 2024]

Appellate Division appeal in a misdemeanor case where the defendant's section 745(d) motion for relevant evidence was denied, and he then pursued writ relief.

HELD: Appellate Division found that the trial court erred in finding no good cause to support the motion.

"It stands to reason that if the higher prima facie burden under the California Racial Justice Act of 2020 (RJA) can be met with statistical evidence alone, then the lower good cause showing required for disclosure under Pen. Code, § 745, subd. (d), does not necessarily require comparative case-specific factors from the defendant's and other cases to meet the threshold plausible factual foundation."

Remanded for trial court to apply *Alhambra* factors.

People v. Corbi (2024) 106 Cal.App.5th 25

[Oct. 25, 2024]

Status: appellant's review petition denied; Justices Liu and Evans voted for review.

Direct appeal from a jury verdict.

The appellate claims included that the prosecutor violated the RJA during closing argument by repeatedly highlighting a Facebook post where the defendant indicated his interest in white women.

HELD: (1) the RJA claim was not preserved for appeal because, while defense counsel noted the comments were "not proper," there was no RJA motion brought below.

Note: the *Corbi* court followed the Lashon analysis, and found that the phrase in § 745, "[f]or claims based on the trial record" did not "mean that certain RJA claims are not forfeitable."

(*Id*. at pp. 35-42.)

Sanchez v. Superior Court of San Bernadino County (2024) 106 Cal.App.5th 617

[Oct. 22, 2024]

- Pretrial, DA filed a motion alleging that during plea negotiations, the deputy public defendant made remarks that may created a conflict of interest between defense counsel and the defendant. In a hearing without the DA present, the remarks were read and defendant affirmed that he wanted to keep his counsel. Defense counsel denied the DA's version and said the comment he made was sarcastic and in pursuit of his client's best interests. In a hearing on the DA's motion, the trial court ordered that a new attorney be appointed because the remarks at least raised a potential RJA issue.
- The defendant sought writ relief, and an OSC issued.
- HELD: The DCA affirmed, finding the trial court did not abuse its discretion. The original defense attorney could not impartially investigate whether an RJA violation had occurred, which created a conflict of interest. Even apart from a conflict, the trial court had the discretion to remove counsel to insulate the proceedings from a future RJA claim.
- **See dissent**: "A deputy public defender sought a more favorable plea offer and expressed the view that the criminal justice system is biased against Hispanic defendants like his client." "The record contains no evidence of a potential RJA claim against the deputy public defender. The trial court's ruling was therefore erroneous and prejudicial, depriving defendant Enrique Sanchez of an attorney whom he wanted to keep and who was zealously representing him."
- **NOTE:** This opinion was originally unpublished but the court published it in response to the DA's request for publication.

People v. Serrano (2024) 106 Cal.App.5th 276

[Oct. 19, 2024]

Current Status: Briefing deferred pending decision in *In re Montgomery*, S287339, which presents the following issue: Must a petitioner allege a prima facie case for relief under the Racial Justice Act (Pen. Code, § 745; RJA) before the trial court can consider a discovery request for disclosure of evidence under the RJA (id., subd. (d))

- The defendant was sentenced in 1998. In January 2024, he filed a stand-alone post judgment motionunder section 745, subdivision (d), seeking information and statistics to support a claim that the Sacramento County DA engaged in racially disparate charging. in violation of PC 745 (a)(3). The trial court denied the motion, holding that the defendant had failed to establish good cause. The defendant appealed.

- HELD:

- (1) The appellate court disagreed with *Montgomery* and found that the RJA authorizes a stand-along post-judgment discovery motion before filing a habeas corpus petition. The plain language of PC 745(d) does not differentiate between pre- and post-conviction proceedings.

- (2) The denial of the motion is an interlocutory order, however, and thus not appealable.

- OUTCOME: Appeal was dismissed.

In re Montgomery (2024) 104 Cal.App.5th 1062 [4DCA/1]

[Sept. 6, 2024]

CURRENT STATUS: Petition for review granted and presents the following issue: "Must a petitioner allege a prima facie case for relief under the Racial Justice Act (Pen. Code, § 745; RJA) before the trial court can consider a discovery request for disclosure of evidence under the RJA (id., subd. (d))?"

- In the trial court, the defendant filed a "declaration" "raising RJA habeas claims," with an attached related "motion for discovery" based on charging and sentencing disparity. The trial court treated the declaration as a writ of habeas corpus and summarily denied it. The trial court's order also referenced the § 745, subdivision (d), motion and denied that for want of jurisdiction. The defendant appealed.
- MAJORITY:
  - the denial of a PC 745(d) motion was not an appealable order; the trial court had no jurisdiction to entertain the (d) motion because it had already denied the companion habeas corpus petition for RJA relief for failure to state a prima facie case.
  - the Legislature did not intend for PC 745(d) to authorize a free-standing motion for discovery in retroactive/post conviction cases.
  - The majority finds that Mr. Montgomery's recourse is to file a new HCP in the court of appeal, where he may also renew his PC 745(d) motion.
- CONCURRENCE: Justice Kelety found that the Legislature expressed an intention to allow defendants to obtain RJA discovery "regardless of the finality of the underlying conviction or the mechanism the defendant uses to assert their RJA claims." The same standards for obtaining discovery under the RJA should apply to all individuals asserting claims under the RJA." The trial court may rule on the (d) motion and the habeas petition in a single order or may rule on the (d) motion separately, before ruling on the habeas petition. Agreeing with the majority, however, that the denial of the (d) motion is not appealable. Instead, Mr. Montgomery may seek review by filing either a writ of mandate or a new habeas petition in the court of appeal.
- OUTCOME: Appeal dismissed

People v. Howard (2024) 104 Cal.App.5th 625

[Aug. 27, 2024]

After the jury's verdict but prior to sentencing, the defendant filed an RJA motion alleging the prosecutor violated section 745, by cross-examining him about his connection to East Palo Alto. The trial court took judicial notice of East Palo Alto's reputation in the 1990's, but denied the motion, and the defendant was sentenced to 19 years to life. The defendant appealed.

