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MOTIONS / DISCOVERY

EXCULPATORY - BRADY - DDA DUTY CANNOT BE DELEGATED

SAN DIEGO APPELLATE DIV: For budget reasons, San Diego City atty, stops handling infractions. They are direct filed by police. HELD: City Atty BRADY obligation to find and disclose exculpatory evid CAN NOT BE DELEGATED. Since City Atty in this case refused to engage in discovery, CASE DISMISSED.

HOUSER P. v. () 4/13/2022 SUPP

TRIAL / ARGUMENT

DEF ATTY - MAY NOT CONCEDE GUILT OVER DEF OBJECTION

Def kills three people in same event. (def is wacko) Def proudly admits to killing V1, but insists he didn't kill V2 and V3. Over def's objections, def atty argues to jury that def killed all 3, but it was manslaughter due to def's mental issues. REVERSED. Def controls what he admits to.

BLOOM P. v. () 4/21/2022 CAL

MENTAL HEARINGS / 1368

WHEN TO HAVE NEW PROCEEDINGS AFTER DEF FOUND COMPETENT

Yes, def did a number of bizarre things. Yes def is mentally ill. (there were prior 1368 hearings; there was NGI plea) Court was fully aware of all of it. Court was NOT obligated to restart 1368 process with each new bizarre action. Court had good basis to believe def was, in fact, competent.

BLOOM P. v. () 4/21/2022 CAL

TRIAL / MISC - TRIAL

DEF PRESENCE - VOLUNTARY ABSENCE - NEED FOR WAIVER

Death Penalty def refuses to come to court during the SANITY phase of his trial. --- There is no need for a lengthy conversation and/or admonition before accepting def's waiver of his right to be present. Def had counsel, Counsel said def's decision was knowing and intelligent.

BLOOM P. v. () 4/21/2022 CAL

TRIAL / COURT SECURITY

SHACKLING DEF - FACTORS - DEF IS BAD DUDE IS NOT ENOUGH

During trial, def ankles chained to the floor. Def could freely stand and move a couple of feet. Record reflects a small number of jurors saw the chain during Voir Dire. (1) ERROR due to lack of compelling basis for decision. (2) HARMLESS -- only "some" jurors "might" have seen something on one day.

BRACAMONTES P. v. () 4/11/2022 CAL

INSTRUCTIONS/ELEMENTS / GENERALLY

EVID - FLIGHT - THE ABSENCE OF FLIGHT - DEFENSE SPECIAL

Def asks for special instruction saying the ABSENCE of FLIGHT is evidence of innocence. DENIED. UPHELD. Pinpoint instructions regarding the ABSENCE of something are not appropriate.

BRACAMONTES P. v. () 4/11/2022 CAL

INSTRUCTIONS/ELEMENTS / MISDEMEANORS AND INFRACTIONS

INFRACTIONS - DDA CANNOT DELEGATE BRADY OBLIGATIONS

SAN DIEGO APPELLATE DIV: For budget reasons, San Diego City atty, stops handling infractions. They are direct filed by police. HELD: City Atty BRADY obligation to find and disclose exculpatory evid CAN NOT BE DELEGATED. Since City Atty in this case refused to engage in discovery, CASE DISMISSED.

HOUSER P. v. () 4/13/2022 SUPP

MOTIONS / SPEEDY

TRIAL DELAY - (RE-TRIAL) 15 YR DELAY DUE D.P. APPELLATE PROCESS

In 1982, def kills 3. Sentenced in 1984. In 1997, FED HABEAS is granted, 2000, new trial starts. Def seeks dismissal because key def witnesses are now dead. -- Motion rightfully denied. The delay was for a good reason. (giving def FULL appellate review.)

BLOOM P. v. () 4/21/2022 CAL

MOTIONS / FARETTA / PRO PER ISSUES

TIMELINESS - BEFORE SANITY PHASE

At the start of the SANITY PHASE of the trial, def makes a FARETTA motion and does NOT ask for a continuance. Request Denied. UPHELD. (1) untimely. (2) Notwithstanding def's assurances, court could conclude that granting the request would indeed cause long delay.

BLOOM P. v. () 4/21/2022 CAL

MOTIONS / SPEEDY

PRE-FILING DELAY - 12-YR OLD CRIME SOLVED BY DNA

Def is suspect in 1991 murder but no charges filed. In 2003, Cold Case Unit has evidence retested with DNA methods unavailable in 1991. (DNA testing in 1991 was inconclusive). New tests reveal def's DNA on victim. UPHELD: Delay was justified. Courts cannot dictate how cases should be investigated.

