**SUPREME COURT OF CALIFORNIA**
**ORAL ARGUMENT CALENDAR**
**SPECIAL SESSION — UNIVERSITY OF SAN FRANCISCO**
**SCHOOL OF LAW**
**FEBRUARY 5, 2013**

The following cases are placed upon the calendar of the Supreme Court for hearing at its Special Session at the University of San Francisco, School of Law, 2130 Fulton Street, McLaren Conference Center (Rooms 250-251), San Francisco, California, on February 5, 2013. (On the next day, February 6, 2013, the court will hold oral argument in three additional cases in its regular San Francisco courtroom. The full calendar for both days is available on the court's Web site: February 5, 2013 and February 6, 2013.)

Set out below are brief descriptions of the cases to be argued at the February 5 Special Session. These descriptions are provided for the convenience of those attending the Special Session, and do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.

## TUESDAY, FEBRUARY 5, 2013 — 10:15 A.M.

***Opening Remarks: Historic Special Session***

(1) S198638, City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al

A City of Riverside ordinance totally bans "medical marijuana dispensar[ies]" — defined as any facilities where medical marijuana is made available — and declares them to be public nuisances. The issue is whether the state's medical marijuana laws preclude such a local ordinance. The pertinent background is as follows:

State laws make it a crime to possess, sell, transport, or cultivate marijuana, or to maintain or knowingly provide a place for the purpose of manufacturing or distributing marijuana. These laws also deem such a place a public nuisance that may be enjoined.

However, the Compassionate Use Act (CUA), adopted by the voters in 1996, seeks to ensure that "seriously ill Californians have the right to obtain and use marijuana for medical purposes." To promote this purpose, the CUA provides that state laws prohibiting the possession or cultivation of marijuana shall not apply to a "qualified patient," or the patient's "primary caregiver," who possesses or cultivates marijuana for the patient's personal medical use upon a doctor's recommendation or approval.

In 2004, the Legislature supplemented the CUA by enacting the Medical Marijuana Program (MMP). A stated purpose of the MMP is to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." Accordingly, the MMP provides, among other things, that "qualified patients [and their] primary caregivers . . . who associate . . . in order collectively or cooperatively to cultivate marijuana for medical purposes" are exempt, with respect to these activities, from state laws that make it a crime or a nuisance to possess, cultivate, sell, transport, and store marijuana, or to maintain a place for such purposes.

Applying its "ban" ordinance, Riverside obtained an injunction against the operation of defendants' medical marijuana facility. The Court of Appeal affirmed. On review in the California Supreme Court, defendants urge that the injunction must be overturned because Riverside's ordinance is invalid. They argue that the CUA and the MMP have legalized, as a matter of state law, certain activities associated with the collective or cooperative cultivation of medical marijuana, and thus have "preempted" a local jurisdiction's authority to prohibit, and make nuisances of, those very same activities.

Riverside responds that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders; that the CUA and the MMP state or imply no purpose to restrict that power; and that Riverside's ordinance does not conflict with these statutes, because the statutes do no more than exempt certain activities from the *state*'s criminal and nuisance laws. Riverside also urges that recent amendments to the MMP specifically permit cities and counties to prevent the local "establishment" of facilities that cultivate and supply medical marijuana.

**1:00 P.M.**

(2) S200158, People v. Clancey (Wesley Cian)

In California, criminal charges often are resolved through the process of plea bargaining between the People (through their representative — the District Attorney or prosecutor) and the defendant. In a plea bargain, the defendant agrees to plead guilty or no contest in order to obtain some benefit, usually a less severe punishment than what could result if the defendant were convicted of all the charged offenses. Because the charging function is entrusted to the prosecutor, a court has no authority to substitute

itself as the People's representative in the bargaining process or to agree to a bargain over the objection of the prosecutor.

Although a court thus has no control over the charging decision, it may exercise discretion in deciding what sentence to impose when a defendant has pleaded guilty or no contest to all of the charges. "In that circumstance, the court may indicate 'what sentence [it] will impose if a given set of facts is confirmed, irrespective of whether guilt is adjudicated at trial or admitted by plea.' " (*People v. Turner* (2004) 34 Cal.4th 406, 418-419.)

