

CaseBank: Cases Added - January 2019 (sorted by Court)

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SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - COMMERCIAL BURG - NON-PUBLIC

Prop 47 "shoplifting" involves consented to entry into "commercial establishment". HELD: theft after entry into an interior room public is not authorized to enter (where no "commerce" takes place) is NOT a Prop 47 shoplifting. This case: back room solely for employees.

COLBERT P. v. () DAR CAL

INSTRUCTIONS/ELEMENT / MISC - FELONY

ESCAPE - 4532 PC - CUSTODY DEFINED - COUNTY PAROLE -

PC 3081(b) permits counties to create local "parole" programs for county jail prisoners. Def violated her "county parole" by leaving the county. HELD: Def was NOT in CUSTODY under PC 4532(b) (1). Def did NOT commit a felony ESCAPE. (2-1 opinion)

TAGGART P. v. () DAR 5:

SEARCH & SEIZURE / INCIDENT TO ARREST

DNA - MULTIPLE ORDERS TO DNA DATABASE - ONE FAULTY

Def's DNA first got into the felony database in 2006 on an arguably bad arrest in which no charges were filed. In 2012 this DNA used to solve cold case from 2008. HELD: Any problem ATTENUATED by VALID orders for def to give DNA in 2008.

MARQUEZ P. v. () DAR 4:3

SENTENCING / MISC - SENTENCING

COMPASSIONATE RELEASE - PC 1170(e)

Dept of Corrections recommends compassionate release to dying murderer under PC 1170(e). Trial court says NO because def's crime too heinous for def to get any compassion. HELD: the ONLY factors the court may consider are the ones articulated in PC 1170(e). Court committed ERROR.

SERVIN P. v. () DAR 4:3

INSTRUCTIONS/ELEMENT / LESSERS

ASSAULT - 245 PC (DEADLY WEAPON) / 245 PC (FORCE LIKELY)

The two forms of PC 245 -- w/deadly weapon / w/force likely to produce GBI are NOT lessers to each other. Def can be convicted of BOTH for the same conduct. --- Def can only be sentenced on One however.

AGUAYO P. v. () DAR 4:1

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - GREATER 1385

1/1/2019 amendments to PC 667 and PC 1385 extending 1385 authority to 5-year priors under PC 667 is RETROACTIVE to all cases not yet final. Including cases on appeal. Remanded.

PRIDE P. v. () DAR 4:1

INSTRUCTIONS/ELEMENT / ADULT SEX CRIMES

PIMPING AND PANDERING - 266i PC

A def can commit the crime of PANDERING under PC 266i(a)(1) by soliciting a preexisting prostitute to become one of HIS prostitutes.

CHATMAN P. v. () DAR 3:

INSTRUCTIONS/ELEMENT / MISC - FELONY

THREATENING OFFICER - 69 PC - DEF MUST KNOW COP IS A

PC 69 states two ways to commit the offense. BOTH WAYS require that def KNOW that the person he is resisting/interfering is an Executive Officer. -- "Should have known" is NOT enough. --- Conviction Reversed.

ATKINS P. v. () DAR 6:

MOTIONS / BAIL / OR

MOTION TO VACATE FORFEITURE - IMPOSING COST TO RE-

PC 1306(b) permits court to assess the "cost of returning def to custody" when a bond-jumper in re-arrested and the bond is exonerated. HELD: this includes the cost of extraditing (and transporting) def from out-of-state. (DCA's are in conflict)

THE NORTH RIVER P. v. () DAR 5:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - GREATER 1385

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MARQUEZ P. v. () DAR 4:3

APPELLATE ISSUES / MISC APPELLATE ISSUES

APPEALABLE ORDERS - COMPASSIONATE RELEASE,

Court denial of a Compassionate Release recommendation by the Dept of Corrections under PC 1170(e) is an APPEALABLE ORDER. (def need not take a writ). Such appellants should alert the DCA to the need for expedited handling.

SERVIN P. v. () DAR 4:3

SEARCH & SEIZURE / EXPECTATION OF PRIVACY

PLACE - THE INTERNET - SOCIAL MEDIA LIMITED TO

Gang cop, pretending to be someone else, asks def to be his social media "friend". Def says OK. Months later, def posts picture (that only friends can see) of himself w/ stolen property. Picture automatically deletes after viewing. DOES def have reasonable expectation of privacy over picture? NO.

PRIDE P. v. () DAR 4:1

APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - POST WAIVER CHANGES TO

Def pleads to a stip 11-yr sentence and waives his right to appeal. New statute then invalidates a part of his sentence. Def files TIMELY appeal. HELD: Appellate waiver did not extend to law changes that occurred after the waiver. Reversed and Remanded.

WRIGHT P. v. () DAR 4:1

TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - DELIBERATIONS - HALLWAY TALK AMONG

Atty unrelated to the case, overhears 4 jurors, during deliberations, in the hallway discussing the case. Atty tells Court. Court refuses to INVESTIGATE and deems a repeated admonition was adequate remedy. REVERSED. Need investigation to rebut PRESUMPTION of prejudice.

