

# CaseBank: Cases Added during April 2019 (sorted by Court)

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## APPELLATE ISSUES / WAIVER OF APPEAL

APPELLATE RIGHTS WAIVER - FILING NOTICE OF APPEAL IS PERMITTED

GARZA v. IDAHO: def enters into plea bargain that included an appellate waiver. After sentencing def asked his atty to file notice of appeal. Atty refused. Deadline passed. HELD: atty was INCOMPETENT. All def wanted was filing a NOTICE to appeal. This is always permitted, even if unmerited.

**GARZA** U.S. 2/27/2019 U.S.

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

DEF'S MENTAL INCOMPETENCE TO BE EXECUTED

MADISON v. ALABAMA: Death row inmate suffers a stroke and now no longer remembers his past crimes. HELD: lack of memory, ALONE, does not make def ineligible for execution. Mental illness/decease/condition must make def unable to have rational understanding of why state wants to kill him.

**MADISON** U.S. 2/27/2019 U.S.

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

DEF'S MENTAL INCOMPETENCE TO BE EXECUTED

MOORE v. TEXAS: When is a death row inmate too mentally deficient to execute. U.S. Supreme Ct and State of Texas are having a long running disagreement as to whether or not the def fits the criteria.

**MOORE** U.S. 2/19/2019 U.S.

## MOTIONS / ID - PRETRIAL

PHOTO LINEUP - SINGLE PHOTO LINEUP

Day after crime, child (age 5) witness shown a single photo an asked if he knew this man. Answer: yes, I saw him commit crime. --- While the Supreme Ct was critical of procedure and said one-photo lineup should be used only in RARE circumstances, in this case, it was not suggestive.

**SANCHEZ** P. v. () 4/29/2019 CAL

## DEFENDANT'S / VOLUNTARY

GENERALLY - TRIAL CT FACT FINDING - CONFLICTING EVID AT HEARING

Def and cops give opposing versions re: Miranda and Voluntariness issues. Trial court made finding that def lied and cops told truth. HELD: Appellate court bound by finding if supported by evidence.

**SANCHEZ** P. v. () 4/29/2019 CAL

## DEFENDANT'S / VOLUNTARY

FACTORS - LENGTH OF QUESTIONING - 3 DAYS - MANY SHORT SESSIONS

Def went through MANY interviews over three days before confessing. No single interview was particularly long. Trial court found confession voluntary. UPHeld.

**SANCHEZ** P. v. () 4/29/2019 CAL

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - CIVIL FORFEITURES IN DRUG CASES

TIMBS v. INDIANA: The maximum fine for def's drug offense was \$10,000. The value of def's car that was civilly forfeited was \$42,000. HELD: Cruel and unusual punishment clause of Constitution applies to State civil forfeitures. --- Forfeiture Reversed and Remanded.

**TIMBS** U.S. 2/20/2019 U.S.

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

CRUEL AND UNUSUAL - METHOD OF EXECUTION - DEF BURDEN

BUCKLEW v. PRECYTHE: Death row def asserts rare medical condition such that normal execution method is particularly cruel and painful. HELD: burden is on the def to show there is a "reasonably available" alternative. This case: it is speculation that alternative was less painful.

**BUCKLEW** U.S. 4/1/2019 U.S.

## EVIDENCE / HEARSAY

PAST RECOLLECTION RECORDED - STATEMENT TO POLICE

5 year old - X - sees his mother murdered. Describes killer to police. Day later makes photo ID of def. Years later, at trial, X can no longer remember details and cannot ID def. X testifies that he told the police the truth. HELD: prior statements and photo ID properly admitted at trial.

**SANCHEZ** P. v. () 4/29/2019 CAL

## EVIDENCE / EXPERTS

OPINIONS RE: WITNESS CREDIBILITY/RELIABILITY - CHILD WITNESS

X, age 5, witnesses mother's murder. X has years of therapy and expresses occasional fantasies about mom and her death. HELD: def expert can articulate any appropriate factors to consider in evaluating X's testimony, but Expert MAY NOT express opinion re: X's credibility/reliability.

**SANCHEZ** P. v. () 4/29/2019 CAL

## DEFENDANT'S / AMBIG. INVOKE

GENERALLY - CONTEXT, USE OF - I AIN'T TALKING NO MORE

In context, "I don't want to say anymore." was not a Miranda invocation. It was a statement that he wanted to quit talking and take the "voice stress test" the police were offering.

