

# CaseBank: Cases Added during November 2020 (sorted by Court)

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

REBUTTAL TO EXPERT PREDICTION OF DEF FUTURE PRISON BEHAVIOR

Def expert in penalty phase opined that def would likely NOT join a prison gang. HELD: this opened the door to evidence that def exchanged cordial letters while awaiting trial with a leader of a white supremacist prison gang.

SCHULTZ P. v. () 11/23/2020 CAL

## MISCELLANEOUS / JUDICIAL DUTIES & ETHICS

JUDICIAL RECUSAL - DEF THREATENS JUDGE

Awaiting trial in jail, def is discovered attempting to learn the home address of the DDA and judge. HELD: Neither the DDA or the Judge are obligated to recuse themselves upon this discovery.

FLINNER P. v. () 11/23/2020 CAL

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

CONSCIOUSNESS OF GUILT - DEF EFFORTS TO CAUSE MISTRIAL

While in jail awaiting trial, def plotted to send letters to witnesses and jurors in effort to disrupt trial and cause mistrial. HELD: such acts are admissible as Consciousness of Guilt.

FLINNER P. v. () 11/23/2020 CAL

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

DEF'S POST 187 CALLOUS TALK RE: VICTIM

Def charged with killing his Girl Friend. Def insists he loved her. HELD: Post killing callous remarks about victim are relevant rebuttal evidence.

FLINNER P. v. () 11/23/2020 CAL

## EVIDENCE / HEARSAY

ADMISSION OF PARTY OPPONENT - CO-DEF'S TRIED TOGETHER

Def and co-def X are tried together and have antagonistic defense. In this context, def and X are "party opponents" for purposes of EV 1220 -- admissions of party opponents. X can introduce hearsay statements of def.

FLINNER P. v. () 11/23/2020 CAL

## EVIDENCE / HEARSAY

CRAWFORD - TESTIMONIAL - POLICE INTERVIEW OF CO-DEF

While in custodial interrogation, def's co-def (X) makes admissions that don't refer to def, but are nonetheless useful to DDA against def. HELD: The "against penal interest" exception to hearsay is NOT an exception to CRAWFORD. X's statements were testimonial.

FLINNER P. v. () 11/23/2020 CAL

## TRIAL / MISC - TRIAL

DEF PRESENCE - HRGS RE: DEF SECURITY MEASURES IN JAIL

Awaiting trial in jail, def is discovered attempting to learn the home address of the DDA and judge. Def was excluded from hearings/discussions re: what additional security measures would be taken re: def. HELD: Def has no statutory or constitutional right to attend such hearings.

FLINNER P. v. () 11/23/2020 CAL

## MOTIONS / RECUSAL

INDIVIDUAL DDA - DEF THREATENS DDA AND HIS FAMILY

Awaiting trial in jail, def is discovered attempting to learn the home address of the DDA and judge. HELD: Neither the DDA or the Judge are obligated to recuse themselves upon this discovery.

FLINNER P. v. () 11/23/2020 CAL

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

CONSCIOUSNESS OF GUILT - DEF THREATS TO HARM DDA

While in jail awaiting trial, sent letters to his mother making threats against the DDA. Def knew at the time that all his mail was being monitored. HELD: such acts are admissible as Consciousness of Guilt.

FLINNER P. v. () 11/23/2020 CAL

## EVIDENCE / MISC - EVID

EXHIBIT - AUTHENTICATION - BY CIRCUMSTANTIAL EVIDENCE

Three examples of how documents can be authenticated by circumstantial evidence.

FLINNER P. v. () 11/23/2020 CAL

## TRIAL / WITNESS

COMPETENCY - MENTALLY ILL WITNESS - INCOHERENT/DELUSIONAL

Although witness X "departed on odd and incoherent digressions during his testimony", there was substantial evidence from which a jury could conclude X qualified as a witness and that portions of his testimony was credible.