On direct appeal, the defendant argued that the trial court erred in denying the RJA motion, and that the error further violated his due process rights. In addition, the defendant argued a new RJA violation on the grounds that the prosecutor violated the RJA and due process by arguing to the jury that the victim's use of the n-word before the shooting was not offensive in the defendant's "world."

HELD: The trial court erred in denying the RJA motion, because the defendant met hit "initial minimal burden to produce facts that, if true, establish that there is more than a mere possibility of an RJA violation."

DISPOSITION: conditionally and remanded reversed for proceedings under the RJA.

NOTES:

- **Standard of review:** DCA review de novo the trial court's legal conclusion that the defendant failed to make a prima facie showing in the trial court.
- Referencing state and federal case law, the court noted how "a person's place of residency may serve as a proxy for race."
- The court also found that the relevance of the defendant's connection to East Palo Alto was marginal
- Concerning the appellate challenge to the DA's use of the n-word, the court declined to decide whether the claim was forfeited for failure to raise below, and instead found "under the present circumstances, [the defendant] may on remand raise his second RJA claim to the trial court, should he choose to do so."
- (*Id*. At pp. 651-659, 663.

People v. Wilson (2024) 16 Cal.5th 874

[Aug. 5, 2024]

Motion for stay & remand denied in death penalty direct appeal. It was based on potential juror bias and charging & sentencing disparities in San Bernardino County.

MAJORITY: The stay-and-remand procedure of § 745, subd. (b), was unnecessary because a habeas petition under § 1473, subd. (e), was an effective means to seek RJA relief.

Explanation:

- **A stay under § 745 requires good cause, which "depends on a case-specific consideration of the reasons proffered for delaying the adjudication of the appeal."** Whether defendant is potentially eligible is an important threshold consideration.
- **The defendant raised a plausible RJA claim, but he must also show he faces legal or practical obstacles to pursuing RJA relief that would be avoided by stay/remand.**
- Interests on "the other side of the balance" favor denial, including the interests of victims' families, witnesses, and the public.
- "[O]ur holding today is limited," and the Court did not suggest stay & remand "is categorically unavailable."
- **Fn. 23: in other cases, the RJA claim may be intertwined with appellate issues; utility of stay/remand may be greater, including in noncapital cases where violations may lead to the possibility of release; and preservation of evidence is a concern.**
- Majority did not to resolve the claim that the harmless error standard applies only to habeas petitions, (not motions).
- Continued on next slide . . .

People v. Wilson (Continued . . .)

The dissent

DISSENT (Liu and Evans):

- Majority "effectively deprives capital litigants of access to the procedure [the RJA] expressly provides for seeking timely relief. and "supplants the Legislature's demand to swiftly rid the criminal justice system of racism with a novel and unnecessary RJA-specific habeas path" that is "riddled with delay because of the difficulty of appointing habeas counsel and processing capital habeas claims." This "approach is untethered to the statute's text or legislative history, and undermines the Legislature's stated purpose."
- Since "Mr. Wilson sets forth nonfrivolous RJA claims that require further factual development, he has established good cause …."
- RJA does not state whether good cause is required for stay/remand but language ("may" & "request") suggest it is not automatic and some cause is necessary. Even if more than presenting a nonfrivolous claim requiring factual development is required, Mr. Wilson has good cause, that stay/remand is "'just under the circumstances.'" The fact that success on either of his claims would render him ineligible for the death penalty "weighs heavily" in favor of stay/remand.
- Cases cited by majority are different. "It would be a category error to analogize the stay-and-remand procedure here--which facilitates the RJA's anti-discrimination purpose-to the stay-and-remand procedures for recent sentencing reform measure, which were enacted merely as 'an act of grace and mercy.' (Citation)."
- In passing AB 1118, the "Legislature was responding to and accounting for the significant and serious obstacles capital defendants face in securing qualified counsel."

People v. Frazier (2024) 16 Cal.5th 814

[Aug. 5, 2024]

Automatic appeal in a capital case.

No RJA claims were raised on direct appeal, but the defendant sought a stay/remand under section 745, subdivision (b).

MAJORITY: In a footnote, and after applying the factors identified in *Wilson*, the majority found that the defendant had not established good cause for a stay/remand, and denied the request without prejudice to file a writ of habeas corpus. The majority found that the defendant's claim **was not intertwined with the issues on appeal; his counsel OSPD was available to file a limited-purpose writ petition; remand at this late stage would cause significant delay.**

DISSENT: by Justice Evans, joined by Justice Liu.

- Frazier alleged significant disparities in capital sentencing based on victim race under PC 745(a)(4)(B). His expert's preliminary findings show homicides of White victims in Contra Costa County were twice as likely to end in a death sentence as were homicides of Black or Latino victims. The majority does not dispute he has identified a plausible claim for relief under the RJA.
- "In my view, when the Legislature has spoken in a clear voice that courts must promptly address what is widely understood to be this country's original sin, we should heed its call."
- None of the 3 factors cited by majority "justifies a ruling that prevents Frazier from obtaining the 'efficient and effective' remedy the Legislature explicitly intended to provide when it added the stay-and-remand procedure."

People v. Singh (2024) 103 Cal.App.5th 76

[Jun. 27, 2024]

Status: Appellant's petition for review denied; Justice Liu voted to grant review.

Direct appeal following a conviction for murder.

One of the claims raised on appeal was that his post-offense interview with police, as translated, infused the trial with implicit bias in violation of the RJA and due process, and that if forfeited for failing to object to the admission of the interrogation video on these grounds, that his counsel rendered ineffective assistance.

The detective had asked about whether the death of the defendant's daughter-in-law was an "honor kill."

The AG argued that the detective's comment was not racially biased "in context" especially since the defense brought in its own expert on Punjabi culture concerning reputation and status.

HELD: the RJA claim was forfeited following *Lashon*, by failing to raise it below; no forfeiture exception applies (e.g., *In re Sheena K.* (2007) 40 Cal.4th 875, 887-888, fn. 7), counsel was not ineffective due to "multiple reasonable tactical reasons why defense counsel may not have objected . . . ." Irrespective, there was no prejudice from counsel's failure to object.

