

# CaseBank: Cases Added during February 2022 (sorted by Court)

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## INSTRUCTIONS/ELEMENTS / MISC -

WITNESS INTIMIDATION - 136.1(b)(2) PC - MUST HAPPEN BEFORE FILING

PC 136.1(b)(2) prohibits dissuading a person "from causing a complaint to be filed ..." Attempting to persuade a person to "drop" charges already filed is NOT a violation of the statute. -- The "and assisting" part of the statute is NOT "or assisting". Therefore post-filing conduct is not covered.

REYNOZA P. v. () 2/14/2022 6:

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

1170.95 PC - ELIGIBILITY - OLD ATTEMPT CONVICTIONS - YES DUE TO AMEND

SB 775 amended PC 1170.95 in two ways. (1) def's convicted of ATTEMPT 187 can seek relief, and (2) DCA's can now apply the law changes in 1170.95 to CURRENT appeals of convictions pre-1170.95

SANCHEZ P. v. () 2/15/2022 5:

## APPELLATE / HARMLESS ERROR

HARMLESS ERROR - ALTERNATIVE THEORIES

Jury instructed on both regular aid/abeting and Nat/Prob/Conseq's. Def convicted. Then Nat/Prob/Conseq's voided by new legislation. HELD: in this case, on this record, this is NOT Harmless.

SANCHEZ P. v. () 2/15/2022 5:

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - PREDICATES - SIZE/SCOPE OF DEF'S GANG

DDA proved def's membership in the greater SURENOS gang. (ignoring the various sub-sets). HELD: this is fine.

VASQUEZ P. v. () 2/9/2022 5:

## MENTAL HEARINGS / SexVioPredator

PROCEDURE - DISCOVERY - EXCLUDING DEF EVID - DUE PROCESS

SexVioPredator finding Reversed and Remanded for new trial. Def missed a discovery deadline and the trial court excluded the defense expert. HELD: while correct under the statute, DUE PROCESS was violated by such a Draconian approach to Discovery statute. (it was a ticky-tac violation).

JACKSON P. v. () 2/14/2022 4:3

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

1170.95 PC - HEARING - EVID - FACT SUMMARY FROM APPELLATE OPINION

Effective 1/1/2022, PC 1170.95 amended to prohibit 1170.95 judges from relying on the Factual Summaries in appellate decisions in making their 1170.95 decisions.

CLEMENTS P. v. () 2/16/2022 4:2

## JUVENILE / SENTENCING

CYA - AVOIDING 733 BY DISMISSING NEWEST 602

Juvi Ct dismisses most recent less serious convictions for the sole purpose of sending Minor to CYA/DJJ on less recent, but more serious, convictions. HELD: this was NOT an Abuse of Discretion.

J. B. In Re () 2/18/2022 6:

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

1170.95 PC - ELIGIBILITY - CASES ON APPEAL - NEW AMENDMENT

SB 775 amended PC 1170.95 in two ways. (1) def's convicted of ATTEMPT 187 can seek relief, and (2) DCA's can now apply the law changes in 1170.95 to CURRENT appeals of convictions pre-1170.95

SANCHEZ P. v. () 2/15/2022 5:

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC

AB 333, effective 1/1/22, added new elements to GANG allegations. HELD: AB 333 is RETROACTIVE. Gang Enhancement verdicts reversed and remanded.

VASQUEZ P. v. () 2/9/2022 5:

## INSTRUCTIONS/ELEMENTS / CHILD AS VICTIM CRIMES

CHILD PORNOGRAPHY - 311.11(c) - ALTERNATIVE SENTENCE - NOT CRIME

Child porn case. HELD: PC 311.11(c) is NOT a standalone crime. The crime is PC 311.11(a). 311.11(c) is an alternative sentencing option to 311.11(a) that is available only if additional facts are proved in addition to the 311.11(a) elements.

DE LA CERDA def v. SUP CT 2/14/2022 5:

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC

AB 333, effective 1/1/22, added new elements to GANG allegations. HELD: AB 333 is RETROACTIVE. Gang Enhancement verdicts reversed and remanded.

