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MOTIONS / BAIL / OR

MOTION TO VACATE FORFEITURE - IMPOSING COST TO RE-

PC 1306(b) permits bail bond poster to be assessed the cost of returning the fugitive def to custody. This cost DOES NOT INCLUDE extradition costs. Once the def is "in custody" anywhere, the meter stops.

BAIL HOTLINE P. v. () **DAR** **SUPP**

GRAND JURY / MISC - GRAND JURY

D.A. PARTICIPATION IN G.J. SELECTION PROCEDURE

On his own authority, a DDA dismisses a GRAND JUROR when the juror states that he is biased AGAINST the def. HELD: (1) DDA has no such authority. Per PC 939.5 only the foreperson has this authority. (2) this error can be raised in 995 motion. (3) this case: error is HARMLESS.

AVITIA P. v. SUP **DAR** **CAL**

D. P. / SPEC. CIRC. / JURY SELECTION

CHALLENGE FOR CAUSE - WRITTEN QUESTIONNAIRES, ONLY

Court grants DDA's challenge for cause in D.P. case based solely on questionnaire. --- No body language etc, means no deference to trial court. De Novo review. And, if answers are at all inconsistent or contradictory, the case is REVERSED.

BUENROSTRO P. v. () **6 C5th 367** **CAL**

MOTIONS / FARETTA / PRO PER ISSUES

TIMELINESS - MID-TRIAL - NO CONTINUANCE ASKED FOR

Mid-trial FARRETTA motion is properly denied as untimely.

BUENROSTRO P. v. () **6 C5th 367** **CAL**

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - POSSESSION OF FORGED CHECKS -

For Prop 47 purposes, the "value" of a forged check is the amount the check is made out for.

FRANCO P. v. () **DAR** **CAL**

TRIAL / MISC - TRIAL

DEF PRESENCE - DISRUPTIVE DEF

Def forfeited his right to be present at his D.P. trial by his multiple, severe, disruptive behavior which included physical attack on his atty in front of jury panel on 1st day of voir dire.

JOHNSON P. v. () **DAR** **CAL**

MISCELLANEOUS / ATTY ETHICS

CONFLICT OF INTEREST - DEF PHYSICALLY ATTACKS HIS

Def spits on, physically attacks, and repeatedly threatens to kill, his court appt'd atty. Atty assures court that he can continue to professionally represent def. UPHELD. Despite the def's best efforts, def atty was not placed in a conflicted position.

JOHNSON P. v. () **DAR** **CAL**

INSTRUCTIONS/ELEMENT / MISDEMEANORS AND

PROBABLE CAUSE REVIEW - 991 PC - SCOPE OF

LOS ANGELES APPELLATE DIV: A probable cause review of a Misdemeanor case under PC 991 is NOT an occasion for a review of any alleged 4th amendment search and seizure issues.

BARAJAS P. v. () **DAR** **SUPP**

INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - DEADLY WEAPON - DULL KNIFE THAT

Def tries to STAB victim wrapped in thick blanket with a butter knife. Victim is not cut or hurt. HELD: this is NOT a PC 245 violation as a matter of law. Conviction reversed.

B. M. P. v. () **DAR** **CAL**

MENTAL HEARINGS / 1368

STANDARD IS NOT TOO NARROW - NEED NOT BE EXPANDED

Def asserts the statutory definition of incompetent to stand trial (PC 1368) is too narrow and therefore this def was found competent when she was really incompetent. --- HELD: 1368 is just fine as it is.

BUENROSTRO P. v. () **6 C5th 367** **CAL**

EVIDENCE / 352 / RELEVANCE

EXPERTS - ALLEGATION THAT EXPERT IS PROFESSIONALLY

Opposing shrinks in PC 1368 trial want to call each other unethical. Trial court keeps it out as irrelevant. HELD: Professional Unethical behavior is relevant. --- It may or may not be kept out under Ev 352. --- this case, the error, if any, is HARMLESS.

BUENROSTRO P. v. () **6 C5th 367** **CAL**

MOTIONS / MARSDEN

GROUND - DEF'S REFUSAL TO TALK TO DEF ATTY

A def may not unilaterally create a breakdown of the atty/client relationship by refusing to talk to this atty. --- This is not a MARSDEN situation and appointment of new atty is not required.