People v. Arias (2024) 101 Cal.App.5th 1163

[May 10, 2024]

- Direct appeal from a jury trial.
- At the time of jury selection, the defense challenged the prosecutor's use of a peremptory strike against a prospective juror who was a Black woman under *Batson/Wheeler*. The trial court denied the motion.
- Also during the trial court proceedings, the defense brought multiple motions under the RJA, all of which were denied
  - Testimony and direct examination questions about whether the defendant had a green card, some asking about whether the defendant conformed to certain stereotypes about Latino men
  - (a)(3) and (a)(4) claims concerned charging and sentencing disparity
- On appeal, appellant challenged the RJA denials, as well as the *Batson/Wheeler* denial
- HELD: The Court of Appeal **did not reach the RJA issues,** but instead reversed on *Batson/Wheeler*. However, it referenced the RJA in stating: "we are disheartened by the prosecutor's desire to reject jurors who were concerned about implicit bias and fairness in the justice system." In fact, recognizing implicit bias "arguably makes a person a *better* juror." (*Id.*, at p. 1182)
- Frustratingly, the entirety of the claims under the RJA were summarized in a footnote: "As a result, we need not address Arias's numerous other claims, including his claim that the trial court erred by denying his two motions under the California Racial Justice Act of 2020 (Stats. 2020, ch. 317, § 1) (RJA) alleging bias against Latinos." (Id., at p. 1169, fn. 2.)
- The information about the appellate challenges under the RJA are described above with thanks to appellate counsel Matthew Siroka who provided the briefing.

Bonds v. Superior Court (2024) 99 Cal.App.5th 821

[Feb. 14, 2024]

Example of an (a)(1) [out of court bias] claim

- Convicted of misdemeanor possession of a concealed firearm (§ 25400(a)(1)) after traffic stop
- The defendant argued that he had been stopped because he was Black.
- RJA evidentiary hearing was held with three expert witnesses:
- Officer testified that race played no role in his decision to stop the defendant's vehicle because he could not "see what race was in that vehicle."
- Trial court denied RJA motion finding the officer credible and that the officer did not exhibit any racial bias because of the defendant's race. The defendant appealed.
- HELD: Trial court applied the wrong standard and ignored implicit bias (e.g., ref. to hoodie); Remanded
- Statistical analysis of stop data is admissible & relevant on all (a) claims

Mosby v. Superior Court
(2024) 99 Cal.App.5th 106

[Jan. 25, 2024]

- Defense presented:
  - 3 expert analysis
  - factual narratives of similar cases with White defendants
- Court of Appeal:
  - made a prima facie showing under (a)(3)
  - declined to decide if statistical evidence alone is enough
  - Fn: (a)(4) applies only after def. is sentenced
  - Writ petition granted [PFR denied]

Mosby v. Superior Court
(2024) 99 Cal.App.5th 106

Continued . . .

[Jan. 25, 2024]

- § 745 puts burden on DA to show race-neutral reasons for the disparity
- So, to prevail, defendant is not required to negate every possible race-neutral reason for the disparity.
- Thus, at prima facie stage, defendant doesn't need to negate all

People v. Lashon (2024)
98 Cal.App.5th 80

[Jan. 8, 2024]

- Pre-AB1118 claim under RJA
- No objection/motion below – futile
- DCA found forfeiture
- **November 2023:** PFR granted, transferred back to DCA for reconsideration in light of AB1118
- **January 2024:** DCA finds forfeiture again
- **April 2024:** PFR and request for stay/remand denied by CSC without comment

People v. Coleman (2024)
98 Cal.App.5th 709

[Jan. 5, 2024]

- No objection/motion below
- Direct appeal claim based on the trial record alleging § 745, subd. (a)(2) violation, because trial counsel exhibited racial bias toward defendant by advising him to "use Ebonics, slang, and to sound ghetto," when he testified
- Held: used discretion to reach merits; "The record fell far short of meeting defendant's burden to demonstrate by a preponderance of the evidence that defense counsel's sound advice indicated racial animus or bias toward him"

People v. Simmons (2023) 96 Cal.App.5th 323

[Oct 12, 2023]

The prosecutor cross examined the defendant about his skin tone; asked him to confirm that he was light skinned; and noted that "sometimes people mistake you for something other than Black."

During rebuttal, the prosecutor suggested the defendant was lying based on his skin tone and "ethnic presentation."

Trial counsel does not raise RJA claim in motion for new trial held three days after the effective date of the RJA.

Client gets life sentence for attempted murder.

Appellant argues the prosecutor violated § 745, subd. (a)(2), and that trial counsel was ineffective for failing to raise the violation at sentencing.