**SANCHEZ** P. v. () 4/29/2019 CAL

## DEFENDANT'S / MISC - DEF'S STATEMENTS

MISC - TREATY RIGHTS OF FOREIGN NATIONALS - RIGHT TO CONSUL

Mexican national was arrested and interrogated without notifying the Mexican Consulate as required by Treaty. HELD: Treaty violation is NOT remedied by suppression.

**SANCHEZ** P. v. () 4/29/2019 CAL

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## TRIAL / MISC - TRIAL

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

Based on DDA's good faith representation of what future witnesses will say, Court permitted evidence to come in subject to a motion to strike. Future witnesses said something different. Motion to Strike granted and jury admonished. No mistrial. UPHELD.

**SANCHEZ** P. v. () 4/29/2019 CAL

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

PROP 47 - PROCEDURE - CRIME PRE-47, SENTENCING POST 47

Def commits crime; then Prop 47 happens; then def is sentenced. HELD: Prop 47 is applied fully without need for def to apply for relief, and, relief cannot be denied because def is Dangerous.

**LARA** P. v. () 4/11/2019 CAL

## INSTRUCTIONS/ELEMENT / ADULT SEX CRIMES

RAPE IN CONCERT - DEF FORCES VICTIM TO BE PROSTITUTE

Def forces Victim to become prostitute. Under fear of def, Victim has sex with "John" who is unaware of Victim's fear. HELD: Def is guilty of RAPE IN CONCERT (PC 264.1). Def acted in concert with John for John to have sex with Victim against her will.

**DEARBORN** P. v. () 3/31/2019 4:3

## SENTENCING / CTS/GOOD TIME

GOOD/WORK/TIME - ONE-STRIKE SEX DEFS

Per statute, One-Strike Sex defendants get ZERO good time / work time credits.

**DEARBORN** P. v. () 3/31/2019 4:3

## INSTRUCTIONS/ELEMENT / HOMICIDE

2ND DEGREE FELONY 187 - UNCONSTITUTIONALLY VAGUE?

Second Degree Felony Murder rule is NOT unconstitutionally VAGUE. The phrase at issue is "a felony that is inherently dangerous to human life" in light of JOHNSON v. U.S. (2015) 135 S Ct 2551. --- This case: Manufacture of Meth is inherently dangerous to human life.

**WHITE** In Re () 4/30/2019 4:2

## MISCELLANEOUS / WRITS

HABEAS - RETROACTIVE CHANGES - SEEKING BENEFIT OF

Def files Habeas. Trial court Grants. DCA affirms. After Remittitur, DDA seeks reconsideration bases on newly enacted statute. HELD: Trial court is without jurisdiction to reconsider or reopen the case after DCA affirmed original decision.

**BERG** P. v. () 4/29/2019 4:1

## TRIAL / JUROR/VERDICT ISSUES

DELIBERATIONS - HUNG JURY - LESSERS - STONE

Jury reports they are hung in case with lessers. The STONE rule is that court must make sure they are HUNG on the greater. If they acquit on the greater and hung on lesser, acquittal must be taken. --- HELD: the STONE rule survives a contrary U.S. Supreme Ct case -- Blueford v Arkansas.

**ARANDA** P. v. () 4/4/2019 CAL

## INSTRUCTIONS/ELEMENT / DUI'S

CHEMICAL TEST - CONSENT - PROBATION TERM AS CONSENT

Def CONSENTED to the terms of probation that included search terms and submit to DUI test terms. After being arrested for DUI, def cannot WITHDRAW that consent. He can refuse all he wants, but blood can be taken (using routine methods).

**CRUZ** P. v. () 4/25/2019 5:

## SENTENCING / 654

PIMPING / HUMAN TRAFFICKING

Pimping and Pandering are 654 to Human Trafficking. Def may be convicted of both, but one sentence must be stayed.

**DEARBORN** P. v. () 3/31/2019 4:3

## MOTIONS /

FACTUAL INNOCENCE FINDING - 851.8 PC

Def is charged with two Felony sex charges. He pleads guilty to one count of misd battery. After successfully completing probation def gets PC 1203.4 dismissal. Def next seeks finding of factual innocence under PC 851.8. DENIED. Def not eligible because he got convicted of something.