BRACAMONTES P. v. () 4/11/2022 CAL

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - DEF SHACKLED DURING TRIAL

During trial, def ankles chained to the floor. Def could freely stand and move a couple of feet. Record reflects a small number of jurors saw the chain during Voir Dire. (1) ERROR due to lack of compelling basis for decision. (2) HARMLESS -- only "some" jurors "might" have seen something on one day.

BRACAMONTES P. v. () 4/11/2022 CAL

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

VICTIM IMPACT - VICTIM WAS AGE 8 - EFFECT ON HER CLASSMATES

187 victim was in the 3rd grade. Her teacher permitted to testify how her murder affected her and V's classmates. UPHELD.

BRACAMONTES P. v. () 4/11/2022 CAL

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INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - CONSPIRACY CASES, APPLICABILITY TO

Def was convicted of CONSPIRACY to commit home invasion robbery under PC 182. with a PC 186.22(b)(4) GANG enhancement. HELD: The enhancement DOES NOT apply to a Conspiracy conviction. It only applies to a completed crime.

LOPEZ P. v. () 4/7/2022 **CAL**

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - FAILURE TO BIFURCATE GANG ENHANCEMENT

AB 333 re: entitlement to BIFURCATION of GANG enhancements is RETROACTIVE. the Retroactive ERROR is NOT harmless in this case. (DCA rejects the argument that PROCEDURAL changes are not generally retroactive.)

BURGOS P. v. () 4/15/2022 **6:**

SENTENCING / RESTITUTION

ITEM - VICTIM'S ATTY'S FEES IN GETTING WORK COMP SETTLEMENT

Def's employee fatally injured on job. Def didn't have Worker's Comp. V's heirs hired atty to get Uninsured Employees Benefit Trust Fund benefit. WCAB awarded benefit, but "forgot" to award attys fee. Criminal Ct awarded attys fee as restitution. HELD: Criminal judge, and DCA, have no juris over WCAB.

CZIRBAN P. v. () 4/12/2022 **6:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - NEW SENTENCE PRESUMPTION FOR LOW TERM

AB 124 is RETROACTIVE. It amends PC 1170(b)(6) to make the LOW TERM presumptively correct if def has suffered childhood abuse, trauma, etc. HELD: the "etc" includes MENTAL ILLNESS even though Mental Illness is not listed. -- Mental Illness is psychological trauma(ish)

BANNER P. v. () 4/8/2022 **5:**

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - MISINSTRUCTION RE: MALICE

A failure to define "MALICE" in this PC 136.1 case -- witness dissuading -- is HARMLESS.

SERRANO P. v. () 4/25/2022 **5:**

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - MISINSTRUCTION - GANG ENHANCEMENT

AB 333 re: new elements to GANG enhancement under PC 186.22 are RETROACTIVE. This Retroactive ERROR is not harmless in this case.

RAMOS P. v. () 4/27/2022 **5:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - BIFURCATION OF GANG ENHANCEMENTS

AB 333 re: entitlement to BIFURCATION of GANG enhancements is RETROACTIVE. the Retroactive ERROR is NOT harmless in this case. (DCA rejects the argument that PROCEDURAL changes are not generally retroactive.)

BURGOS P. v. () 4/15/2022 **6:**

MOTIONS / VENUE/JURISDICTIONS

JURISDICTION - CRIMINAL CT LIMITED TO CRIMINAL CASE BEFORE IT

Def's employee fatally injured on job. Def didn't have Worker's Comp. V's heirs hired atty to get Uninsured Employees Benefit Trust Fund benefit. WCAB awarded benefit, but "forgot" to award attys fee. Criminal Ct awarded attys fee as restitution. HELD: Criminal judge, and DCA, have no juris over WCAB.

CZIRBAN P. v. () 4/12/2022 **6:**

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - NO SUA SPONTE DUE TO SCREEN

There is no SUA SPONTE duty for court to refer a defendant for screening to see if he qualifies for MENTAL HEALTH diversion under PC 1001.36.