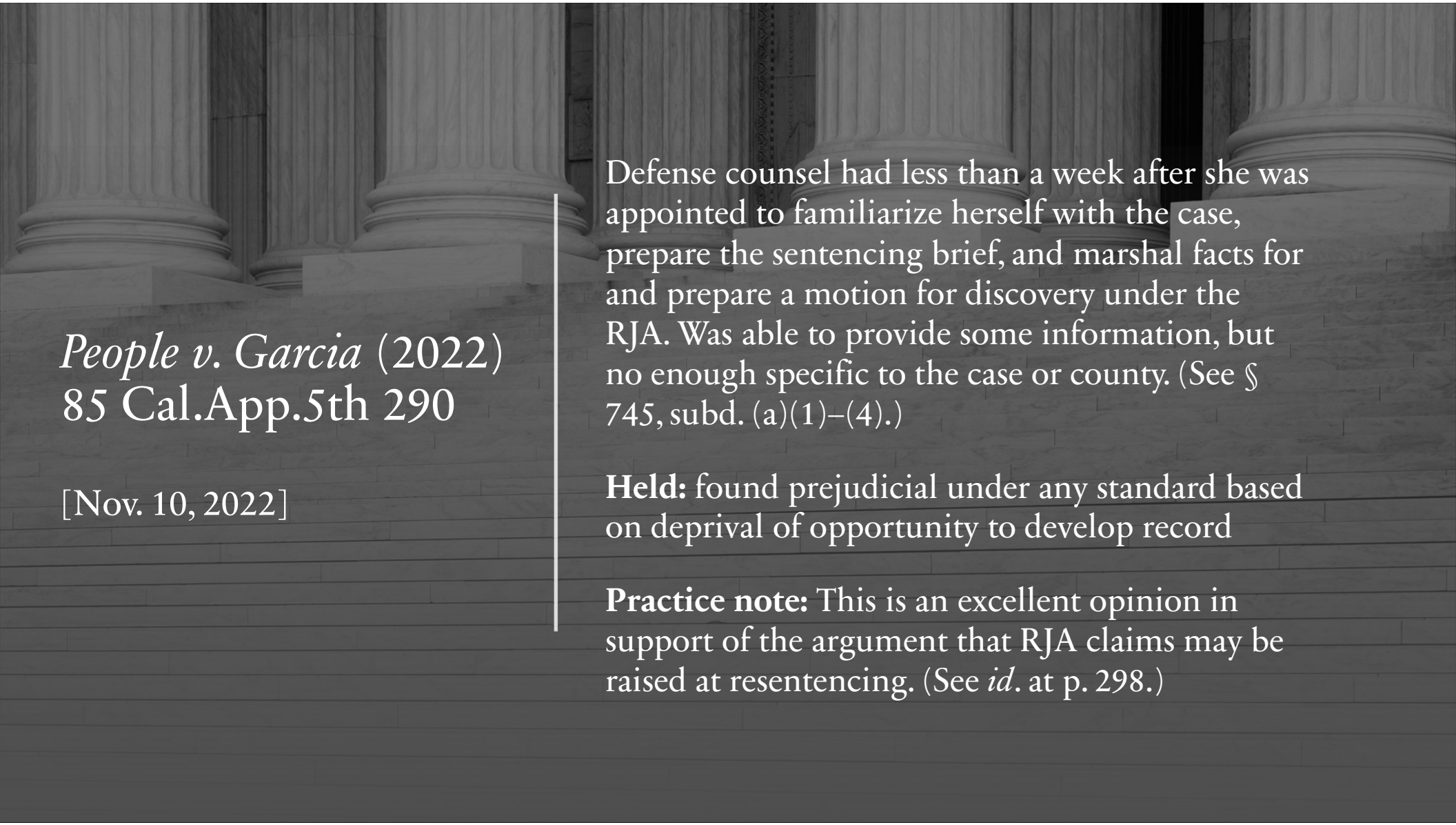
People v. Simmons (2023) 96 Cal.App.5th 323

Continued . . .

The Attorney General concedes the error and prejudice.

Held: (1) Violation of § 745(a)(2); (2) Prejudicial Ineffective Assistance of Counsel; (3) RJA Violation = Structural Error; (4) No Violation of the California Constitution's Separation of Powers Clause

Dissent: (1) Leg. has usurped judiciary's authority to define a miscarriage of justice; (2) So RJA violates the separation of powers clause; (3) Urged CSC to grant review on its own motion, since both parties argued against application of harmless error analysis [CSC declined]



People v. Garcia (2022)
85 Cal.App.5th 290

[Nov. 10, 2022]

Defense counsel had less than a week after she was appointed to familiarize herself with the case, prepare the sentencing brief, and marshal facts for and prepare a motion for discovery under the RJA. Was able to provide some information, but no enough specific to the case or county. (See § 745, subd. (a)(1)–(4).)

Held: found prejudicial under any standard based on deprival of opportunity to develop record

Practice note: This is an excellent opinion in support of the argument that RJA claims may be raised at resentencing. (See *id*. at p. 298.)

Young v. Superior court
(2022) 79 Cal.App.5th 138

Denial of motion for discovery under § 745, subd. (d)

[May 26, 2022]

To establish good cause for discovery under the RJA, "a defendant is required only to advance a plausible factual foundation, based on specific facts, that a violation of the Racial Justice Act 'could or might have occurred' in his case"

"Plausible justification" is even more relaxed than the "relatively relaxed" *Pitchess* standard

Court must weigh *Alhambra* factors to decide scope of disclosures (i.e., whether material adequately described, availability, risk of unreasonable delay, undue burden, confidentiality & privacy rights.)

Young cautions: Once a plausible justification is established, it will likely be an abuse of discretion for the court to deny a motion.

People v. Fitch (2025 Cal.App.Unpub.LEXIS 1792); H049201

[Mar. 24, 2025]

Direct appeal raising multiple issues of which some concerned the playing and admission of two rap videos. In addition to challenges under Evid. Code, §§ 352.2 and 352, the defendant argued that use of the rap videos violated the RJA, and to the extent an objection was required below, that the defendant received the ineffective assistance of counsel.

HELD Re: RJA - (1) the normal rules of forfeiture apply to RJA claims, followed Lashon to find the failure to raise the issue prior to sentenced forfeited the claim on appeal; (2) BUT , the court found ineffective assistance of counsel on both the deficient performance prong (should have made the RJA claim prior to sentencing and there was no tactical reason for failing to do so) and prejudice prong on the grounds that the RJA prima facie standard is very low and there is a reasonable probability that the trial would have found it met and have conducted an evidentiary hearing. If the RJA claim was sustained, the trial court would have been required to impose a remedy.

REMEDY: judgment reversed for multiple reasons including the IAC under the RJA. Among other remedies, the court directed that the defendant on remand be afforded the opportunity to bring an RJA motion, and to follow section 745 regarding the applicable procedure and appropriate remedy should a violation be found.

People v. Nieto (2023 Cal.App.Unpub.LEXIS 3802)

[Jun. 29, 2023]

§ 745, subd. (a)(2)
Prosecutorial misconduct in closing

Reached claim on the merits but agreed with the AG that "[t]o the extent the prosecutor's comments implied that [Nieto] was a human predator, that was a fair description of [the] defendant [based on his conduct]. . . ."

"[W]e conclude that referencing predatory behaviors, without more, does not indicate racial animus sufficient to support a violation of the [RJA]. Of course, we recognize that while referring to predatory behavior is generally race-neutral, under certain circumstances such language could be used to invoke racist tropes."

Appears to apply de novo review to § 745 (a)(2) claim.

