

# CaseBank: Cases Added during December 2021 (sorted by Court)

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## EVIDENCE / CORPUS RULE

MAKING CORPUS - ROBBERY (VICTIM WAS MURDERED)

187 victim found on street near her car. No sign of sexual assault. Def is stranger to V. V's purse is near body in open condition. HELD: this is enough for CORPUS to show V was killed in course of Robbery or attempted Robbery.

GONZALEZ P. v. () 12/2/2021 CAL

## MOTIONS / CONTINUANCES

DEF ATTY NEEDS CONTINUANCE, DEF OBJECTS

D.P. case. Def attys seeks continuance, def objects. HELD: Court has discretion to grant continuance over def's objection. Court also has discretion to force def atty to go to trial unprepared. (Particularly when def threatens FARETTA if continuance granted.)

GONZALEZ P. v. () 12/2/2021 CAL

## D. P. / SPEC. CIRC. / PEN -

VICTIM IMPACT - VIDEO FAMILY/FRIENDS TALKING ABOUT VICTIM

Court disapproves of some aspects of video presented as Victim Impact evidence (e.g. background music) but finds all such defects HARMLESS.

GONZALEZ P. v. () 12/2/2021 CAL

## MOTIONS / FARETTA / PRO PER ISSUES

TIMELINESS - 2 DAYS BEFORE TRIAL - D.P. CASE

D.P. case over 1 year since filing. Two days before trial, def makes FARETTA motion and says he will need a month to get ready. Denied as untimely. UPHELD.

WRIGHT P. v. () 12/16/2021 CAL

## DEFENDANT'S STATEMENTS / MIRANDA

SUBSTANTIAL COMPLIANCE - PARAPHRASED WARNINGS

Officer gives def his personal paraphrasing of MIRANDA. DCA acknowledges it could be nit-picked, but, any defects are minor and/or trivial. UPHELD.

STA ANA P. v. () 12/21/2021 6:

## TRIAL / JUROR/VERDICT ISSUES

DELIBERATIONS - HUNG JURY - TELLING JURY TO KEEP AT IT

Jury says they are hung. Court gives them appropriate instruction saying "keep trying". Def asserts Ct had obligation to question jury about their status before giving the instruction. HELD: this was a relatively quick jury note re: being hung. No obligation to question jury.

STA ANA P. v. () 12/21/2021 6:

## DEFENDANT'S STATEMENTS / MASSIAH

MANIPULATING TIMING OF ARREST TO AVOID MASSIAH

Police have PC to arrest def in 187 case, but decline to. Def in custody on unrelated charges. Police plant undercover cop into def's jail pod as inmate who listens to def's confession of 187. HELD: No MASSIAH violation. Def's right to counsel on 187 not yet RIPE.

GONZALEZ P. v. () 12/2/2021 CAL

## SEARCH & SEIZURE / WIRETAP

APPLICATION SIGNED BY D.A. DESIGNEE - WAS D.A. UNAVAILABLE?

Wiretap application signed by DA's designated substitute. Application does NOT articulate where DA is or why he couldn't sign application himself. UPHELD. Statute does NOT require such information to be in application. ?Does DA need to be ABSENT?

GONZALEZ P. v. () 12/2/2021 CAL

## D. P. / SPEC. CIRC. / MISC - D.P./SPEC. CIRC.

HABEAS DISCOVERY - 1054.9 PC - DDA JURY SELECTION NOTES

Def sentenced to death in 1994. After death affirmed on appeal, def brings Habeas alleging a WHEELER violation. PC 1054.9 discovery ordered for DDA jury selection notes. HELD: while normally Work Product, DDA said he relied on a "point system". Therefore, the "point system" is relevant and needed.

JONES P. v. SUP CT 12/2/2021 CAL

## EVIDENCE / EXPERT

FINGERPRINTS - EXPERT TO EXPLAIN WHY FINGERPRINTS NOT FOUND

DDA calls Fingerprint Expert for sole reason of explaining why it was not unusual for there to be NO USEABLE prints found at crime scene and/or murder weapon. Def objects as irrelevant since lack of fingerprints not an issue. Trial ct allowed it. UPHELD.

WRIGHT P. v. () 12/16/2021 CAL

## TRIAL / MISC - TRIAL

JUDICIAL QUESTIONING OF WITNESSES IN FRONT OF JURY - UNWOKE

Trial judge asks a question of Expert (that was actually helpful to the defense) with language that was not WOKE. HELD: while DCA did not "condone" the language, there was no Prejudice to the def.

STA ANA P. v. () 12/21/2021 6:

## SENTENCING / 654

954 PC - PC 261 (RAPE OF UNCONSCIOUS) / PC 261 (RAPE OF INTOXICATED)

Rape of Intoxicated Person (PC 261(a)(3)) and Rape of Unconscious Person (PC 261(a)(4)) are two separate crimes and def can be convicted of both under PC 954. But, for sentencing purposes, they are subject to PC 654.