**MAZUMDER** P. v. () 4/24/2019 4:3

## TRIAL / MISC - TRIAL

DEF ATTY / DEF TACTICAL CONFLICT - ADMIT ACT / DENY MENS REA

Def atty concludes (wisely) that def's best defense is to admit doing the ACT, but deny having the required mental state. Def insists that he did not do the ACT, wants that defense presented to jury. HELD: this is not a mere tactical decision, DEF, not atty, controls.

**FLORES** P. v. () 4/12/2019 4:1

## SENTENCING / 654

FELONY 187 / UNDERLYING FELONY

At sentencing, court must interpret jury's reasoning behind 187 verdict (premed or felony/murder) to determine if Robbery is PC 654 to the 187. HELD: in do so, a jury acquittal as to gun use enhancement is NOT controlling.

**CARTER** P. v. () 4/29/2019 4:1

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

*HABEAS DISCOVERY - 1054.9 PC - DDA VOIR DIRE NOTES*

D.P. case. Wheeler motion made, DDA refers on-the-record to his voir dire notes. Motion denied, def convicted, death verdict, appeal, affirmed. Def atty now seeks HABEAS DISCOVERY of the DDA's voir dire notes. HELD: they are discoverable.

**JONES** *P. v. SUP* 4/9/2019 **4:1**

## **MOTIONS / MISC - MOTIONS**

*DISCOVERY COSTS FOR INDIGENT DEF W/ PRIVATE ATTY*

Def is indigent. Def's mom hires private atty for def. Mom's contract with atty says Mom will pay for costs (including DDA charges for copying discovery). Def brings motion for County to pay discovery costs because he is indigent. Motion denied. UPHELD.

**WASHINGTON** *P. v. ()* 4/15/2019 **3:**

## **INSTRUCTIONS/ELEMENT / HOMICIDE**

*2ND DEGREE FELONY 187 - UNCONSTITUTIONALLY VAGUE?*

Second Degree Felony Murder rule is NOT unconstitutionally VAGUE. The phrase at issue is "a felony that is inherently dangerous to human life" in light of JOHNSON v. U.S. (2015) 135 Sct 2551.

**FRANSEN** *P. v. ()* 4/4/2019 **2:8**

## **INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE**

*ASSAULT - 245 PC - PUTTING VICTIM IN REASONABLE FEAR OF GBI*

While high on Meth, def drives recklessly and once drove straight at someone and then swerved away at last second. HELD: this is an ASSAULT. Def purposely caused victim to be in reasonable fear of imminent bodily injury.

**BIPIALAKA** *P. v. ()* 4/17/2019 **2:8**

## **EVIDENCE / HEARSAY**

*DYING DECLARATION*

Victim suffers severe head injury. Told 1st-responders he did not remember what happened. Told ER nurse he was hit on head by a fist. Victim dies 2 weeks later of heart attack. HELD: this is NOT a Dying Declaration. No evidence Victim thought he was about to die.

**RAMIREZ** *P. v. ()* 4/26/2019 **2:8**

## **JUVENILE / PROCEDURE**

*WARDSHIP TERMS - SEARCH TERMS FOR ALL ELECTRONICS - HATE CRIME*

Minor commits a Hate Crime. Wardship term that minor submit to a search of electronic devices to see if he is visiting Hate web sites is UPHELD.

**J. G.** *In Re ()* 4/4/2019 **2:6**

## **MOTIONS / WITHDRAW PLEA / STRIKE**

*W/DRAW GROUNDS - ADVISE RE: I.N.S. CONSEQ'S - 1473.7 PC*

In 2003 def pleads guilty in plea bargain. On written plea form, the word "may" was stricken and word "will" added to Immigration advisement -- YOU WILL BE DEPORTED. In 2017, def's motion to vacate conviction under PC 1473.7 is granted by trial court. AFFIRMED.

**NOVOA** *P. v. ()* 4/22/2019 **4:1**

## **MOTIONS / BAIL / OR**

*MOTION TO VACATE FORFEITURE - DEFECTS IN ORIGINAL IMPOSITION*

Def FTA, bail forfeited. Bond Company seeks exoneration by asserting Bail was improperly imposed in the first place. HELD: When the company agreed to post bail, it WAIVED any and all defects that might have occurred prior to that event.