"Thus, while we join the call for courts and counsel to 'be aware of explicit and implicit racial biases' and 'to be vigilant in their efforts to ensure compliance with the Racial Justice Act and the provision of fair trials' (*id*. at p. 96 [maj. opn.]), after thoroughly reviewing Nieto's trial we reject his [RJA] claim."

People v. Mejia-Picazo (2023 Cal.App.Unpub.Lexis 3725)

[Jun, 28, 2023]

§ 745, subds. (a)(1) & (a)(2)

Prosecutorial asked an officer about the defendant's ability to speak and understand English during his conversation with the defendant

- Defense brought a motion for mistrial on the grounds that the prosecutor was injecting racial bias into the proceedings having had no purpose in raising the issue of defendant's English-speaking abilities apart from suggesting defendant was "faking" and "is somehow disingenuous.
- Trial court denied the mistrial motion, but addressed the jury about the problematic nature of the prosecutor's argument

Held: (1) assuming the prosecutor erred, there was no prejudice because "any harm was remedied by the trial court's admonishment to the jury. The court gave a prompt and thorough admonition, identifying for the jury the exact material at issue, explaining why it was improper, and instructing them to disregard all testimony on the issue"; (2) RJA claim forfeited by defense counsel's failure to object or bring a motion on that ground.

People v. Weathersby
(2023 Cal.App.Unpub.LEXIS 1361)

[Mar. 8, 2023]

§ 745, subds. (a)(1) & (a)(2)
Prosecutorial misconduct in closing

Defense argued prosecutor referred to defendant as a "monster" during closing argument, which dehumanized him in front of the jury, and that the word "monster" has "racial overtones" which violated § 745, subdivisions (a)(1) and (a)(2).

The AG argued forfeiture and, in any event, harmless

DCA agreed with AG. Court relied on precedent to support their holding. (See *People v. Sandoval* (1992) 4 Cal.4th 155, 180 ["[c]losing argument may be vigorous and may include opprobrious epithets when they are reasonably warranted by the evidence"]; *People v. Farnam* (2002) 28 Cal.4th 107, 168 [no misconduct where "the prosecutor referred to defendant as 'monstrous,' 'cold-blooded,' vicious, and a 'predator' "]; *People v. Harrison* (2005) 35 Cal.4th 208, 246, [referring to defendant as "evil" was within the permissible scope of closing argument].)

No prejudice: "these brief and isolated alleged epithets could not have been prejudicial under any standard in light of the record and the overwhelming evidence of guilt." (*Id*. at p. 35.)

People v. Johnson & Williams (2022 Cal.App.Unpub.LEXIS 7947)

[Dec. 29, 2022]

Status: PFRs denied.

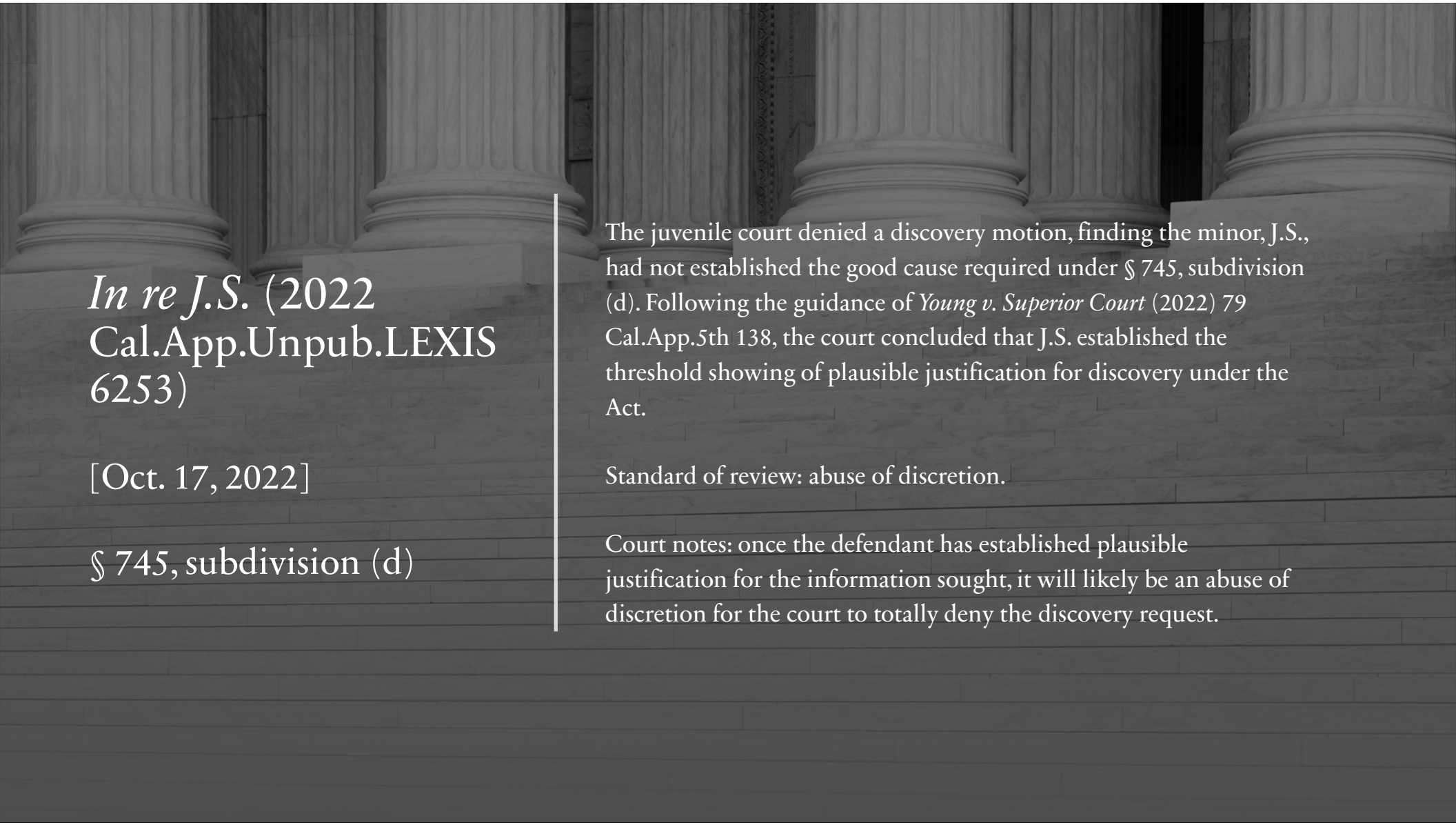
Co-defendants' direct appeal from convictions for sex trafficking and related offenses. They argue the RJA was violated by a prosecution's expert witness.