BANNER P. v. () 4/8/2022 **5:**

SENTENCING / MISC - SENTENCING

PRESUMPTIONS - 1170(B)(6) - LOW TERM IF CHILDHOOD TRAUMA

AB 124 is RETROACTIVE. It amends PC 1170(b)(6) to make the LOW TERM presumptively correct if def has suffered childhood abuse, trauma, etc. HELD: the "etc" includes MENTAL ILLNESS even though Mental Illness is not listed. -- Mental Illness is psychological trauma(ish)

BANNER P. v. () 4/8/2022 **5:**

INSTRUCTIONS/ELEMENTS / LESSER

DOM VIOLENCE - 273.5 PC / 240 PC

Simple assault - PC 240 - is a LESSER included offense to PC 273.5 -- domestic violence.

SERRANO P. v. () 4/25/2022 **5:**

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - BIFURCATION OF GANG ENHANCEMENTS

AB 333 re: entitlement to BIFURCATION or GANG enhancements is RETROACTIVE. But, the Retroactive ERROR is harmless in this case since GANG evidence would have been admissible on the underlying charge even if Bifurcation had taken place.

RAMOS P. v. () 4/27/2022 **5:**

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APPELLATE / HARMLESS ERROR HARMLESS ERROR - FAILURE TO BIFURCATE GANG ENHANCEMENT

AB 333 re: entitlement to BIFURCATION or GANG enhancements is RETROACTIVE. But, the Retroactive ERROR is harmless in this case since GANG evidence would have been admissible on the underlying charge even if Bifurcation had taken place.

RAMOS P. v. () 4/27/2022 5:

PAROLE / PAROLE DECISIONS FRANKLIN HEARINGS FOR NON-3051 DEFENDANTS

24 yr old def gets sentenced to 59-to-life under 3-strikes. Def is NOT eligible for PC 3051 early parole hearings. But, someday, def will get a regular parole hearing. Therefore, def is entitled to a FRANKLIN hearing under PC 4801(c).

DELGADO P. v. () 4/29/2022 4:3

MOTIONS / PROCEDURE ALL MOTIONS - DEF'S PRESENCE AT HRGS -- ZOOM IS NOT ENOUGH

Due to COVID, court held def's MARDEN hearing via ZOOM, over the def's objection. HELD: this was ERROR under PC 977 and 1193 which each state def has right to be "personally present". ZOOM is not "personally present". --- Error is HARMLESS in this case.

WHITMORE P. v. () 4/29/2022 4:3

MOTIONS / VENUE/JURISDICTIONS VENUE - WAIVER BY FAILING TO TAKE WRIT (NOT) - NEED FOR PREJUDICE

Def makes motion to change venue. DENIED. Def does NOT take a writ. Def convicted at trial and appeals. HELD: Issue is NOT WAIVED. Can be raised on appeal. BUT, now, def must show PREJUDICE to get reversal. (tough to do with a VENUE violation.)

VAUGHN P. v. () 4/18/2022 4:2

INSTRUCTIONS/ELEMENTS / CHILD AS VICTIM CRIMES HUMAN TRAFFICKING - 236.1 PC - MISTAKE OF FACT (AGE OF V)

Perpetrators of PC 236.1 -- trafficking -- are not permitted by the statute to use MISTAKE of AGE as a defense if MINOR is trafficked. Def was an AID/ABETTOR, who needed the intent to commit the "offense". Can def use MISTAKE of AGE defense? HELD: NO. (at least not for 236.1)

VAUGHN P. v. () 4/18/2022 4:2

SENTENCING / CTS/GOOD TIME CTS - 2nd SENTENCING AFTER DCA REMAND

Def's case remanded for new sentencing hrg after appeal. The remand for the limited issue of exercising new 1385 authority over gun enhancements. HELD: Notwithstanding, limited remand, Court should recalculate CTS/GoodTime at 2nd sentencing.

McDAVID P. v. () 4/21/2022 4:1

MISCELLANEOUS / RETROACTIVE BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

Def plea bargained a felony drug possession into a MISD drug possession in return for agreeing to three-year probation. Then AB 1950 happened reducing all MISD probation to one year. Def wants reduction to one-year. DDA wants to undo Plea Bargain. -- HELD: Def gets reduction.

FLORES P. v. () 4/12/2022 5:

APPELLATE / HARMLESS ERROR HARMLESS ERROR - DEF'S PRESENCE AT HRGS (ZOOM SUBSTITUTE)

Due to COVID, court held def's MARDEN hearing via ZOOM, over the def's objection. HELD: this was ERROR under PC 977 and 1193 which each state def has right to be "personally present". ZOOM is not "personally present". --- Error is HARMLESS in this case.