**ACCREDITED** *P. v. ()* 4/29/2019 **3:**

## **SENTENCING / RESTITUTION**

*GENERALLY - CAN INCREASE AFTER APPEAL - NO DOUBLE JEOPARDY*

Def convicted at trial, X dollars ordered as Restitution. Def appeals, gets new trial. Convicted again. MORE than X dollars ordered as Restitution. UPHELD. Restitution is NOT punishment. Double Jeopardy principles do NOT apply.

**FRANSEN** *P. v. ()* 4/4/2019 **2:8**

## **MOTIONS / PITCHESS**

*APPELLATE REVIEW - NEED FOR RECORD OF IN CAMERA MATERIAL*

The IN CAMERA Pitchess transcript must include a detailed description of the documents reviewed and a statement of why the court is not ordering anything disclosed from the document. -- Documents themselves need NOT be part of appellate record.

**BIPIALAKA** *P. v. ()* 4/17/2019 **2:8**

## **INSTRUCTIONS/ELEMENT / MISC - FELONY**

*ARSON - IS 452 PC ONE CRIME? OR FOUR CRIMES?*

The various subdivisions of Arson statute, PC 452, state A SINGLE CRIME that can be violated different ways. Therefore, a Def may NOT be convicted of BOTH 452(b) and 452(c) for the same fire. --- DCA's in conflict.

**SHIGA** *P. v. ()* 4/17/2019 **2:7**

## **MISCELLANEOUS / RETROACTIVE**

*BENEFIT TO DEF - STATUTE CHANGES - WHEN IS DEF'S CASE FINAL?*

Def convicted, sentenced, appeals, loses appeal, Remittitur issued. Then new statute gives sentencing courts PC 1385 authority over gun enhancements. Def, in prison for a gun enhancement, seeks new sentencing. DENIED. Case is Final.

**HERNANDEZ** *P. v. ()* 4/15/2019 **2:6**

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## **EVIDENCE / EXPERTS**

*OPINIONS RE: WITNESS CREDIBILITY/RELIABILITY - CHILD SEX VICTIMS*  
Expert testimony that X% of kids who report sex abuse are telling the truth is improper REGARDLESS of the quality of the methodology used by the study that came up with X.

**JULIAN** *P. v. ()* 4/29/2019 **2:6**

## **MENTAL HEARINGS / SexVioPredator**

*PROCEDURE - PRE-PETITION EVAL - TWO SHRINKS MUST AGREE*  
Yes, SexVioPredator petition can only be filed if two shrinks AGREE def is SVP. But, if shrinks disagree initially, there is nothing wrong with one of the examiners changing their mind after gaining access to new material.

**MORRISON** *P. v. ()* 4/30/2019 **2:4**

## **SENTENCING / MISC - SENTENCING**

*FEES/ASSESSMENTS - ABILITY TO PAY - PUBLIC DEFENDER COSTS*  
All defendants sentenced to Prison are PRESUMED to not have the ability to reimburse the County for the cost of Public Defender and experts hired by Public Defender. But, this presumption is REBUTTABLE.

**RODRIGUEZ** *P. v. ()* 4/23/2019 **2:3**

## **SENTENCING / MISC - SENTENCING**

*CRUEL AND UNUSUAL - LWOP (DEFACTO) - SEX DEF UNDER 25 - 3051 PC*  
At age 19 two defs commit multiple one-strike sex crimes and get 129-to-life and 95-to-life. HELD: (1) age 18 bright line cutoff upheld. (2) PC 3051 parole hrgs are given to murderers under age 25. it is EQUAL PROTECTION violation to exclude One-Strike defs from PC 3051's early parole hearings.

**EDWARDS &** *P. v. ()* 4/10/2019 **1:4**

## **PAROLE / PAROLE DECISIONS**

*PROP 57 - DEPT OF CORRECTIONS REGULATIONS*  
DCA holds that Dept of Corrections regulations implementing Prop 57 provisions regarding early parole for inmates convicted of non-violent felonies improperly narrow the scope of Prop 57 applicability.

**McGHEE** *In Re ()* 4/29/2019 **1:4**

## **MENTAL HEARINGS / 1368**

*WHEN TO HAVE NEW PROCEEDINGS AFTER DEF FOUND COMPETENT*  
Six months after jury found def NOT 1368, def atty informs court that def is worse than before and asks court to restart 1368 process. -- Court refuses. Def convicted. REVERSED. Def atty articulated factual basis to back up claim def's mental state had significantly changed.

