

CaseBank: Cases Added during August 2022 (sorted by Court)

www.casebanklaw.com

SENTENCING / 654
 954 PC - 245 PC (DEADLY WEAPON) / 245 PC (FORCE LIKELY)
 The 2 forms of felony ASSAULT -- 245(a)(1) - Deadly weapon - and 245(a)(4) - force likely to inflict GBI are "different statements of the SAME CRIME." for purposes of PC 954. Jury can convict of both, but one must later be stricken.
AGUAYO P. v. () 8/25/2022 CAL

APPELLATE / HARMLESS ERROR
 HARMLESS ERROR - MISINSTRUCTION - MISTAKE-OF-FACT
 Def arrested in backyard of V. Def claimed he thought (wrongly) house belongs to his friend. Jury instructed that Mistake of Fact can be defense when that mistake was "reasonably held". HELD: this was error, it need merely be "genuinely" held. DCA said Harmless. Supreme Ct disagreed.
HENDRIX P. v. () 8/22/2022 CAL

MOTIONS / SEVERANCE/JOINDER
 COUNTS - TWO COMPLAINTS, TWO PRELIM'S, ONE INFORMATION
 Crime A and B committed months apart, and complaints filed weeks apart, and prelims were days apart. DDA files a single, consolidated Information w/out court pre-approval. HELD: this does NOT violate PC 954 or any other statute. --- At def's 995 hrg, court can consider BOTH prelim transcripts. (4-3 decision)
HENSON P. v. () 8/1/2022 CAL

D. P. / SPEC. CIRC. / MISC - D.P./SPEC. CIRC.
 PRO PER DEF - REFUSES TO MOUNT A DEFENSE
 D.P. def's atty would not consent to guilty pleas. Def then has FARETTA granted. Def waived jury. Def mounts zero defense and confesses in testimony in guilt phase; asserts No Remorse in penalty phase. UPHELD. There was no basis to deny def's FARETTA request. PC 686.1 does NOT trump Faretta.
MORELOS P. v. () 8/11/2022 CAL

CONSTITUTIONAL ISSUES / MISC - D.P./SPEC. CIRC.
 JURY WAIVER - ADVISEMENT
 PRO PER def waives JURY in both guilt and penalty phase. On appeal, claims he was inadequately advised. HELD: there is NOT a clear-cut list jury-waiving defs must be told before accepting jury waiver. This def made a knowing and intelligent waiver. DISSENT.
MORELOS P. v. () 8/11/2022 CAL

D. P. / SPEC. CIRC. / PEN -
 MITIGATION - DEF FAMILY HISTORY PRE-DEF'S BIRTH
 Def seeks to introduce as Mitigation not only that HE had bad childhood from abusive dad, but that his Dad also had abusive childhood. HELD: Events that predate def's birth are NOT RELEVANT.
RAMIREZ P. v. () 8/25/2022 CAL

INSTRUCTIONS/ELEMENTS / DEFENSES
 MISTAKE OF FACT
 Def arrested in backyard of V. Def claimed he thought (wrongly) house belongs to his friend. Jury instructed that Mistake of Fact can be defense when that mistake was "reasonably held". HELD: this was error, it need merely be "genuinely" held. DCA said Harmless. Supreme Ct disagreed.
HENDRIX P. v. () 8/22/2022 CAL

PRELIMS / 995 / MISC - PRE/995
 995 - TWO COMPLAINTS, TWO PRELIM'S, ONE INFORMATION
 Crime A and B committed months apart, and complaints filed weeks apart, and prelims were days apart. DDA files a single, consolidated Information w/out court pre-approval. HELD: this does NOT violate PC 954 or any other statute. --- At def's 995 hrg, court can consider BOTH prelim transcripts.
HENSON P. v. () 8/1/2022 CAL