HEM P. v. () DAR 3:

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MOTIONS / IMMUNITY

USE IMMUNITY - COURT IMPOSED - OVER D.A. OBJECTION

Def wants to call a witness who takes the 5th. (1) Court has no authority to grant immunity. (2) DDA MUST grant immunity only in extreme cases. Example: Wit has clear, essential, exculpatory evid and DDA has ZERO reason to deny immunity. --- this is not such a case.

HULL P. v. () **DAR** 3:

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

KIDNAP FOR ROBBERY - KIDNAP TO AID ESCAPE FROM

CALCRIM 1203 (re: PC 209) modified by trial court to include Kidnapping with intent to aid in the ESCAPE from a Robbery. --- HELD: this modification was proper.

STINSON P. v. () **DAR** 3:

SENTENCING / CTS/GOOD TIME

GOOD TIME - ONE-STRIKE SEX CASES - 2933.5 PC

Neither one-strike law (PC 667) nor PC 2933.5 authorized trial court to deny def ALL good time credits for pre-sentencing time in custody in one-strike sex case. --- Even if def fits 2933.5 criteria, it is the Dept of Corrections ONLY that enforces 2933.5

BUSANE P. v. () **DAR** 2:6

TRIAL / ARGUMENT

NO-NO FOR DEF ATTY - CONCEDED DEF'S GUILT ON SOME

Without any on-the-record consent of his client, def atty concedes def's guilt of some charges and argues his innocence of the most serious charges. HELD: this is NOT a stipulation to a conviction. DDA must still prove case and jury must still find guilt based on the evid. UPHeld.

LOPEZ P. v. () **DAR** 2:4

TRIAL / JUROR/VERDICT ISSUES

JUROR ID - JUROR WRITES PRIVATE NOTE TO JUDGE

After jury excused post verdict, juror X writes two letters to the trial judge asking a number of questions about the case. Judge discloses letters to attys, but redacts ID information. UPHeld: letters did not reveal any juror misconduct, so attys not entitled to ID.

MUNOZ P. v. () **DAR** 2:1

MOTIONS / DISCOVERY

GENERALLY - 1054 - INTENDS TO CALL - MULTI-DEF CASES

Multi-def trial. Investigator for Def1 interviews witness X. Because atty for Def1 knows atty for Def2 will call X to testify, he withholds interview from DDA because "he" does not intend to call X as a witness. Question: does this violate PC 1054.3(a)(1)? Answer: NO.

LANDERS P. v. () **DAR** 1:4

EVIDENCE / HEARSAY

PRIOR TESTIMONY - OPPORTUNITY TO CROSS

Yes, def atty learned of impeachment material on witness X AFTER prelim, and X invokes the 5th at trial. BUT, def's motive and opportunity to cross-examine at prelim was CLOSE ENOUGH to trial motives that X's prelim testimony can be introduced over def's objection.

HULL P. v. () **DAR** 3:

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

DUE PROCESS - FEES AND FINES - ABILITY TO PAY

Even though the statutes don't say so, DCA decides DUE PROCESS mandates that ANY fine/fee must NOT BE IMPOSED absent a finding of def's ABILITY TO PAY. This case: \$30 court facilities (Govt 70373); \$40 court operations (PC 1465.8); and \$150 Restitution Fine (PC 1202.4).

DUENAS P. v. () **DAR** 2:7

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGE INCLUDES PROCESS

Senate Bill 1437, effective 1/1/2019, changes Felony Murder and aid/abet Natural/Probable conseq's. It also establishes a process for retroactive application to old cases - PC 1170.95. Def's case was on appeal 1/1/2019 and not "final". HELD: Def must use 1170.95 procedure to get relief.

MARTINEZ P. v. () **DAR** 2:5

INSTRUCTIONS/ELEMENT / HOMICIDE

LESSERS - NO LESSER TO WATSON MURDER

In WATSON DUI 187 case, the ONLY charge was PC 187. Trial court refuses to give ANY lessers. UPHeld.

MUNOZ P. v. () **DAR** 2:1

EVIDENCE / 352 / RELEVANCE

DEF BOOKING PHOTO - DEF IS SMILING AFTER KILLING

Watson DUI 187 case. Def is smiling in his booking photo. He also has bloodshot, watery eyes. Def seeks to keep it out under Ev 352. Trial court lets it in. DCA ducks the issue by calling it HARMLESS.

MUNOZ P. v. () **DAR** 2:1

MOTIONS / DISCOVERY

SANCTIONS - MONETARY SANCTION ON DEF ATTY

After trial, and sentencing, are over, trial judge takes up issue of monetary sanctions for defense atty for discovery violation. Is it too late for such a hearing? NO. It is actually preferred to the option of disrupting the trial to focus on this peripheral subject.

LANDERS P. v. () **DAR** 1:4