JOHNSON P. v. () **DAR** **CAL**

TRIAL / MISC - TRIAL

DEF'S PERSONAL RIGHT TO TESTIFY - FORFEITED BY

Def forfeits his right to testify by his refusal to confine his remarks to merely answering the question asked.

JOHNSON P. v. () **DAR** **CAL**

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

GUILTY PLEAS - PRO PER DEF WITH CONSENT OF ADVISORY

D.P def wants to plead guilty to everything. Atty won't consent under PC 1018. FARETTA granted; new atty appt'd as ADVISORY atty. After weeks of advice, Advisory Atty tells court guilty plea is a rational tactic to avoid death. Ct accepts guilty pleas. UPHELD. Advisory atty role satisfies 1018.

MIRACLE P. v. () **6 C5th 318** **CAL**

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TRIAL / COURT SECURITY

SHACKLING DEF - EXTRAORDINARY DEF EQUALS

Extraordinarily dangerous def justifies extraordinarily restrictive shackling of def in front of jury.

MIRACLE P. v. () 6 C5th 318 CAL

JUVENILE / UNFITNESS

PROP 57 - APPELLATE REVIEW - NEED FOR ARTICULATED

A post-Prop 57 unfitness ruling is Reversed and Remanded by the DCA due to failure of juvi court to "clearly and explicitly articulate its evaluative process". Merely summarizing the factors pro and con and then making a decision is NOT enough.

C. S. def v. SUP 29 CA5th 1009 6:

INSTRUCTIONS/ELEMENT / MISC - FELONY

CONSPIRACY - TO PERVERT OR OBSTRUCT JUSTICE - 182(a)(5)

It is possible for a def to be guilty of Conspiracy to Obstruct Justice without also committing the crime of Accessory (PC 32) or Obstructing a Peace Officer in performance of his duties (PC 148). This case: def made agreement with perpetrator to lie to police when interviewed.

GARCIA P. v. () 29 CA5th 864 6:

SENTENCING / RE-SENTENCE - 36, 47 & 64

PROP 47 - ELIGIBILITY - SHOPLIFTING DEFINED

Def enters ice hockey rink locker room, breaks into lockers and steals personal property of people who are out skating on the ice. HELD: this is a SHOPLIFTING as defined by Prop 47. --- Burden, at trial, is on DDA to prove it was NOT a SHOPLIFTING before convicting def of other crime.

E. P. P. v. () DAR 4:3

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - SPECIFIC OVER GENERAL - POINTING LASERS AT

Def points a laser at an aircraft in flight and was charged with PC 245. HELD: PC 247.5 (and 417.25, and 417.26) specifically prohibits what def did. Def can ONLY be charged with one of these crimes, not 245. Specific over General.

SUN P. v. () 29 CA5th 946 4:3

MISCELLANEOUS / RETROACTIVE

COURT DECISIONS - CLEAR BREAK - PREDICTABILITY -

Def files HABEAS to reverse GANG enhancement. Def's trial was pre-SANCHEZ. HELD: SANCHEZ was NOT new law. Def's trial atty's failure to object, and appellate atty's failure to raise issue is not excused. HABEAS denied.

THOMAS In Re () DAR 4:2

CONSTITUTIONAL ISSUES / PREEMPTION

PREEMPTION - FED/STATE - DEF DEFRAUDS A FED GOVT

Def, a federal employee, commits fraud lying about a work injury to fed worker's comp program. HELD: (1) PREEMPTION does NOT prevent Calif from making this act a Calif crime. (2) Labor Code 1871.4 does NOT apply. --- PC 550 and PC 484 probably do apply.

HAMILTON P. v. () DAR 4:1

MENTAL HEARINGS / SexVioPredator

PROCEDURE - DISCOVERY - DDA GETS ALL OF DEF

DDA in SexVioPredator proceeding may gain in discovery ALL of def's treatment records and may share them with his retained expert for trial. -- W&I 6603(j).

SMITH P. v. SUP DAR CAL

APPELLATE ISSUES / MISC APPELLATE ISSUES

RECORD ON APPEAL - DEFICIENCIES - ENOUGH FOR

Although there were some relevant transcripts missing from the record on appeal, the transcripts in the record adequately showed the relevant evidence, arguments, and rulings to permit meaningful appellate review.