MISCELLANEOU / RETROACTIVE
 BENEFIT TO DEF - APPELLATE DECISIONS - GALLARDO
 In 1987, court made factual findings re: nature of Out-of-State prior before giving def 3-strike sentence. In 2017, GALLARDO held such findings violate def's right to JURY. HELD: GALLARDO is procedural and is NOT RETROACTIVE to final cases. HABEAS Petition is DENIED.
MILTON In Re () 8/22/2022 CAL

MOTIONS / FARETTA / PRO PER ISSUES
 GROUNDS TO DENY - DEF WON'T OPPOSE DEATH PENALTY - NOT
 D.P. def's atty would not consent to guilty pleas. Def then has FARETTA granted. Def waived jury. Def mounts zero defense and confesses in testimony in guilt phase; asserts No Remorse in penalty phase. UPHELD. There was no basis to deny def's FARETTA request. PC 686.1 does NOT trump Faretta.
MORELOS P. v. () 8/11/2022 CAL

MOTIONS / VENUE/JURISDICTIONS
 VENUE - CHANGE OF VENUE - PUBLICITY - WAIT UNTIL AFTER VOIR DIRE
 Change of VENUE motion (away from 1999 Bakersfield) due to pretrial publicity properly denied, permitting def to renew after Voir Dire. Lots of statistics showing lots of articles and lots of people knew about case. --- But, lots of people didn't.
RAMIREZ P. v. () 8/25/2022 CAL

DEFENDANT'S STATEMENTS / MISC - DEF'S
 MISC - TREATY RIGHTS OF FOREIGN NATIONALS - RIGHT TO CONSUL
 Def, a Mexican national, was not informed of his treaty right to have police notify the Mexican Consulate. HELD: there is no PER SE remedy for this violation, and def cannot show any prejudice. (Treaty only requires NOTICE be given (if asked). No requirement to stop questioning.)
RAMIREZ P. v. () 8/25/2022 CAL

CaseBank: Cases Added during August 2022 (sorted by Court)

www.casebanklaw.com

MOTIONS / RECUSAL

OFFICE - OFFICE TAKES INCONSISTENT POSITIONS RE: CO-DEF'S

Def's co-def's were tried first. Def seeks to RECUSE DA's Office on accusation the DDA intends to accuse Def of being the shooter after telling other jury co-def was shooter. Def says DA must become a witness. HELD: Properly denied as speculative and premature.

RAMIREZ P. v. () 8/25/2022 CAL

EVIDENCE / 352 / RELEVANCE

REBUTTAL EVIDENCE - UNREDACTED TAPE OF DEF INTERVIEW

During taped interview, police referred to incriminating stuff jury could not hear. At trial def testified he was confused and pressured into saying untrue things. HELD: this opened door to playing the tape for the LIMITED purpose showing def was not pressured or confused.

RAMIREZ P. v. () 8/25/2022 CAL

TRIAL / ARGUMENT

DDA NO-NO - ARGUING INCONSISTENT THEORIES / CO-DEF'S - MAYBE

Evidence was partial, incomplete, and contradictory as to which co-def was the shooter. At X's trial DDA said X was most likely shooter. At Y's trial, DDA said Y was most likely shooter. HELD: no misconduct. No Evidence was withheld, no evidence was tainted. No false DDA statement to either jury.

RAMIREZ P. v. () 8/25/2022 CAL

APPELLATE / WAIVER OF APPEAL

WAIVER - FAILURE TO MAKE ADEQUATE APPELLATE RECORD

In PENALTY phase, DDA gives notice that if Def presents evid that Def would be good inmate, DDA would present rebuttal evid of def plotting to kill guards. -- Rebuttal not presented. On appeal, def says rebuttal WOULD HAVE BEEN hearsay. HELD: No appellate record to support def assertion.

RAMIREZ P. v. () 8/25/2022 CAL

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

1170.95 PC - FORUM TO APPLY BANKS RETROACTIVELY - YES - SUPREME CT

PC 1170.95 is a proper forum for def to assert his PRE-Banks/Clark Spec Circ conviction should be set aside. No need to first bring a Habeas. Such convictions do NOT make def PER SE ineligible for 1170.95 relief.