STA ANA P. v. () 12/21/2021 6:

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## MISCELLANEOU / JUDICIAL DUTIES & ETHICS

JUDICIAL AUTHORITY - ONE JUDGE CAN'T OVERRULE ANOTHER JUDGE

Multi-def case. DDA and Judge X don't get along. Pretrial, X dismisses def under 1385. Weeks later, DDA files CCP 170.3 and X recuses himself. New judge Y agrees to "reconsider" def's dismissal and reinstates def into case. HELD: Y had no jurisdiction. DDA's only remedy was appeal.

**VALLEJO** *def v. SUP CT* 12/23/2021 **6:**

## SENTENCING / DIVERSION

DIVERSION - MISD - PC 1001.95 - DUI'S ARE ELIGIBLE - NO

DUI's are NOT subject to new MISD diversion under PC 1001.95. Opinion "implores" the legislature to clear up this mess of conflicting statutes.

**GRASSI** *def v. SUP CT* 12/28/2021 **4:3**

## PAROLE / PAROLE DECISIONS

3051 PC PAROLE - FRANKLIN HEARINGS

30 years after conviction, after def denied parole at regular parole hearing, def asks for a FRANKLIN hearing. Summarily denied. REVERSED. Def is entitled to 3051 parole hearings, therefore eligible for FRANKLIN hearing IF def has evid he couldn't present previously. Remanded.

**HOWARD** *P. v. ()* 12/22/2021 **4:3**

## DEFENDANT'S STATEMENTS / VOLUNTARY

FACTORS - POLICE THREAT TO CHARGE DEF FAMILY MEMBERS

At trial, def's videotaped confession admitted w/out objection. DCA concludes tape shows officer threatened to charge def's sons w/187 if def did not confess and REVERSES conviction. Strong dissent says (1) issue must be raised by Habeas, (2) Tape shows confession voluntary.

**JIMENEZ** *P. v. ()* 12/14/2021 **4:2**

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - PRISON CRIMES - MEX MAFIA IS SEPARATE GANG

On the street, def was member of Gang X. But, while in custody, def was member of Mexican Mafia, and the prison crime def committed was for benefit of MM. DDA presented gang evid re: Gang X. HELD: this is not sufficient.

**RAMIREZ** *P. v. ()* 12/9/2021 **4:2**

## MOTIONS / BAIL / OR

BAIL FORFEITURE - SUMMARY JUDGMENT - TIME REQUIREMENTS (COVID)

Emergency COVID rules do NOT toll or extend Bail Company's time to oppose motion for summary judgment in Bail forfeiture cases.

**FINANCIAL CASUALTY** *P. v. ()* 12/21/2021 **4:1**

## MOTIONS / 170 - CAUSE

IF GRANTED - EFFECT ON PAST RULINGS OF CHALLENGED JUDGE

Multi-def case. DDA and Judge X don't get along. Pretrial, X dismisses def under 1385. Weeks later, DDA files CCP 170.3 and X recuses himself. New judge Y agrees to "reconsider" def's dismissal and reinstates def into case. HELD: Y had no jurisdiction. DDA's only remedy was appeal.

**VALLEJO** *def v. SUP CT* 12/23/2021 **6:**

## INSTRUCTIONS/ELEMENTS / DUI'S

DIVERSION - 1001.95 PC - DUI'S ARE ELIGIBLE - NO

DUI's are NOT subject to new MISD diversion under PC 1001.95. Opinion "implores" the legislature to clear up this mess of conflicting statutes.

**GRASSI** *def v. SUP CT* 12/28/2021 **4:3**

## SENTENCING / STRIKE CASES

1385 AUTHORITY - FACTOR, BAD - JUDICIAL PLEA BARGAIN

Over DDA's objection, court STRUCK two alleged STRIKES, def then plead guilty, then got 28 year determinate sentence. REVERSED. There was NO cogent reason to strike the Strikes other than judicial plea bargaining. This is NOT a legal reason. (even if 28 years is a long sentence)

**VASQUEZ** *P. v. ()* 12/2/2021 **4:3**

## APPELLATE / MISC APPELLATE

WAIVER - FAILURE TO OBJECT - EXCEPTION TO RULE

At trial, def's videotaped confession admitted w/out objection. DCA concludes tape shows officer threatened to charge def's sons w/187 if def did not confess and REVERSES conviction. Strong dissent says (1) issue must be raised by Habeas, (2) Tape shows confession voluntary.

**JIMENEZ** *P. v. ()* 12/14/2021 **4:2**

## SENTENCING / 654

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

PC 245(a)(4) (w/deadly weapon) and PC 245(a)(1) (w/force likely) are two statements of a single crime. PC 954 prohibits a conviction for BOTH. One must be dismissed.