FLINNER P. v. () 11/23/2020 CAL

## D. P. / SPEC. CIRC. / SPECIAL CIRCUMSTANCES

LYING IN WAIT

Def asserts that the Lying-in-wait SPEC CIRC applies to ALL lying-in-wait homicides and therefore fails to adequately narrow death penalty eligible defendants. -- Supreme Court disagrees.

FLINNER P. v. () 11/23/2020 CAL

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## TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - IN TRIAL - FORMING INTENT TO WRITE BOOK ABOUT CASE

At post verdict hearing, juror X admits she planned to write a book about the case from the start of her jury service, and contacted book agent during trial, but did NOT discuss details of case with the agent. HELD: X did not commit MISCONDUCT.

**FLINNER** P. v. () 11/23/2020 CAL

## TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - POST VERDICT - FALSELY ACCUSING OTHERS OF MISCONDUCT

At post verdict hrg. Juror 1 accuses jurors 10 & 12 of misconduct. 10 & 12 deny and other jurors say 10 & 12 did not commit misconduct. Court finds juror 1 not credible. Def seeks mistrial for Juror 1's misconduct by making false allegations. HELD: 1 committed no misconduct during trial.

**FLINNER** P. v. () 11/23/2020 CAL

## EVIDENCE / HEARSAY

AGAINST PENAL INTEREST - CO-DEF'S POLICE STATEMENT - CRAWFORD

While in custodial interrogation, def's co-def (X) makes admissions that don't refer to def, but are nonetheless useful to DDA against def. HELD: The "against penal interest" exception to hearsay is NOT an exception to CRAWFORD. X's statements were testimonial.

**FLINNER** P. v. () 11/23/2020 CAL

## EVIDENCE / EXPERT

DNA - STATISTICS - FULL PRODUCT RULE - COLD HIT CASES

Def identified as the killer by a "cold hit" of DNA database. Def asserts the "product rule" is inappropriate way to calculate probabilities in Cold Hit cases. Court acknowledges conflicting math arguments, but finds product rule "an" appropriate method. -- No KELLY issue.

**TURNER** P. v. () 11/30/2020 CAL

## PRELIMS / 995 / MISC - PRE/995

HEARSAY - GANG EXPERTS - SANCHEZ APPLIES TO PRELIMS

SANCHEZ (re: Gang Expert hearsay) applies to PRELIMINARY HEARINGS.

**MENIFEE** def v. SUP CT 11/13/2020 6:

## PAROLE / PAROLE DECISIONS

PROP 57 - DEPT OF CORRECTIONS REGULATIONS

Whether or not def qualifies for early parole under Prop 57 is based on his CURRENT convictions (the ones he is currently serving time for), not his OLD convictions.

**HAYNES** In Re () 11/13/2020 4:3

## TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - GENERALLY - CONFLICTING EVID RE: MISCONDUCT

At post verdict hearing. Juror 1 accuses jurors 10 & 12 of misconduct. 10 & 12 deny it and all the other jurors say 10 & 12 did not commit misconduct. Court finds juror 1 not credible and verdict stands. UPHELD.

**FLINNER** P. v. () 11/23/2020 CAL

## MENTAL HEARINGS / 1368

PROCEDURE - EVID HEARING TO DECIDE WHETHER TO START PROCESS

After Guilt verdict, and before penalty phase, def taken to hospital for medical emergency. Def atty says def attempted suicide and is 1368. Court holds informal hearing and concludes def is malingering and does not start 1368 process. UPHELD. -- No evidence def has mental disorder.

**FLINNER** P. v. () 11/23/2020 CAL

## MOTIONS / NEW TRIAL - ATTY INCOMPETENCE

FAILURE TO CONSULT APPROPRIATE EXPERTS

Trial Ct grants HABEAS for incompetence of counsel for failure to seek expert on issue of time of death in 187 case. DCA reversed trial court. Supreme Ct reverses DCA. -- No new law.

**LONG** In Re () 11/30/2020 CAL

## MISCELLANEOUS / RETROACTIVE

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

As long as the def is on PRCS, the case is not yet FINAL.