STRONG P. v. () 8/8/2022 CAL

TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - IN TRIAL - WRITING DOWN THOUGHTS AND IMPRESSIONS - NOT

During deliberations, court staff found paper containing juror #7's thoughts about the case. Some referenced outside-events, but said such events must NOT be considered. HELD: No evidence of misconduct. Notes to self is NOT improper discussions of case.

TRAN P. v. () 8/29/2022 CAL

MOTIONS / 1385

ABUSE OF DISCRETION IN *not* DISMISSING UNDER 1385 PC

Def's non-related drug charges were severed from his death penalty murder charges. AFTER def got death verdict, def seeks Dismissal of drugs charges per PC 1385. Denied. 2nd trial convicts def of drug crimes. (Imposed sentence was stayed). UPHELD.

RAMIREZ P. v. () 8/25/2022 CAL

EVIDENCE / 352 / RELEVANCE

DDA CLOSING ARGUMENT OF CO-DEF'S TRIAL

Evid was incomplete and contradictory as to which co-def was shooter. At X's trial DDA said X most likely shooter. At Y's trial, DDA said Y was most likely shooter. HELD: DDA's X argument NOT relevant at Y's trial. No Evid was withheld, no evid was tainted. No false DDA statement to either jury.

RAMIREZ P. v. () 8/25/2022 CAL

DEFENDANT'S STATEMENTS / AMBIG. INVOKE

GENERALLY - CONTEXT, USE OF - I HAVE NOTHING MORE TO SAY

In context, "I don't have nothing else to say to you guys" was NOT an invocation of MIRANDA, it was a rejection of the officers suggestion that def might want to change his story because he was lying.

RAMIREZ P. v. () 8/25/2022 CAL

INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - BENEFIT OF - SUFFIC OF EVID

Acting alone, def fires gun into two homes. the SOLE evidence his GANG benefited was expert testimony that the gang gains REPUTATIONAL benefit from ANY crime committed by ANY member. HELD: This is NOT enough, PC 186.22(b)(4) enhancement REVERSED.

RENTERIA P. v. () 8/25/2022 CAL

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

CRUEL AND UNUSUAL - DEF'S UNDER AGE 21

Def given death penalty for 187 committed at age 20. UPHELD. Age 18 is clear cut line.

TRAN P. v. () 8/29/2022 CAL

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - EVID ERROR - GANG EXPERTS

In this 2007 Gang-Murder death penalty case, Supreme Ct finds all of the SANCHEZ errors HARMLESS.

TRAN P. v. () 8/29/2022 CAL

CaseBank: Cases Added during August 2022 (sorted by Court)

www.casebanklaw.com

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - BIFURCATION OF GANG ENHANCEMENTS

Is PC 1109's mandatory BIFURCATION of gang allegations RETROACTIVE?
Cal Supreme Ct DUCK the issue by finding HARMLESS in this 2007 Gang-Murder D.P. case.

TRAN P. v. () 8/29/2022 CAL

MOTIONS / SEVERANCE/JOINDER

DEF'S - ARANDA - POST-CRAWFORD, ONLY TESTIMONIAL HEARSAY

Post-CRAWFORD, ARANDA-BRUTON issues and concerns ONLY apply to jury hearing TESTIMONIAL Hearsay. -- Co-def's statements to cellmates are NOT testimonial even if cellmate is a covert police agent.

TRAN P. v. () 8/29/2022 CAL

TRIAL / JUROR/VERDICT ISSUES

JUROR ADDRESSES - HEARING

Post-Verdict def asks for juror addresses to seek information re: allegation of misconduct during deliberations. Court invites jurors to hearing before deciding. 4 jurors show up and say (1) no misconduct, and (2) no consent to give address. No addresses given. UPHELD.