Majority opinion:

- No § 745 (a)(2) violation for using "gorilla pimp" and other inflammatory language by expert witnesses in a human trafficking case.
- Judgment was entered before Jan. 1, 202, and so the applicability of the new statute was addressed
- The DCA rejects the claim that AB 256 violates equal protection because it includes a harmless error provision for retroactive 745 (a)(2) violations. Rational basis review applies. Court infers from the legislative history that fiscal concerns motivated them to include a harmless error standard for retroactive but not prospective cases.
- The court declined to resolve whether a post judgment RJA claim may be brought on appeal, rather than via habeas
- Court rejected the claims that the expert witnesses' use of words like "predatory," "exploiter," "grooming" and "commodity" are racially coded where two Black men were accused of prostituting a White girl. And that the officer's use of "gorilla pimp" violated the RJA. While it implicated the RJA, it fell within the (a)(2) exception which applies when "the person speaking is describing language used by another that is relevant to the case."

Concurring opinion by Justice Lie:

- On this record, the use of "gorilla pimp" is racially coded and not excused by any viable theory of relevance. However, the RJA error was harmless beyond a reasonable doubt.
- Such racially coded language is "particularly injurious in the context of profile evidence." "Our tolerance for racial coding of profile evidence can only reinforce implicit racial bias and, in a trial of defendants of the coded race, 'undermine public confidence in the fairness of the state's system of justice' (Stats. 2020, ch. 317, sec. 2) even where the record leaves no reasonable doubt that the jury would have reached the same result absent the error."



In re J.S. (2022 Cal.App.Unpub.LEXIS 6253)

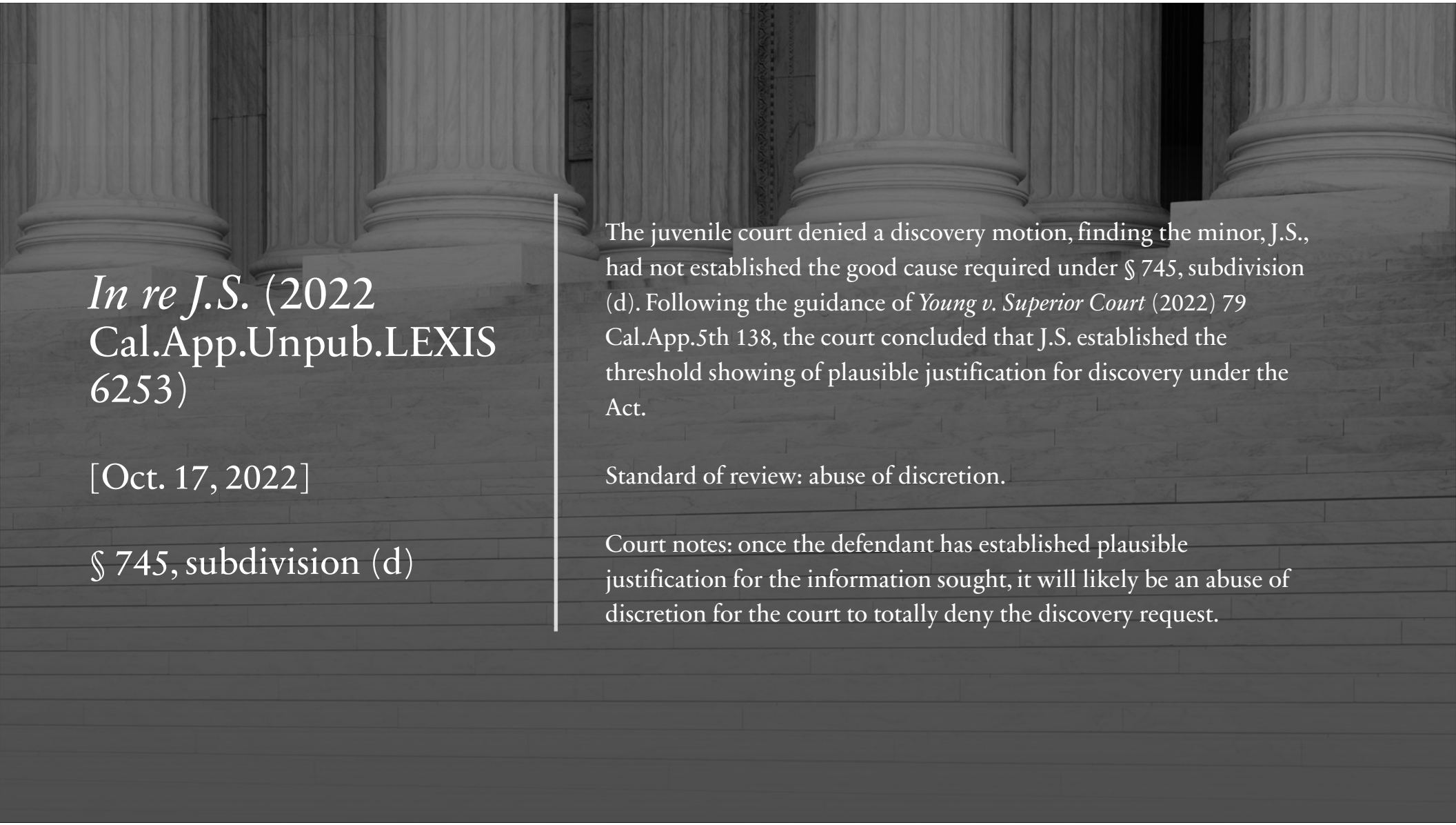
[Oct. 17, 2022]

§ 745, subdivision (d)

The juvenile court denied a discovery motion, finding the minor, J.S., had not established the good cause required under § 745, subdivision (d). Following the guidance of *Young v. Superior Court* (2022) 79 Cal.App.5th 138, the court concluded that J.S. established the threshold showing of plausible justification for discovery under the Act.