In this case the defendant was charged with a number of felonies and misdemeanors, mostly theft-related, as well as a prior "strike" conviction within the meaning of the Three Strikes law. The prosecutor and the defendant discussed a possible plea bargain, but did not reach an agreement. The trial court opined that if the defendant were to enter a plea to all of the charges, an appropriate sentence would be five years in prison. However, in order to impose a five-year sentence, the trial court would have to dismiss the "strike" conviction under Penal Code section 1385. Over the prosecutor's objection, the defendant pleaded no contest to the charges and was sentenced to five years.

The main issue before the court is whether the plea and sentence were the product of the proper exercise of the trial court's sentencing discretion (as the defendant contends) or the improper intrusion of the court in the plea bargaining process (as the People contend). The People also argue that an indicated sentence cannot presuppose the exercise of the court's power to dismiss a charge under Penal Code section 1385 — and, even if it could, an indicated sentence cannot presuppose the dismissal of a prior conviction that qualifies as a "strike" under the Three Strikes law.

(3) S030553, People v. Williams (George Brett) [Automatic Appeal]

A Los Angeles County jury found defendant George Brett Williams guilty of two first degree murders and found true the special circumstance allegations of multiple murder and that the murders were committed while defendant was engaged in the commission or attempted commission of a robbery. After the penalty phase, the jury returned a verdict of death.

In all cases in which a judgment of death is entered, the case is automatically appealed directly to the California Supreme Court, and in that appeal the court considers all claims raised in the appeal. In contrast, all non-death-penalty cases, civil or criminal, are first reviewed in the California Court of Appeal. (Review of all non-death-penalty cases by the California Supreme Court is discretionary and depends on whether the court agrees to grant a petition for review to address a novel or otherwise significant legal issue raised by the case.)

The facts of this case are as follows: On January 2, 1990, Willie Thomas and Jack Barron were fatally shot at close range in a house on Spring Street in Los Angeles. The prosecution's case was that defendant shot both victims in the course of a robbery that had begun during a fraudulent drug transaction involving the victims, defendant, and three associates. According to the testimony of the three associates, all of whom had pleaded guilty in prior proceedings, defendant shot both victims. Additionally, two neighbors to the Spring Street house testified that defendant was present at the house on the night of the killings. The prosecution presented evidence that the pager found at the scene of the crime was defendant's, and that his fingerprints were found in the room where the victims had been shot and on the truck to which the victims' bodies had been dragged.

Among the many issues defendant raises on appeal, the following might be discussed at oral argument:

1. *Denial of* Batson/Wheeler *motions*. During the selection of a jury, each party — the prosecution and the defense — is allowed a certain number of peremptory challenges, which means a party can dismiss a prospective juror without stating a reason. Both the state and federal Constitutions, however, prohibit the use of peremptory challenges to remove prospective jurors based on racial discrimination. (*Batson v. Kentucky* (1986) 476 U.S. 79, 84-89 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258, 276-277 (*Wheeler*).) A *Batson*/*Wheeler* motion is a motion that one party asserts against the other during the process of jury selection claiming that the other party has used a peremptory challenge to remove a prospective juror based on racial discrimination. Defendant made three *Batson*/*Wheeler* motions based on the prosecutor's use of peremptory challenges to remove five African-American women prospective jurors. The prosecutor was required to explain his reasons for exercising peremptory challenges against these prospective jurors. The trial court accepted the prosecutor's reasons as race neutral and denied defendant's *Batson*/*Wheeler* motions. On appeal, defendant argues that the trial court erred in denying his *Batson*/*Wheeler* motions.

2. *Ineffective Assistance of Counsel.* The Sixth Amendment to the United States Constitution states that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." This has been interpreted as giving a criminal defendant a constitution right to the effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668.)

Defendant claims that his trial counsel performed deficiently by failing to call as a witness a police officer with whom defendant had worked as an informant. Defendant contends that the testimony of this police officer would have resulted in a more favorable outcome for defendant at his trial.

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