

PUBLICATION UPDATE

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California Criminal Defense Practice

Publication 171 Release 74

December 2014

HIGHLIGHTS

Search and Seizure

- *Georgia v. Randolph* does not apply when consent is provided by one occupant well after another occupant, who objects to search, has been removed from their joint home by police [see *Fernandez v. California* (2014) 188 L. Ed. 2d 25], now discussed in Ch. 22. Also, police may not conduct a warrantless search of a cell phone seized from an arrestee [see *Riley v. California* (2014) 189 L. Ed. 2d 430, 2014 U.S. LEXIS 4497], now discussed in Ch. 22.

Pleas

- A certificate of probable cause is not required before appealing a denial of a Penal Code § 1016.5 motion to vacate; proof that the required advisements were given must be shown by the prosecution by a preponderance of the evidence [see *People v. Arriaga* (2014) 58 Cal. 4th 950], now discussed in Ch. 42.

Defenses

- The doctrine of imperfect self-defense is not available when the defendant's belief in the need to defend himself or herself is delusional [see *People v. Elmore* (2014) 59 Cal. 4th 121], now discussed in Chs. 73 and 142.

Death Penalty

- States may not preclude a defendant from showing intellectual disability, so as to be exempted from the death penalty, merely because the defendant has an IQ above 70 [see *Hall v. Florida* (2014) 188 L. Ed. 2d 1007], now discussed in Ch. 87.

Sentencing

- Defendants whose state prison sentences were imposed and suspended, and the defendant placed on probation, before October 1, 2011, who then violate probation after that date, are subject to being sentenced to the previously-imposed state prison sentence rather than county jail [see *People v. Scott* (2014) 58 Cal. 4th 1415], now discussed in Ch. 91.

Cruel and Unusual Punishment

- The California Supreme Court has

given a constitutional construction to Penal Code § 190.5(b), and remanded cases for resentencing despite enactment of Penal Code § 1170(d)(2), regarding juvenile homicide offenders given life without parole sentences [see *People v. Gutierrez* (2014) 58 Cal. 4th 1354], now discussed in Chs. 87 and 91.

Aiding and Abetting

- An aider and abettor may not be convicted of first degree premeditated murder under the natural and probable consequences doctrine [see *People v. Chiu* (2014) 59 Cal. 4th 155], now discussed in Ch. 140.

Juvenile Practice

- A minor's attorney must give consent before the minor may be allowed to plead no contest in a wardship proceeding [see *In re Alonzo J.* (2014) 58 Cal. 4th 924], now discussed in Chs. 120 and 124. When a wardship petition alleges that a minor has committed a series of criminal offenses that include serious or violent offenses,

the minor may not be committed to the Division of Juvenile Facilities if the last offense in the series is nonviolent [see *In re D.B.* (2014) 58 Cal. 4th 941], now discussed in Ch. 124.

Sex Offenses

- Battery is not a lesser included offense of Penal Code § 288(a) lewd act on a child under 14 [see *People v. Shockley* (2013) 58 Cal. 4th 400], now discussed in Ch. 142.

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Publication 171 Release 74

December 2014

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