Standard of review: abuse of discretion.

Court notes: once the defendant has established plausible justification for the information sought, it will likely be an abuse of discretion for the court to totally deny the discovery request.



In re J.S. (2022 Cal.App.Unpub.LEXIS 6253)

[Oct. 17, 2022]

§ 745, subdivision (d)

The juvenile court denied a discovery motion, finding the minor, J.S., had not established the good cause required under § 745, subdivision (d). Following the guidance of *Young v. Superior Court* (2022) 79 Cal.App.5th 138, the court concluded that J.S. established the threshold showing of plausible justification for discovery under the Act.

Standard of review: abuse of discretion.

Court notes: once the defendant has established plausible justification for the information sought, it will likely be an abuse of discretion for the court to totally deny the discovery request.

RJA on Direct Appeal

Other Relevant Court Rulings

See also OSPD RJA Sharepoint for up to date information

Other Notable Rulings

In re Gill (2024 Cal. LEXIS 2383) § 745(d) - discovery

Cal. Supreme Court denied writ of habeas corpus with an explanation re inadequately alleged facts

[May 1, 2024]

- "The petition does not satisfy the statutory requirements for the disclosure of discovery or for the appointment of counsel under the Racial Justice Act. (§ **745, subd.** (**d**) [providing for disclosure of evidence relevant to violations of the Racial Justice Act; motion requesting such disclosure shall describe the types of records or information sought]; § 1473, subd. (e) [providing for the appointment of counsel for an indigent petitioner who alleges facts constituting a violation of the Racial Justice Act].)"
- "Petitioner does not describe or attach supporting documentary evidence concerning racial bias or animus or the use of racially discriminatory language, he does not explain how the alleged actions of his attorneys or others reflected racial bias or animus, and he does not allege facts showing that he was charged or convicted of a more serious offense or suffered a longer or more severe sentence when compared with other similarly situated individuals."
- See others e.g., *In re Mathis* (2024 Cal. LEXIS 1499) ["The petition does not satisfy the statutory requirements for the appointment of counsel under the Racial Justice Act. (§ 1473, subd. (e) [providing for the appointment of counsel for an indigent petitioner who alleges facts constituting a violation or the Racial Justice Act]".)

California Supreme Court's response to the PFR

People v. Coleman (2024 Cal.LEXIS 2406) (May 1, 2024)

Cal. Supreme Court denied PFR with Justice Evans' Concurring Statement

Underlying opinion: *People v. Coleman* (2024) 98 Cal.App.5th 709 (summarized in another slide)

- **Underlying alleged RJA violation:** trial counsel asking defendant to "speak [E]bonics," "sound ghetto," and "talk hood" when he testified.
- **Defendant did not request a stay and remand:** "Had he done so, the trial court could have conducted an evidentiary hearing to determine if counsel specifically advised Coleman to "sound ghetto," "sound hood," and "sound like a thug." (See § 745, subd. (c).) An evidentiary hearing would have also presented Coleman with an opportunity to introduce any additional evidence, such as social science research or expert testimony, to demonstrate such statements evince racial bias"
- **Footnote:** did not file a PFR from the denial of a related habeas "Had he done so, the trial court could have conducted an evidentiary hearing to determine if counsel specifically advised Coleman to "sound ghetto," "sound hood," and "sound like a thug." (See § 745, subd. (c).) An evidentiary hearing would have also presented Coleman with an opportunity to introduce any additional evidence, such as social science research or expert testimony, to demonstrate such statements evince racial bias."

Other Notable Rulings

***In re Nelson* (2024 Cal.LEXIS 2609) [May 15, 2024]**

People v. Nelson (2023 Cal. App. Unpub. LEXIS 690

*Opn: Feb 2, 2023 (2*DCA, Div. 1)

- 2021: CSC reversed death sentence and D sentenced to LWOP
- Prior to resentencing, D filed a pro per RJA motion challenging the multiple murder special circumstance. In support, D cited a report indicating 85% of the 215 people sentence to death in Los Angeles County are people of color and the Gov's amicus brief in McDaniel. Nelson is Black & Latino.
- The trial court denied the motion; DCA affirmed, finding Nelson had not made a prima facie showing of a § 745(a)(3) or (a)(4) violation.
- Nelson also challenged statements made by the trial court dismissive of racial injustice in the criminal justice system. The DCA said it did not need to determine whether the remarks were improper because it reviews the trial court's ruling, not its rationale.
- ***In re Nelson***: The opinion does not mention that Nelson filed a habeas petition with a statistical analysis showing the disparities the court says are relevant, and on May 15, 2024, the CSC issued an OSC returnable to the superior court as to why Nelson was not eligible for discovery under the RJA.

Bias Based on National Origin

- RJA-related claims based on national origin:
- Motion to dismiss, based on DA's failure to negotiate immigration-safe plea because the DA opined that all violent felons should be deported.
- Motion for relief under PC 745(a)(1) where officer's assault on client was based on his frustration that client was speaking Spanish.
- An (a)(1) claim based on DA's refusal to take the immigration consequences of the case into account.
- PC 745 (a)(1) claim of discrimination based on national origin because officer interrogated client in English although he indicated he primarily spoke Spanish and another officer acting as an uncertified interpreter was present but participated only intermittently.
- Unpublished Second District, Division One case - *People v. Sibomana* (2024 Cal.App.Unpub.LEXIS 1901), review granted, held behind *In re Hernandez*, S282186 [concerning validity of a plea and the question of whether the defendant "meaningfully understood the immigration consequences of his plea"])
- PC 745(a)(2) claim based on trial court's warning that the defendant "will" be deported if he enters a no contest plea to offense and then failed to give him additional time to consider the plea.

Useful Pre-RJA Case:

People v. Thompson (2022) 83 Cal.App.5th 69

[Aug. 11, 2022]

During jury voir dire the prosecutor told the prospective jurors part of the fable of the scorpion and the frog – misconduct because it was character argument and racially discriminatory.