**LOPEZ** P. v. () 11/13/2020 6:

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - GREATER 1385 AUTHORITY

SB 620 -- giving courts 1385 authority over 5 year priors -- (effective 1/1/2018) does NOT apply to cases that are FINAL, and, Equal Protection does not require that it be applied to old cases.

**BALTAZAR** P. v. () 11/12/2020 5:

## INSTRUCTIONS/ELEMENTS / DUI'S

INSTRUCTIONS - CALCRIM 2110 vs CALCRIM 2100 - DISCREPANCY

CALCRIM 2110 (DUI) says "manner in which a person drives is not enough by itself to establish ... [DUI]". CALCRIM 2100 (DUI w/Injury) does NOT contain such language. HELD: Yes, the two instructions should be consistent. But, omission of language is not ERROR.

**STOCKMAN** P. v. () 11/2/2020 4:2

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## SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

PC TO DETAIN - ANONYMOUS PHONE TIP - "ACTING SHADY"

An anonymous tip that black males in a Mercedes were "acting shady" at a location does NOT describe CRIMINAL conduct. Therefore it does NOT supply Reasonable Suspicion justifying a Detention of anyone.

**EDJERRIN J.** *In Re ()* 11/20/2020 4:1

## APPELLATE / MISC APPELLATE

REMAND PROCEDURE - 1538.5 DECIDED ON WRONG BASIS

DCA reverses trial court reasoning for denying def's 1538.5 motion. But, because trial court did not make any findings re: other possible grounds for denying the motion, the case is REMANDED for trial court to address those other grounds.

**EDJERRIN J.** *In Re ()* 11/20/2020 4:1

## SENTENCING / PROBATION

TERMS - FORCED SALE OF PROPERTY FOR NON COMPLIANCE

Def convicted of Municipal Ordinance re: upkeep of property. After numerous violations of probation terms mandating fix-up of property, Def AGREED (to avoid Jail) to a new probation term of FIX or SELL. Def didn't fix, court orders SALE. UPHELD (because def agreed to it)

**GONZALEZ** *P. v. ()* 11/24/2020 4:1

## APPELLATE / MISC APPELLATE

WENDE BRIEF - NOT APPLICABLE TO APPEALS OF 1170.95 DENIALS

PC 1170.95 petition denied. Def appeals. WENDE brief filed. HELD: DCA need not do full independent review of record, BUT, we think it is a good idea. DISSENT: NO, it is not a good idea.

**GALLO** *P. v. ()* 11/19/2020 4:1

## SENTENCING / MISC - SENTENCING

CONSEC - PRISON CRIMES

Def commits crime in prison and gets Full, Complete, Consecutive sentence per PC 1170.1. Then def commits additional crime in prison and gets Full, Complete, consec sentence. Def asserts new crime should get 1/3 consec to the 1st in-prison crime. HELD: def is wrong.

**ROSEBERRY** *P. v. ()* 11/17/2020 3:

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

1170.95 PC - EVID - TRANSCRIPT OF CO-DEF'S TRIAL

Def files PC 1170.95 petition for 2011 guilty plea to 2nd degree 187 made under fear of 1st degree conviction under aid/abet Nat/Probable theory. Denied. Court relied, in part, on transcript of co-def's (shooter's) trial. HELD: this was ERROR (but Harmless).

**FALCON** *P. v. ()* 11/9/2020 2:8

## SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

CONSENSUAL CONTACT v DETENTION - RED LIGHTS USED WHILE STOPPED

Officer in marked unit pulling up behind an occupied parked car and activating EMERGENCY lights is a DETENTION of the occupants.

**EDJERRIN J.** *In Re ()* 11/20/2020 4:1

## INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

THEFT - GRAND THEFT - VALUE OF TAKEN ITEM

Items stolen from store were marked "\$300 value, on sale for \$100". (Def stole 4 of them) HELD: Absent additional testimony re: value, there is insufficient evidence to prove items had a value of over \$100 each.