WHITMORE P. v. () 4/29/2022 4:3

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170.95 PC - ELIGIBILITY - FELONY 187 W/ ROBBERY SPEC CIRC

For PC 1170.95, the term "actual killer" is more narrowly defined than a person who "caused" the victim's death. Therefore, a Robbery-Murder Spec Circ conviction does NOT make def 1170.95 PER SE ineligible. (def was charged alone - no co-defs. No aid/abet instructions given at trial)

LOPEZ P. v. () 4/28/2022 4:3

INSTRUCTIONS/ELEMENTS / DEFENSES MISTAKE OF FACT - AGE OF VICTIM - TRAFFICKING AID/ABETTERS

Perpetrators of PC 236.1 -- trafficking -- are not permitted by the statute to use MISTAKE of AGE as a defense if MINOR is trafficked. Def was an AID/ABETTOR, who needed the intent to commit the "offense". Can def use MISTAKE of AGE defense? HELD: NO. (at least not for 236.1)

VAUGHN P. v. () 4/18/2022 4:2

SENTENCING / ENHANCEMENTS GUN USE - 12022.53 PC - REMANDS FROM DCA

Def convicted of PC 12022.53 gun enhancement. On appeal, remanded for ct to exercise new discretion to PC 1385 gun enhancement. Trial reimposes original sentence. On this 2nd appeal, case remanded for ct to exercise new, new, discretion to impose a LESSER 12022.53 gun enhancement.

McDAVID P. v. () 4/21/2022 4:1

APPELLATE / HARMLESS ERROR HARMLESS ERROR - ALTERNATIVE LEGAL THEORIES - SB 1437

SB 775 now lets DCA's apply SB 1437 to cases on appeal. Therefore, one of the theories of guilt presented to jury is retroactively ERROR. -- But, in this case, the error is HARMLESS. Overwhelming evid that def was aid/abettor who acted with intent to kill.

GKUKHOY P. v. () 4/18/2022 3:

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APPELLATE / MISC APPELLATE REMEDY - RETROACTIVE ERROR - ERROR CAUSED BY STATUTE CHANGE

Def convicted of 187 on Nat/Prob Conseq's instruction. Due to SB 775, DCA must apply SB 1437 to def's appeal. HELD: Conviction is REVERSED, but, DDA may retry def on a different theory even though it was not relied on in the first trial.

HOLA P. v. () 4/11/2022 3:

APPELLATE / MISC APPELLATE WENDE BRIEF - NOT APPLICABLE TO POST-CONVICTION PETITIONS

Def's conviction is affirmed on appeal. Then def seeks post-conviction relief of reducing conviction to a misdemeanor under PC 1170.18. DENIED. Def appeals again. HELD: WENDE does NOT apply to appeals of denials of post-conviction petitions.

WEISNER P. v. () 4/27/2022 3:

TRIAL / WHEELER APPELLATE REVIEW - DEFERENCE TO TRIAL COURT - NOT

DDA's stated reason for preempting Juror X was X's response to a question during V.D. Trial Ct denied WHEELER motion. -- DCA holds transcript does NOT support DDA's reason. REVERSED. -- DISSENT (1) transcript does support DDA; (2) trial ct thought so also, deference should be given.

SALINAS P. v. () 4/4/2022 2:5

MISCELLANEOUS / RETROACTIVE BENEFIT TO DEF - PROBATION LENGTH - 1203.1 PC

Effective 1/1/21, AB 1950 reduced felony probation to 2 years. (1) AB 1950 is retroactive. (2) def violated prob BEFORE 1/1/21, but AFTER 2 years of prob. HELD: def gets benefit. v/p should be dismissed EVEN if v/p hearing was held before 1/1/21. Def's v/p case was not FINAL before 1/1/21.

CANEDOS P. v. () 4/13/2022 2:!

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170.95 PC - HEARING - EVID - DEF'S STATEMENTS AT PAROLE HRGS

Def convicted in 1979. 1170.95 petition in 2019. Court denies 1170.95, in part, on def's testimony at his prior Parole Hearings. Def asserts he should have USE IMMUNITY for such testimony. -- MAYBE immunity appropriate if NEW charges were filed, But, NO immunity for 1170.95 hearings.