HALL P. v. () 2/22/2022 4:2

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

1170.95 PC - GENERAL - AMENDMENTS TO 1170.95 ARE RETROACTIVE

Effective 1/1/2022, PC 1170.95 amended to make clear that 1170.95 court is to act as a trier of fact applying the Beyond a Reasonable Doubt Standard. -- This case: trial court correctly found that def acted with Implied Malice. 1170.95 petition properly DENIED.

CLEMENTS P. v. () 2/16/2022 4:2

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## SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - ABUSE OF DISCRETION TEST

Def denied Mental Illness Diversion - PC 1001.36 - after a 3 day hearing with conflicting expert testimony. HELD: the appellate standard is ABUSE of DISCRETION. On this record, the denial was not an abuse of discretion.

GERSON P. v. () 1/28/2022 4:1

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

1170.95 PC - ELIGIBILITY - SPEC CIRC DISMISSED AFTER HUNG JURY

In 2008, def convicted of aid/abet 187. Jury HUNG on Spec Circ. and it was then dismissed "for insuff evid". HELD. Def is PER SE eligible for PC 1170.95 relief. DDA may NOT relitigate whether or not def as a Major Participant who acted w/ Reckless Disregard.

HAMPTON P. v. () 2/10/2022 3:

## EVIDENCE / EXPERT

DNA - SAMPLES CONTAINING MULTIPLE DNA's - STRmix

STRmix is a proprietary method of DNA identification in situations involving samples containing DNA from more than one person. After a two-day KELLY hearing, court finds it has gained general acceptance in relevant scientific community. UPHELD.

DAVIS P. v. () 2/28/2022 3:

## INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

ROBBERY - FEAR - ROBBERY v EXTORTION - THE SAME?

When def goes to Victim to collect his monthly PROTECTION payment, and the victim refuses to pay, that is an ATTEMPT EXTORTION. When def then beats up the victim and takes the money, that is a COMPLETED ROBBERY. --- Both convictions can stand.

MENDOZA P. v. () 2/3/2022 2:8

## INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

ASSAULT - 245 PC - BOTH VERSIONS - SINGLE EVENT

First, def attempts to stab the victim w/ right hand and misses. Second, def punches victim in face with left hand, knocking victim unconscious. HELD: Def committed two crimes - the two forms of PC 245. But, it was single course of action and single purpose. Only one conviction can stand.

MENDOZA P. v. () 2/3/2022 2:8

## SENTENCING / MISC - SENTENCING

PROTECTIVE ORDERS - 136.2 PC - DOMESTIC VIOLENCE VICTIMS

DEF beats up wife. He did not beat up his and her kids. HELD: the kids should NOT be included in the Post-conviction Protective Order per PC 136.2(i)(1).

LOPEZ P. v. () 2/15/2022 2:8

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

Def enters Plea Bargain for 5 years Probation to avoid prison. Def then appeals 1538.5 ruling (permitted under bargain). During appeal, AB 1950 limits felony probation to TWO years. HELD: (1) AB 1950 is RETROACTIVE. (2) Case remanded and Trial ct may VOID Plea Bargain. DCA's are split on remedy issue

SCARANO P. v. () 2/9/2022 3:

## INSTRUCTIONS/ELEMENTS / DEFENSES

MISTAKE OF FACT - CALCRIM 3406 IS NEVER REDUNDANT

Def charged with auto theft. He as arrested while driving. The defense was that def borrowed the car from X and def thought X was the owner. (X was NOT the owner). Def asked for CALCRIM 3406 (mistake of fact). Ct declined saying it was Redundant. REVERSED. 3406 is not redundant.

SPECK P. v. () 2/22/2022 3:

## EVIDENCE / EXPERT

KELLY - PERSONAL INTERESTS OF EXPERT WITNESSES

STRmix is a proprietary method of DNA identification in situations involving samples containing DNA from more than one person. HELD: while the self-interested owner of method cannot ALONE overcome KELLY hurdle, he can be a relevant, qualified, witness at the KELLY hearing.

DAVIS P. v. () 2/28/2022 3:

## INSTRUCTIONS/ELEMENTS / MISC -

EXTORTION - FEAR - ROBBERY FEAR / EXTORTION FEAR - THE SAME?

When def goes to Victim to collect his monthly PROTECTION payment, and the victim refuses to pay, that is an ATTEMPT EXTORTION. When def then beats up the victim and takes the money, that is a COMPLETED ROBBERY. --- Both convictions can stand.