**WAXLAX** *P. v. ()* 12/9/2021 **4:2**

## INSTRUCTIONS/ELEMENTS / HOMICIDE

MALICE (IMPLIED) - GANG FIST FIGHTS

Def initiated, Gang related, fist fight escalates into fatal stabbing by someone other than def. Magistrate fails to HTA def at prelim. REVERSED. This is enough for Implied Malice 187 even without Nat/Prop Conseq theory. (at least at prelim stage)

**VALENZUELA** *P. v. SUP CT* 12/30/2021 **4:1**

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## PRELIMS / 995 / MISC - PRE/995

995 - SUFF OF EVID - IMPLIED MALICE (W/OUT NAT/PROP CONSEQ'S)

Def initiated. Gang related, fist fight escalates into fatal stabbing by someone other than def. Magistrate fails to HTA def at prelim. REVERSED. This is enough for Implied Malice 187 even without Nat/Prop Conseq theory. (at least at prelim stage)

**VALENZUELA** P. v. SUP CT 12/30/2021 4:1

## SEARCH & SEIZURE / AUTOS / CONTAINERS

IMPOUND/INVENTORY - PRETEXT DECISION TO IMPOUND

During lawful traffic stop, officer smells burnt MJ and def has suspended CDL, officer impounds car and does inventory search. REVERSED as a PRETEXT. (Def was known gang member. Officer was in gang suppression unit.)

**BLAKES** def v. SUP CT 11/24/2021 3:

## MISCELLANEOU / JUDICIAL DUTIES & ETHICS

JUDICIAL ETHICS - ASSOCIATING W/ ATTYS AT BAR/EDUCATION EVENTS

Trial judge participates in local Bar Association programs along side the DDA while the def's trial is in progress. HELD: this does NOT raise any Due Process concerns re: neutrality and impartiality. Nor does it support any need for recusal.

**CLARK** P. v. () 12/23/2021 3:

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GUN USE - 12022.53 PC - PROXIMATE CAUSE - MULTIPLE SHOOTERS

Two defs simultaneously shoot victim to death. HELD: BOTH can be guilty of PC 12022.53(d) personal use enhancement without the need to determine which bullet was cause of death.

**LOPEZ** P. v. () 12/29/2021 2:8

## EVIDENCE / 352 / RELEVANCE

THIRD PARTY DEFENSES

187 case. X had motive to kill V. X has no alibi. HELD: this is NOT sufficient evid to support 3rd Party Culpability defense. This is not enough to directly link X as the killer.

**LOPEZ** P. v. () 12/29/2021 2:8

## SEARCH & SEIZURE / EXIGENT CIRCUMSTANCES

SITUATION - DUI - SEIZING BLOOD - DEF ABOUT TO ENTER SURGERY

DUI def loses consciousness in crash and is taken to hospital. Police are told def is about to undergo surgery lasting many hours. HELD: Since there is no time to get S/W for blood before surgery, exigent circumstances exist to take blood without warrant.

**NAULT** P. v. () 12/20/2021 2:8

## PAROLE / PAROLE DECISIONS

3051 PC PAROLE - FRANKLIN HEARINGS

Before FRANKLIN, def sentenced to 17 years for manslaughter for crime committed when def was 18. Def now seeks a FRANKLIN hearing. Trial ct denied request because def will get a REGULAR parole hearing before his PC 3051 parole hrg. REVERSED. Def qualifies for 3051. He is entitled to

**BENZLER** P. v. () 12/14/2021 3:

## MOTIONS / 170 - CAUSE

CAUSE - JUDGE'S INVOLVEMENT W/DDA IN BAR/EDUCATION EVENTS

Trial judge participates in local Bar Association programs along side the DDA while the def's trial is in progress. HELD: this does NOT raise any Due Process concerns re: neutrality and impartiality. Nor does it support any need for recusal.

**CLARK** P. v. () 12/23/2021 3:

## MOTIONS / 1385

LIMITS ON - CAN'T USE TO GIVE LESSER GUN ENHANCEMENT

Def's conviction and sentence are affirmed on appeal in all respects, but, case was remanded to give trial opportunity to exercise newly granted PC 1385 authority over gun enhancement. HELD: this remand was for BINARY decision to strike, not for choosing lesser gun enhancement.

**CERVANTES** P. v. () 12/1/2021 2:8

## EVIDENCE / 352 / RELEVANCE

THIRD PARTY DEFENSES

Def commits 187 with a gang supplied gun that used in other crimes committed by other people. HELD: this is NOT sufficient evid to support 3rd Party Culpability defense. That X once possessed murder weapon at different time does NOT link X to charged crime.

**LOPEZ** P. v. () 12/29/2021 2:8

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC

AB 333 (effective 1/1/22) added new elements to proving PC 186.22 gang allegations. HELD: all non-final cases involving gang allegations, including gun enhancements that include gang allegations, must be remanded for new trial on the allegations.