**GRANT** *P. v. ()* 11/12/2020 4:1

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

1170.95 PC - POST GRANT - USE OF EXCESS CTS

Def's PC 1170.95 petition is GRANTED. Def is resentenced on remaining crimes and def has Excess CTS. Def placed on 3-year Parole. HELD: Court has discretion to NOT apply the excess CTS to shorten the length of Parole. --- Excess CTS should be applied to Restitution FINE.

**LAMOUREUX** *P. v. ()* 11/5/2020 4:1

## EVIDENCE / 352 / RELEVANCE

352 GENERALLY - 1101(b) EVID EXCLUDED UNDER 352

1999, def's 2nd wife dies in accident, no charges filed. 2012, def kills 3rd wife, claims self-defense. DDA says 1999 death was actually murder and proper 1101 (b) evidence. HELD: it was ERROR to admit. 1) weak proof of 1999 act; 2) weak similarities; 3) prejudicial and time consuming.

**WINKLER** *P. v. ()* 11/2/2020 3:

## PAROLE / PAROLE DECISIONS

PROP 57 - DEPT OF CORRECTIONS REGULATIONS

Def brings HABEAS saying Dept of Corrections regs under Prop 57 improperly failed to consider conduct credits when setting early parole eligibility. Trial court agreed with def. DCA does not.

**CANADY** *In Re ()* 11/25/2020 3:

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

1170.95 PC - EVID - PRELIM TRANSCRIPT

Def files PC 1170.95 petition for 2011 guilty plea to 2nd degree 187 made under fear of 1st degree conviction under aid/abet Nat/Probable theory. Denied. Based on prelim transcript, court concludes def was aided/abetted w/intent to aid 187 -- Nat/Probable theory was not involved.

**FALCON** *P. v. ()* 11/9/2020 2:8

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## SENTENCING / CTS/GOOD TIME

GOOD TIME - CANT BE USED TO SHORTEN TIME ON PRCS

Def is on PRCS. Def violates terms. Def is given "flash" days in jail. HELD: PC 4019 good time credits do NOT operate to shorten the time def is on PRCS.

**SHELP** P. v. () 11/20/2020 2:6

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

1170.95 PC - PROVOCATIVE ACT CONVICTIONS

In 2011, def's were convicted of 1st degree 187 under the Provocative Act Doctrine after a robbery victim shot and killed a co-perpetrator. HELD: PC 1170.95 does NOT apply to these defendants. -- def's Equal Protection argument is discussed and rejected.

**JOHNSON & BAKER-** P. v. () 11/9/2020 2:6

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

1170.95 PC - AFTER HRG - DEF HAD INTENT TO AID 187

In 1998, Def convicted of 2nd degree 187 via Nat/Prob theory. After hrg, court finds def aided/abetted actual killer w/ intent to aid/abet a murder. --- PC 1170.95 does NOT apply to the def. --- Not error for court to consider the Factual Summary of Appellate Opinion affirming def's conviction.

**GARCIA** P. v. () 11/4/2020 2:6

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - MINORS - LWOP - 3051 PC DOES NOT APPLY

At age 21, def kills two during robbery. Def gets LWOP. HELD: PC 3051 does NOT apply to def since it applies only to DE FACTO LWOP cases. --- No Equal Protection problem in a 26 year old DeFacto LWOP def getting early parole hearing and a 21 year old LWOP def not getting one.

**WILLIAMS** In Re () 11/16/2020 2:5

## SENTENCING / STRIKE CASES

CRUEL AND UNUSUAL - circa 2020 - STRIKE PRIORS WERE 25+ OLD

DCA finds def's 3-strike sentence of 39-to-life to be CRUEL AND UNUSUAL. Opinion acknowledges such sentences were common during the beginning DECADES of the 3-strike law. (but not now, apparently). --- Def's two prior strikes were over 25 years old.

**AVILA** P. v. () 11/30/2020 2:3

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

1170.95 PC - IS NOT FORUM TO APPLY BANKS RETROACTIVELY

PC 1170.95 is NOT a proper forum to vacate a SPEC CIRC conviction by seeking a retroactive application of BANKS and CLARK. Def must first vacate the SPEC CIRC via a HABEAS petition, then use PC 1170.95.