TRAN P. v. () 8/29/2022 CAL

CONSTITUTIONAL ISSUES / FIRST AMENDMENT

1ST AMEND - RELIGION - COVID RESTRICTIONS ON CHURCHES

Santa Clara County's COVID orders restricting INDOOR gatherings is found by DCA to be a violation of 1st Amendment as it applied to a CHURCH. --- Church held services anyway, a TRO was issued, and ignored, then Church was held in Contempt. --- Strict Scrutiny test applied.

CALVARY CHAPEL P. v. () 8/15/2022 6:

MENTAL HEARINGS / SexVioPredator

TRIAL - EVIDENCE - EXPERTS - DDA MUST USE ONLY DSH EXPERTS

DDA seeks to hire it's own SHRINK to testify at def's SexVioPredator trial. Def files writ. Writ is GRANTED. DDA is limited to shrinks assigned to case by DSH.

NEEDHAM def v. SUP CT 8/8/2022 4:3

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

1170.95 PC - HEARING - PRIOR PRELIM MAGISTRATE FINDING

In 2017, At prelim, def NOT HTA on a Spec Circ. Def later convicted of 187. --- In 2020, Def asserts the prelim decision is BINDING on a PC 1172.6 court on issue of whether def was a Major Participant w/ Reckless Indifference. HELD: Holding order at prelim is NOT binding.

NIEBAR P. v. () 8/22/2022 4:1

APPELLATE / HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - BIFURCATE GANG ENHANCEMENT

Is PC 1109's mandatory BIFURCATION of gang allegations RETROACTIVE?
Cal Supreme Ct DUCK the issue by finding HARMLESS in this 2007 Gang-Murder D.P. case.

TRAN P. v. () 8/29/2022 CAL

EVIDENCE / HEARSAY

CRAWFORD - TESTIMONIAL - CO-DEF'S JAIL CONVERSATIONS

Post-CRAWFORD, ARANDA-BRUTON issues and concerns ONLY apply to jury hearing TESTIMONIAL Hearsay. -- Co-def's statements to cellmates are NOT testimonial even if cellmate is a covert police agent.

TRAN P. v. () 8/29/2022 CAL

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

VICTIM IMPACT - EXTREME IMPACT - CALMLY PRESENTED

While the IMPACT of V's murder on V's mother and father was itself extreme and emotionally moving (dad seriously contemplated murder/suicide to end mom's suffering), that is NOT a basis to limit Victim Impact evidence.

TRAN P. v. () 8/29/2022 CAL

MISCELLANEOUS / MISC

INITIATIVES - LEG'S ABILITY TO AMEND - GANGS - VOTER INTENT

PROP 21 added PC 182.5 re: Conspiracy GANG cases. 182.5 incorporates by references PC 186.22. AB 333 amended 186.22, but w/out a 2/3's majority. HELD: using VOTER INTENT analysis, DCA holds AB 333 changes APPLY to PC 182.5 cases.

LOPEZ P. v. () 8/3/2022 5:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - WHEN DOES CASE STAY FINAL?

Def's GANG convictions are FINAL. Then AB 333 is enacted. Then CDCR recommends a resentencing under PC 1170(d)(1). HELD: Case is no longer FINAL. Def's GANG convictions are REVERSED and Remanded for new trial.

SALGADO P. v. () 7/26/2022 4:3

MOTIONS / FARETTA / PRO PER ISSUES

GROUND TO DENY - COMPETENCY TO ACT AS ATTY - NEEDED FINDINGS

Based solely on def's confusion about some questions on the FARETTA request form, trial court finds def mentally unable to represent himself. REVERSED. A finding of Severe Mental Illness is required. Therefore, a professional mental health evaluation needed.

OROSCO P. v. () 8/17/2022 4:1

CaseBank: Cases Added during August 2022 (sorted by Court)

www.casebanklaw.com

MENTAL HEARINGS / 1026

NGI EXTENSIONS - SUFFICIENCY OF EVIDENCE

NGI def stills hears voices telling him to do things. BUT, with help of medication, def has not ACTED on what the voices say for many years. Def appeals his PC 1026.5 extension on Sufficiency of Evidence grounds. DCA REVERSES. No remand to give DDA another try.