Majority opinion: forfeited and due to absence of a record establishing the breadth of juror familiarity with the fable, it would be speculative to conclude "the jury construed or applied any of the remarks in an objectionable fashion."

Concurrence: "What this trial court likely did not then perceive, absent more explicit argument by defense counsel, was that deployment of the fable in the trial of a Black man—particularly one charged with a violent and ostensibly motiveless crime—echoed a durable racist trope of the "other" as intrinsically predatory, subhuman in its irrationality, and prone to repay trust with treachery …

Explicit reference to Thompson's race was likewise unnecessary in this context: before the presentation of evidence or even opening statement, the prospective jurors had no foundational facts from which to infer anything about Thompson's nature; what they knew of him at that point, beyond the charges of which he was presumed innocent, was that he was Black."

Pre-RJA – no objection

People v. Sta Ana (2021) 73 Cal.App.5th 44

[Dec. 21, 2021]

- Defendant testified at trial through an interpreter, was born outside the U.S, immigrated to the U.S.
- Trial court judge made a problematic analogy in front of the jury about the defendant
- No objection – appellate challenge under state law and due process for judicial bias
- No forfeiture
- No reversal because language not prejudicial (!)

RJA on Direct Appeal

Legislative History of the Racial Justice Act

Legislative Findings [Assembly Bill No. 2542, 2020 Cal Stats. Ch. 317]

- (f) Existing precedent also accepts racial disparities in our criminal justice system as inevitable. Most famously, in 1987, the United States Supreme Court found that there was "a discrepancy that appears to correlate with race" in death penalty cases in Georgia, but the court would not intervene without proof of a discriminatory purpose, concluding that we must simply accept these disparities as "an inevitable part of our criminal justice system" (*McCleskey v. Kemp*, 481 U.S. 279, 295-99, 312 (1987)). In dissent, one Justice described this as "a fear of too much justice" (*Id*., at p. 339 (Brennan, J., dissenting)).
- (g)". . . we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California, both prospectively and retroactively."

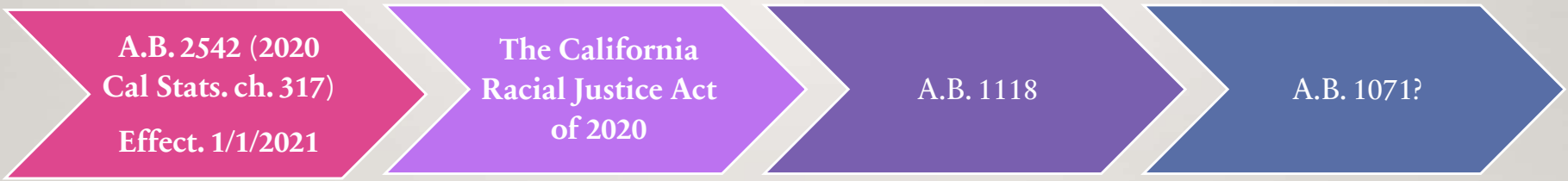
Legislative Findings [Assembly Bill No. 2542, 2020 Cal Stats. Ch. 317]

- (g) "Current law, as interpreted by the courts, stands in sharp contrast to this Legislature's commitment to "ameliorate bias-based injustice in the courtroom" subdivision (b) of Section 1 of Chapter 418 of the Statutes of 2019 (Assembly Bill 242). **The Legislature has acknowledged that all persons possess implicit biases** (*Id*. at Section 1(a)(1)), that these biases impact the criminal justice system (*Id*. at Section (1)(a)(5)), and that negative implicit biases tend to disfavor people of color (*Id*. at Section (1)(a)(3)-(4)).**"**

Legislative Findings [Assembly Bill No. 2542, 2020 Cal Stats. Ch. 317]

- (1) All persons possess implicit biases, defined as positive or negative associations that affect their beliefs, attitudes, and actions towards other people.
- (2) Those biases develop during the course of a lifetime, beginning at an early age, through exposure to messages about groups of people that are socially advantaged or disadvantaged.
- (3) In the United States, studies show that most people have an implicit bias that disfavors African Americans and favors Caucasian Americans, resulting from a long history of subjugation and exploitation of people of African descent.
- (4) People also have negative biases toward members of other socially stigmatized groups, such as Native Americans, immigrants, women, people with disabilities, Muslims, and members of the LGBTQ community.
- (5) Judges and lawyers harbor the same kinds of implicit biases as others. Studies have shown that, in California, Black defendants are held in pretrial custody 62 percent longer than White defendants and that Black defendants receive 28 percent longer sentences than White defendants convicted of the same crimes.
- (6) Research shows individuals can reduce the negative impact of their implicit biases by becoming aware of the biases they hold and taking affirmative steps to alter behavioral responses and override biases.

The Racial Justice Act Evolves



Assembly Bill No. 2542 (Stats. 2020 ch. 317)

The Legislature finds and declares all of the following:
(a) Discrimination in our criminal justice system based on race, ethnicity, or national origin (hereafter "race" or "racial bias") has a deleterious effect not only on individual criminal defendants but on our system of justice as a whole. The United States Supreme Court has said: "Discrimination on the basis of race, odious in all respects, is especially pernicious in the administration of justice." (*Rose v. Mitchell*, 443 U.S. 545, 556 (1979) (quoting *Ballard v. United* States, 329 U.S. 187, 195 (1946))). The United States Supreme Court has also recognized "the impact of... evidence [of racial bias] cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses." (*Buck v. Davis*, 137 S. Ct. 759, 777 (2017)). Discrimination undermines public confidence in the fairness of the state's system of justice and deprives Californians of equal justice under law."

Assembly Bill No. 1118 [Effective January 1, 2024]

- (b) A defendant may file a motion ~~in the trial court or, if judgment has been imposed, may file~~ pursuant to this section, or a petition for writ of habeas corpus or a motion under Section 1473.7, in a court of competent jurisdiction, alleging a violation of subdivision (a). For claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section. If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.
- Clarifies that habeas is not the exclusive post-conviction remedy