**EASTER** *P. v. ()* 3/13/2019 **1:2**

## **EVIDENCE / ACCOMPLICE**

*INSTRUCTION - WHEN "ACCOMPLICE" IS ELEMENT OF CRIME*  
Rape In Concert - PC 264.1 - requires the People to prove def acted with an accomplice. -- If "accomplice" testimony is used, Instructions must make it clear that finding of an "accomplice" must be Beyond Reasonable Doubt when it comes to PC 264.1.

**MARTINEZ** *P. v. ()* 4/24/2019 **2:6**

## **CIVIL PROSECUTIONS / MISC - CIVIL**

*17200/17501 - SALE PRICING ADS*  
B&P 17501 regarding misleading advertising about "sale" pricing and "regular price" is NOT unconstitutionally vague.

**J. C. PENNY** *P. v. SUP* 4/16/2019 **2:4**

## **SENTENCING / ENHANCEMENTS**

*GUN USE - 12022.53 PC - 1385 AUTHORITY TO PICK LESSER SUBDIVISION*  
Amendment to PC 12022.53 which permits courts to STRIKE the gun enhancement under PC 1385 ALSO permits sentencing court to impose the lesser enhancement of 12022.53(b) or (c) even though the def was convicted of the LIFE enhancement of 12022.53(d) --- "in the interest of justice".

**MORRISON** *P. v. ()* 4/11/2019 **1:5**

## **MISCELLANEOUS / RETROACTIVE**

*BENEFIT TO DEF - STATUTE CHANGES - GREATER 1385 AUTHORITY*  
Def gets plea bargain for 9 years, which included a 5 year prior. Before sentencing, SB 1393 gave new authority for court to strike 5-year priors under PC 1385. --- Does plea bargain prevent court from using 1385 to give def a sentence of less than 9 years? -- NO. -- REMANDED for new sentencing.

**STAMPS** *P. v. ()* 4/9/2019 **1:4**

## **JUVENILE / UNFITNESS**

*PROP 57 - POST 57 LEGIS AMENDMENTS TO UNFITNESS LAW*  
Prop 57 redid juvi unfit law. Two years later SB 1391 made 14 and 15 year olds less eligible to be found unfit. Prop 57 stated it could not be amended by legislature unless amendments were "consistent with and further the intent" of Prop 57. HELD: SB 1391 is valid amendment.

**ALEXANDER C.** *P. v. SUP* 4/30/2019 **1:4**

## **SENTENCING / MISC - SENTENCING**

*CRUEL AND UNUSUAL - 23 YEARS PAST 1ST PAROLE ELIGIBLE DATE*  
In 1988, at age 17, def found unfit and sentenced to LIFE for kidnap/robbery. 1st parole hearing was 1996. In 2019, after 11 parole denials by parole board, DCA finds def's sentence of 31 years is now Cruel and Unusual as applied to def. --- Def gets immediate release w/out parole.

**PALMER** *In Re ()* 4/5/2019 **1:2**

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## **MISCELLANEOUS / WRITS**

*HABEAS - GENERALLY - IS AVAILABLE IF DEF IS ON PAROLE*

Being on Parole is still a form of restraint. Therefore, def may still bring a HABEAS writ to seek release from parole.

**PALMER** *P. v. ()* 4/5/2019 1:2

## **MISCELLANEOUS / WRITS**

*HABEAS - RETROACTIVE CHANGES - SEEKING BENEFIT OF*

Applying the BANKS case and amendment to PC 190 retroactively, DCA grants a HABEAS writ reversing a 1994 felony-murder Spec Circ conviction. --- DCA held the only evidence that def was "major participant w/ reckless indifference" was def POST-CRIME conduct, and, that is not enough.

**TAYLOR** *In Re ()* 4/19/2019 1:1

## **INSTRUCTIONS/ELEMENT / MISC - FELONY**

*ARSON - IS 452 PC ONE CRIME? OR FOUR CRIMES?*

The various subdivisions of Arson statute, PC 452, state separate crimes (not lesser to each other). Def may be convicted of BOTH 452(b) and 452(c) for the same fire. (PC 654 would require one sentence be stayed.) --- DCA's in conflict.

**CORRIGAN** *P. v. ()* 4/8/2019 1:1