CHEATHAM P. v. () 8/29/2022 3:

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - ADVERSE CONSEQUENCE

Def, a Naturalized CITIZEN, pled to a felony. Def later discovers the conviction prevents him from SPONSORING his Father's immigration application. HELD: This IS NOT a "adverse immigration consequence" under PC 1473.7

GREGOR P. v. () 8/12/2022 3:

INSTRUCTIONS/ELEMENTS / HOMICIDE

FELONY 187 - ACTUAL KILLER - PROXIMATELY CAUSING DEATH - NOT

While being kidnapped by def, Victim, w/out def's knowledge, leaps out of moving vehicle and dies. HELD: While def may have proximately caused V's death, def is NOT an "actual killer" under new felony murder law.

VANG P. v. () 8/5/2022 3:

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - WHEN DOES CASE STAY FINAL?

Def convictions are FINAL. Years later, def files a PC 1172.6 petition for resentencing. Petition is DENIED. Def now asserts she should get retroactive application of newly enacted laws due to 1172.6 petition making her case NOT FINAL. HELD: Because petition was DENIED, case remained FINAL.

GUILLORY P. v. () 8/17/2022 1:5

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

Def gets plea bargain for Probation on DUI-Veh-Manslaughter (PC 191.5) that specified probation was to be for 5 years. Then AB 1950 happened. HELD: Probation is reduced to two years, and DDA does NOT have option of asking court to retract plea bargain.

BOWDEN def v. SUP CT 8/26/2022 1:3

MOTIONS / DOUBLE JEOPARDY

NGI EXTENSION REVERSED FOR INSUFFICIENT EVID - NO NEW TRIAL

NGI def stills hears voices telling him to do things. BUT, with help of medication, def has not ACTED on what the voices say for many years. Def appeals his PC 1026.5 extension on Sufficiency of Evidence grounds. DCA REVERSES. No remand to give DDA another try.

CHEATHAM P. v. () 8/29/2022 3:

APPELATE / MISC APPELLATE

MISC - REPLACING DEF'S NAME WITH ONLY HIS INITIALS - RULE 8.90(b)

Def's request to pursue his appeal under only his INITIALS pursuant to RULE 8.90(b)(10). HELD: request denied. 8.90(b) applies only in certain types of appeals, and this case is not one of them.

GREGOR P. v. () 8/12/2022 3:

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

1170.95 PC - HEARING - PRIOR JURY ACQUITTAL OF SPEC CIRC

2004, def convicted of 187 / robbery / kidnap / carjacking. ACQUITTED on Spec Circ Kidnap, HUNG on Spec Circ Robbery and Spec Circ Carjacking. 2019, def asserts Spec Circ acquittal is BINDING on PC 1172.6 petition re:

MAJOR/RECKLESS. HELD: it is binding ONLY re: Kidnap, NOT Robbery and

GUILLORY P. v. () 8/17/2022 1:5

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - ABSURD RESULTS - ILLOGICAL DOES NOT EQUAL ABSURD

Def gets plea bargain for 5 yr Probation on DUI-Veh-Manslaughter (PC 191.5). Then AB 1950 happened. HELD: Probation is reduced to two years. 191.5 says probation CAN be for 5 years, does not say MUST be for 5 years. (Now plain DUI's have 3 yr probation, while 191.5 has 2 yr)

BOWDEN def v. SUP CT 8/26/2022 1:3

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROBATION LENGTH - 1203.1 PC

Def gets plea bargain for Probation on DUI-Veh-Manslaughter (PC 191.5) that specified probation was to be for 5 years. Then AB 1950 happened. HELD: Probation is reduced to two years.

BOWDEN def v. SUP CT 8/26/2022 1:3