MENDOZA P. v. () 2/3/2022 2:8

## TRIAL / MISC - TRIAL

Q&A - RIGHT TO CONFRONTATION - COVID FACE MASKS

Emergency COVID rule requiring all witnesses to wear masks while testifying did NOT violate def's right to confrontation, and did NOT interfere with the jury's ability to evaluate witnesses.

LOPEZ P. v. () 2/15/2022 2:8

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - PROBATION LENGTH - 1203.1 PC

Def enters into plea bargain with a 5 year probation length. After two years, def violates probation and gets prison. Then AB1950 is passed limiting felony probation to 2 years while def's case is still open. HELD: (1) AB1950 is RETROACTIVE. (2) Plea Bargain CANNOT be undone.

BUTLER P. v. () 2/15/2022 2:8

# CaseBank: Cases Added during February 2022 (sorted by Court)

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## MOTIONS / PLEA BARGAINING

BARGAIN - COURT CAN NOT MODIFY IF LAW CHANGES

Def enters into plea bargain with a 5 year probation length. After two years, def violates probation and gets prison. Then AB 1950 is passed limiting felony probation to 2 years while def's case is still open. HELD: (1) AB 1950 is RETROACTIVE. (2) Plea Bargain CANNOT be undone.

**BUTLER** P. v. () 2/15/2022 2:8

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Q&A - RIGHT TO CONFRONTATION - COVID FACE MASKS

Emergency COVID rule requiring all witnesses to wear masks while testifying did NOT violate def's right to confrontation, and did NOT interfere with the jury's ability to evaluate witnesses.

**ALVAREZ** P. v. () 2/14/2022 2:7

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

1170.95 PC - ELIGIBILITY - JURY NOT INSTRUCTED ON NAT/PROB CONSEQ'S

Def convicted of aid/abet 187 in 2005. HELD: Def is NOT eligible for PC 1170.95 relief. While the DDA argued the Natural and Probable Consequences LOGIC, the jury was NOT instructed on the topic.

**CORTES** P. v. () 2/15/2022 2:5

## APPELLATE / MISC APPELLATE

WENDE BRIEF - APPEAL OF NON-APPEALABLE ORDERS

Def appeals. WENDE brief filed. (1) the appeal is from a non-appealable order, therefore, appeal is DISMISSED without the independent review of the entire record. (2) Filing a WENDE brief presupposes an appeal was proper. If it is not proper ATTY has DUTY to tell DCA.

**WILLIAMS** P. v. () 2/24/2022 2:5

## APPELLATE / HARMLESS ERROR

HARMLESS ERROR - OMITTING ELEMENT - GANG CASES

AB 333, effective 1/1/22. added new elements to all GANG charges and enhancement. HELD: AB 333 is retroactive to all open cases. DCA finds new elements were NOT proved up. Error is NOT harmless. Case reversed and remanded.

**SEK** P. v. () 2/1/2022 2:1

## MENTAL HEARINGS / SexVioPredator

PROCEDURE - EARLY RELEASE REQUESTS - 6605 W&I - FRIVOLOUS - NOT

SexVioPredator petitions for Conditional Release under W&I 6605. Court dismisses w/out hearing as Frivolous. REVERSED and remanded. Petition need not have supporting evidence to avoid being Frivolous. Petition was NOT a mere repeat of a prior petition that was previously denied.

**SMITH** P. v. () 2/17/2022 1:5

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC

AB 333, effective 1/1/22. added new elements to all GANG charges and enhancement. HELD: AB 333 is retroactive to all open cases. DCA finds new elements were NOT proved up. Case reversed and remanded.

**DELGADO** P. v. () 2/10/2022 2:7

## SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - PUBLIC SAFETY

Def denied Mental Illness Diversion -- PC 1001.36 -- due to dangerousness. Def's crime was ARSON. Def heard voices telling him to set fires. UPHELD.

**PACHECO** P. v. () 2/15/2022 2:6

## APPELLATE / MISC APPELLATE

WENDE BRIEF - ATTY DUTY RE: APPROPRIATENESS OF APPEAL

Def appeals. WENDE brief filed. (1) the appeal is from a non-appealable order, therefore, appeal is DISMISSED without the independent review of the entire record. (2) Filing a WENDE brief presupposes an appeal was proper. If it is not proper ATTY has DUTY to tell DCA.