GARCIA P. v. () 29 CA5th 864 6:

MISCELLANEOUS / JUDICIAL DUTIES & ETHICS

COMMISSIONERS - POWERS OF - REALIGNMENT PAROLE

Realignment created COMMISSIONER position to do Parole Hrgs - Govt 71622.5. UNFORTUNATELY statute cannot trump Cal Constitution which says COMMISSIONERS can only do Subordinate Judicial Duties. --- 71622.5 commissioner needs a STIP to sentence parole violators.

BERCH P. v. () 29 CA5th 966 4:3

SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - LIFE FOR SEX WITH CHILD - 288.7 PC

PC 288.7 requires a 15-to-life sentence for sexual penetration of a child 10 years or younger. HELD: this is NOT cruel and unusual.

GOMEZ P. v. () DAR 4:3

CONSTITUTIONAL ISSUES / RIGHT TO JURY TRIAL

JURY TRIAL RIGHT - PRIORS - SCOPE OF WAIVER - POST

Jury convicts def of crimes. Def waives right to jury trial re: alleged prior convictions. Jury discharged. DDA then finds a new prior and moves to amend. HELD: the DDA may amend, BUT, the prior jury waiver does NOT apply to the new allegation. (and def has right to have SAME JURY decide it.)

LAVOIE P. v. () 29 CA5th 875 4:2

APPELLATE ISSUES / MISC APPELLATE ISSUES

MISC - LESSERS, DCA MAY IMPOSE "RELATED LESSERS" ?

Appellate court reverses conviction on charged crime X. Question: may the appellate court affirm a conviction on an UNCHARGED, but RELATED LESSER crime Y? ANSWER: Yes, but DCA in this case declines to do so.

HAMILTON P. v. () DAR 4:1

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - WHEN IS DEF'S CASE

PC 12022.53 is amended to permit sentencing court to dismiss gun enhancements under PC 1385. Amendment applies to all cases not yet FINAL. Def is in state hospital after NGI verdict. Is his case FINAL? Answer: YES. Amendment does not apply to def's case.

K. P. P. v. () DAR 4:1

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INSTRUCTIONS/ELEMENT / MISC - FELONY

VANDALISM - 594.3 PC - VANDALISM OF CHURCH PROPERTY

PC 594.3 is a specific vandalism statute re: vandalizing CHURCH buildings. HELD: in this context, "building" includes the signage in the lawn in front of the Church saying it is a church.

LADUKE P. v. () **DAR** 4:1

SENTENCING / DETAIN/ARREST/PAT-DOWN

PC TO DETAIN - HARASSING PEOPLE ON SIDEWALK IS NOT A

911 call complained of suspect standing on sidewalk "harassing" pedestrians. 2 hours later, officers respond and see def in area, matching description, but not doing anything. HELD: No PC to detain. (1) two hour gap; and (2) "Harassing pedestrians" is not a crime.

THOMAS P. v. () **DAR** 3:

SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

PC TO DETAIN - REFUSING TO TALK TO POLICE IS NOT PC

Police approach def on street without PC to detain. Def refuses to talk to officers and starts to walk away. HELD: this behavior does NOT create PC to detain. Def gets to walk away.

THOMAS P. v. () **DAR** 3:

JUVENILE / SENTENCING

WARDSHIP TERMS - INTERNET, USE OF TO BRAG ABOUT

Juvi wardship term that minor stop bragging about his criminal exploits on the internet UPHELD as reasonably related to minor's rehabilitation.

A. A. In Re () **DAR** 2:6

SENTENCING / RESTITUTION

GENERALLY - OVER COMPENSATE - REPLACE AND V RETAINS

Def steals 520 continuous feet of copper wire from victim. Police recover two segments of 262 feet and 32 feet, which victim can't use. Court orders restitution in the amount of replacement cost of 520 feet. Court ALSO releases the segments back to Victim. UPHELD. Not an abuse of discretion.

ERICKSON P. v. () **DAR** 2:6

SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - MINORS - LWOP (DEFACTO) - SEX

In 1996, minor found unfit and given 94-to-life for multiple One-Strike sex counts. HELD: This is defacto LWOP. New sentencing ordered so that MILLER factors can be considered. (DICTA: anything over 50-to-life won't survive the next appeal.)