**LOPEZ** P. v. () 12/29/2021 2:8

## INSTRUCTIONS/ELEMENTS / DUI'S

SEIZING BLOOD - EXIGENCY - DEF ABOUT TO GO INTO SURGERY

DUI def loses consciousness in crash and is taken to hospital. Police are told def is about to undergo surgery lasting many hours. HELD: Since there is no time to get S/W for blood before surgery, exigent circumstances exist to take blood without warrant.

**NAULT** P. v. () 12/20/2021 2:8

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## SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

PROP 47 - ELIGIBILITY - DANGEROUSNESS

Def denied resentencing under both Prop 47 and Prop 36 due to his dangerousness. Court finding is based, in part, on def's PRISON behavior and disciplinary record. UPHELD.

**STROTHER** P. v. () 12/9/2021 2:8

## MENTAL HEARINGS / SexVioPredator

TRIAL - JURY WAIVERS - WAIVER BY ATTY ALONE IS ENOUGH

SexVioPredator statute does NOT require that def PERSONALLY waive his statutory right to a jury trial (his atty can do it). OPINION REMANDS to trial court for hearing on def's tardy claim that EQUAL PROTECTION requires a personal waiver.

**WASHINGTON** P. v. () 12/3/2021 2:7

## INSTRUCTIONS/ELEMENTS / DRUGS

MARIJUANA - PROP 64 - DOES NOT PREEMPT LOCAL ORDINANCES

Local MJ ordinances are NOT preempted by new Statewide MJ legalization laws.

**WHEELER** def v. APP DIV 12/15/2021 2:3

## SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - HEARING - PRIOR COURT ACQUITTAL THAT WAS "WRONG"

At 2000 court trial, def convicted of 187 felony murder. Ct found def was Major/Participant w/ Reckless/Indifference BUT, acquitted def on Spec Circ due to Ct mistaken view of law. HELD: this acquittal made def eligible for a PC 1170.95 resentencing as a matter of law.

**HARRISON** P. v. () 12/30/2021 1:4

## TRIAL / MISC - TRIAL

MISTRIAL - AVOIDING BY CURING NO-NO'S BY ADMONITION - NO

At start of trial, Ct joins two unrelated 187 charges. After hearing evidence at trial, Ct reconsiders and Severs the cases, granting mistrial on one, but allowing the other to proceed, instructing jury to disregard evid of the severed crime. REVERSED. Mistrial should have been declared for BOTH.

**TURNER** P. v. () 12/23/2021 1:3

## INSTRUCTIONS/ELEMENTS / GENERALLY

WILLFULLY DEFINED

A requirement that def commit the crime WILLINGLY does NOT require that def have any particular mental state or Knowledge. It only means that the def do "the act" willingly or intentionally.

**ZGURSKI** P. v. () 12/27/2021 1:3

## SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

PROP 36 - DANGEROUSNESS - USE OF PRISON DISCIPLINE

Def denied resentencing under both Prop 47 and Prop 36 due to his dangerousness. Court finding is based, in part, on def's PRISON behavior and disciplinary record. UPHELD.

**STROTHER** P. v. () 12/9/2021 2:8

## CONSTITUTIONAL ISSUES / PREEMPTIO

PREEMPTION - STATE/LOCAL - MARIJUANA

Local MJ ordinances are NOT preempted by new Statewide MJ legalization laws.

**WHEELER** def v. APP DIV 12/15/2021 2:3

## SEARCH & SEIZURE / GOOD FAITH

RELIANCE ON - COURT DECISIONS THAT ARE CHANGED AFTER SEARCH

June 21, 2021, U.S. Supreme Ct ended the prior PER SE rule that officers could enter residences while in Hot Pursuit of MISC suspect. (new rule: exigency decided on case-by-case basis). HELD: Entry in this pre 6/21/21 Hot Pursuit of MISC suspect is upheld under GOOD FAITH exception.

**LANGE** P. v. () 12/20/2021 1:5

## SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - POST GRANT - FELONY 187's - ADDING DISMISSED CHARGES

Information alleged 8 crimes. Trial was only on two (two Spec Circ 187). After def was convicted of both, other counts dismissed. YEARS LATER, def granted resentencing under PC 1170.95. HELD: Court has discretion to sentence def on the DISMISSED counts. (If ct finds def guilty of them.)

**SILVA** P. v. () 12/8/2021 1:4

## INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

IDENTITY THEFT - 530.5 PC

Def uses name of Victim to open bank account. Def says he thought name was a FAKE name, not a real person name. HELD: While PC 530.5(a) requires a real person's name to be used, IT DOES NOT require that def know the name is that of real person.

**ZGURSKI** P. v. () 12/27/2021 1:3