**WILLIAMS** P. v. () 2/24/2022 2:5

## MISCELLANEOUS / RETROACTIVE

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AB 333, effective 1/1/22. added new elements to all GANG charges and enhancement. HELD: AB 333 is retroactive to all open cases. DCA finds new elements were NOT proved up. Error is NOT harmless. Case reversed and remanded.

**SEK** P. v. () 2/1/2022 2:1

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

1170.95 PC - ELIGIBILITY - WHEN VICTIM WAS PEACE OFFICER

In 2006 def convicted of aid/abet 187, BUT, he was Acquitted of the spec circ Robbery/187. NORMALLY, this would make def eligible for PC 1170.95 relief, BUT, 1170.95 relief is NOT given when the victim was a Police Officer and the knew or should have known it. REMANDED for hrg re: what def knew.

**FLINT** P. v. () 1/28/2022 2:1

## MENTAL HEARINGS / SexVioPredator

MISC - MUST DIAGNOSIS BE RECOGNIZED BY DSM-5?

If the only sign of def's mental illness is that he likes having sex with people that don't consent, is that a true Mental Illness? Can California hold someone as a SexVioPredator for a mental illness NOT recognized by DSM-5? --- Issue raised, but not decided in this opinion.

**SMITH** P. v. () 2/17/2022 1:5

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## INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

ROBBERY - AID/ABET AFTER TAKING - BUT DID NOT AID ESCAPE

Minor helps intimidate, harass, assault victim, but he joins in with buddies AFTER victim's cell phone was taken. --- HELD: insufficient evidence to convict minor of ROBBERY. Minor's actions did NOT assist the Robber in escaping.

**K. M.** *In Re ()* 2/17/2022 1:5

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROBATION LENGTH - 1203.1 PC

Def given three-year probation. In the third year, he violates and is sent to prison. During the appeal of the v/p, AB 1950 is enacted limiting felony probation to 2 years. HELD: (1) AB 1950 is RETROACTIVE, BUT (2) Retroactivity does NOT undo a v/p was legal at the time.

**FAIAL** *P. v. ()* 2/28/2022 1:3

## JUVENILE / SENTENCING

WARDSHIP TERMS - DUI - NO ALCOHOL, PLUS SEARCH TERMS

Minor DUI def given probation term to not possess or drink alcohol and given search terms to enforce it. UPHELD.

**CESAR G.** *In Re ()* 2/10/2022 1:2

## EVIDENCE / MISC - EVID

BLOOD - OPINING A STAIN SEEN ON A VIDEO IS A BLOOD STAIN

Experienced Homicide Detective is permitted to opine that a dark spot on def's clothing as seen on a security video showing def leaving an apartment where a severely beaten dead body was later found was "consistent" with being a blood stain. UPHELD.

**PHILLIPS** *P. v. ()* 2/28/2022 1:2

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - SENTENCING PRESUMPTIONS

SB 567 (effective 1/1/22) amending PC 1170(b) re: courts can't impose upper term without reasons being proved Beyond a Reasonable Doubt is RETROACTIVE to all open cases. BUT, the error is HARMLESS in this case because the reasons were all based on def prior convictions.

**FLORES** *P. v. ()* 2/3/2022 1:3

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROBATION LENGTH - 1203.1 PC

Def given three-year probation. In the third year, she violates and probation is summarily revoked. Def is at large. Then AB 1950 reduces felony probation to two years. Then def is arrested on outstanding warrant. HELD: (1) AB 1950 is RETROACTIVE, BUT (2) Retroactivity does NOT undo a v/p was legal at the

**KUHNEL** *P. v. ()* 2/28/2022 1:3

## JUVENILE / SENTENCING

PARENTS - MAKING THEM PAY FOR TREATMENT COSTS

There is no statutory authority for JUVI court to order Minor to pay for the cost of court-ordered rehab programs.

**CESAR G.** *In Re ()* 2/10/2022 1:2

## TRIAL / MISC - TRIAL

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

Prosecution witness gives testimony that was excluded by the court in a pretrial motion. -- court handled it was excluding it again and admonishing the jury. HELD: Mistrial was NOT necessary. Admonition was adequate.

**PHILLIPS** *P. v. ()* 2/28/2022 1:2