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

MENTAL HEARINGS / 1368 CTS / PC 4019 GOODTIME - TIME IN STATE HOSPITAL

In 2018, SB 1187 gave Good Time credits to 1368 defs getting treatment while in county jail. HELD: Equal Protection therefore requires Good Time credits for 1368 defs getting treatment in state hospital.

YANG P. v. () 4/29/2022 1:3

MISCELLANEOUS / RETROACTIVE BENEFIT TO DEF - SB 1437 - APPLIED BY DCA TO NON-FINAL CASES

Def convicted of 187 on Nat/Prob Conseq's instruction. Due to SB 775, DCA must apply SB 1437 to def's appeal. HELD: Conviction is REVERSED, but, DDA may retry def on a different theory even though it was not relied on in the first trial.

HOLA P. v. () 4/11/2022 3:

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170.95 PC - ELIGIBILITY - JURY NOT INSTRUCTED ON NAT/PROB CONSEQ'S

1170.95 petition properly denied. Jury not instructed on Nat/Prob Conseq's. Def was found to be aid/abettor who shared perpetrator's intent to kill.

ESTRADA P. v. () 4/25/2022 2:8

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 GENERALLY - COURTS CAN NOT RESENTENCE ABSENT SPECIAL STATUTE

Def sentenced in 1985 to 105 years. In 2021, def petitions trial court to amend sentence because part of his sentence is illegal. HELD: trial court loses jurisdiction to amend sentence one def starts serving the sentence. --- def's only possible remedy is HABEAS.

KING P. v. () 4/18/2022 2:2

APPELLATE / HARMLESS ERROR HARMLESS ERROR - ALTERNATIVE LEGAL THEORIES - SB 1437

Due to SB 775, def can seek benefit of 1170.95 changes to 187 on direct appeal if case not Final on 1170.95 enactment date. --- therefore, instructions in def's trial did not conform to post 1170.95 law. --- This Retroactive Error is HARMLESS because evid proves def was ACTUAL KILLER

BIRDSALL P. v. () 4/22/2022 1:4

MISCELLANEOUS / MISC AMEND OLD PROBATION REPORT TO CORRECT ERRORS

Def sentenced to Life + in 1975. In 2019, def seeks to correct alleged errors in probation report re: his out of state priors. Court held it had no jurisdiction for motion. HELD: Court does have jurisdiction under PC 1203.1. - Issue is not moot since def has future parole hearings.

CRITES P. v. () 4/14/2022 1:4

SENTENCING / CTS/GOOD TIME CTS - COMMITMENT TO STATE HOSPITAL UNDER 1368 PC

In 2018, SB 1187 gave Good Time credits to 1368 defs getting treatment while in county jail. HELD: Equal Protection therefore requires Good Time credits for 1368 defs getting treatment in state hospital.

YANG P. v. () 4/29/2022 1:3

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CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - CTS GOODTIME RULES - 1368 DEF'S

In 2018, SB 1187 gave Good Time credits to 1368 defs getting treatment while in county jail. HELD: Equal Protection therefore requires Good Time credits for 1368 defs getting treatment in state hospital.

YANG *P. v. ()* 4/29/2022 1:3

INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

ASSAULT - 245 PC - WARNING SHOT AIMED NEAR, BUT NOT AT, VICTIM

Confronted by two UNARMED people who might wish to fight him, def pulls out gun and fires warning shots into the ground near the V's who were approx 20 feet away. No one hit, but, def convicted of GENERAL INTENT PC 245. UPHELD. Def did act LIKELY to cause injury.

CRUZ-PARTIDA *P. v. ()* 4/28/2022 1:1

SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

PAT-DOWN, BASIS FOR - BAGGIE CLOTHING / PERSON OF INTEREST

Def patted-down during an otherwise routine traffic stop. Gun found. 1538.5 Granted. AFFIRMED. Baggy pants, and being somewhat related to 187 investigation, is NOT enough of a basis to suspect def was armed.

PANTOJA *P. v. ()* 3/24/2022 1:2

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

1170.95 PC - HEARING - PRIOR JURY ACQUITTAL

Court denied def's 1170.95 petition finding def was Major Part/ Reckless Indiff. Court stated def's GUN possession was important factor. BUT, def was acquitted of gun possession enhancement. REVERSED. 1170.95 ct cannot make a factual finding the jury rejected.

COOPER *P. v. ()* 4/12/2022 1:1