GARCIA P. v. () **DAR** 2:6

INSTRUCTIONS/ELEMENT / HOMICIDE

MALICE (IMPLIED) - OVER PRESCRIBING OPIOIDS

Doctor prescribes large amounts and high dosages of opioids to many patients, some of whom die of overdoses. Convicted of 2nd degree 187. UPHELD: Def knew her patients were abusing opioids and she did nothing to try and stop them. Jury could find this to be callous disregard implied malice.

TSENG P. v. () **DAR** 2:1

INSTRUCTIONS/ELEMENT / GENERALLY

EVID - FALSE PRE-TRIAL STATEMENTS - CALCRIM 362

Def attacks CALCRIM 362 - false statements as consciousness of guilt - by nit-picking that consciousness of guilt about "something" does not necessarily equal consciousness of guilt about the charged crime. HELD: Instructions as a whole take care of this possibility.

BURTON P. v. () **29 CA5th 917** 3:

SEARCH & SEIZURE / PROBATION/PAROLE

PROBATION - DEF FALSELY DENIES TO COP HE IS ON

Police approach def and ask if he is on probation. Def LIES and says no. Police then search def without PC. HELD: Def is NOT stopped from contesting search. 1538.5 should have been Granted.

THOMAS P. v. () **DAR** 3:

EVIDENCE / HEARSAY

GANG EXPERT - HEARSAY, USE OF - CRAWFORD APPLIED TO

Post SANCHEZ, expert can still opine about Def's gang generally - who they are, what they do, why they do it. HE CANNOT testify re: information from FI cards (regardless of who wrote it and who it was about.)

MERAZ P. v. () **DAR** 2:8

MENTAL HEARINGS / MDO

QUALIFYING PRE-RELEASE-DATE TREATMENT

MDO criteria requires def receive at least 90 days of treatment for his qualifying disorder (delusion disorder) BEFORE petition is filed. This case, def prior treatment was for DIFFERENT mental disorders (depression and personality disorders). MDO commitment REVERSED.

BENDOVID P. v. () **DAR** 2:6

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROP 57 - JUVI UNFITNESS

In 1996, at age 17, minor found UNFIT by juvi ct, and sentenced to 94 to life. HELD: PROP 57 applies, so before a (MILLER) resentencing, an UNFITNESS hrg must be held. WHY? because 1996 unfit hrg used a different criteria than the Prop 57 criteria.

GARCIA P. v. () **DAR** 2:6

INSTRUCTIONS/ELEMENT / HOMICIDE

LESSERS - MURDER / INVOLUNTARY MANSLAUGHTER -

Def inflicts sever beating on victim using only hands and feet. All of victim's injuries were minor, EXCEPT victim DIED due to a spinal cord injury in the neck immediately adjacent to site of prior neck surgery that left metal rods in victim's neck. HELD: ERROR to refuse to give LESSER of invol.

VASQUEZ P. v. () **DAR** 2:3

INSTRUCTIONS/ELEMENT / HOMICIDE

CAUSE OF DEATH - MULTI-DRUG OVERDOSE - DEF SUPPLIED

Doctor prescribes large amounts and high dosages of opioids to many patients, some of whom die of overdoses. Convicted of 2nd degree 187. UPHELD: Fact that victims improperly MIXED drugs def prescribed with other ILLEGAL drugs, does NOT break chain of CAUSATION.

TSENG P. v. () **DAR** 2:1

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SENTENCING / PRIORS

667.5(b) PC - 5-YEAR WASHOUT PERIOD - EFFECT OF PROP 47

If a prior prison conviction is reduced to a misd under Prop 47, it can no longer be used as a One-year prior under PC 667.5(b), AND it can no longer be used to prevent the 5-year WASHOUT rule from being invoked for 667.5(b) priors.

BALDWIN *P. v. ()* **DAR** 1:5

SENTENCING / V/P'S

PRCS VIOLATIONS - EFFECT OF TOLLING

When a def's PRCS is summarily revoked, the PRCS is tolled in the sense that court retains jurisdiction to adjudicate violation even after PRCS length expires. It is NOT TOLLED in the sense that the length of PRCS supervision is extended.

JOHNSON *P. v. ()* **29 CA5th 1041** 1:2