**NUNEZ** P. v. () 11/3/2020 2:2

## SENTENCING / REALIGNMENT

CTS/GOOD TIME - CANNOT BE USE TO SHORTEN LENGTH OF PRCS

Def is on PRCS. Def violates terms. Def is given "flash" days in jail. HELD: PC 4019 good time credits do NOT operate to shorten the time def is on PRCS.

**SHELP** P. v. () 11/20/2020 2:6

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - 1170.95 PC - PROVOCATIVE ACT CASES

In 2011, def's were convicted of 1st degree 187 under the Provocative Act Doctrine after a robbery victim shot and killed a co-perpetrator. HELD: PC 1170.95 does NOT apply to these defendants. -- def's Equal Protection argument is discussed and rejected.

**JOHNSON & BAKER-** P. v. () 11/9/2020 2:6

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - 3051 PC PAROLE - LWOP DEF'S

At age 21, def kills two during robbery. Def gets LWOP. HELD: PC 3051 does NOT apply to def since it applies only to DE FACTO LWOP cases. --- No Equal Protection problem in a 26 year old DeFacto LWOP def getting early parole hearing and a 21 year old LWOP def not getting one.

**WILLIAMS** In Re () 11/16/2020 2:5

## SENTENCING / STRIKE CASES

1385 AUTHORITY - ABUSE OF DISCRETION TO DENY ROMERO MTN

DCA finds trial court abused discretion by NOT granting def's ROMERO motion. -- Def's two prior strikes were 28 and 26 years earlier with def was age 18 and 20. Def's current crime involved the threat of violence, but no actual violence.

**AVILA** P. v. () 11/30/2020 2:3

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

1170.95 PC - PRIMA FACIE PETITION

Def's burden to state a prima facie case in a PC 1170.95 petition is to articulate a factual basis to conclude def could not be convicted of 1st or 2nd degree 187 under current law.

**NUNEZ** P. v. () 11/3/2020 2:2

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

1170.95 PC - PROVOCATIVE ACT CONVICTIONS

In 1993, def was convicted of 1st degree 187 under the Provocative Act Doctrine after a robbery victim shot and killed a co-perpetrator. HELD: PC 1170.95 does NOT apply to the defendant.

**SWANSON** P. v. () 11/19/2020 2:1

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## MOTIONS / PLEA BARGAINING

BARGAIN - COURT OPTIONS IF LAW CHANGES

Def gets bargain for agreed sentence that included 1 year prior under PC 667.5 (b). Then SB 136 voids the prior. HELD: Def is NOT entitled to the bargain less the voided prior. DDA can insist on a new negotiation. BUT, Court cannot approve new plea that gives def a HIGHER sentence.

**GRIFFIN** P. v. () 11/30/2020 1:5

## MOTIONS / BAIL / OR

FTA'S - IMMEDIATE BAIL FORFEITURE - IMPLIED FINDING OF GOOD CAUSE

The 1st two times the def FTA'd the court did not forfeit bail. Nor did the court explicitly find good cause for not doing so. BUT, both times an excuse was offered by def atty. HELD: the court IMPLICITLY found good cause. On 3rd time, bail was properly forfeited.

**BANKERS INSURANCE** P. v. () 11/16/2020 1:4

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

1170.95 PC - EVID - FACT SUMMARY FROM 1203.1 PC STATEMENT

Def files PC 1170.95 petition for 1969 murder conviction (pre-Spec Circ) in which V was killed during robbery by def and two others. Petition denied after the court considered Fact Summary from original PC 1203.1 statement. UPHELD. This was reliable hearsay that could be used.

**WILLIAMS** P. v. () 11/20/2020 1:3

## MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

W/DRAW GROUNDS - ATTY INCOMPETENCE RE: DEF MENTAL ILLNESS

Def entitled to withdraw plea due to Atty Incompetence. Atty had knowledge of def's long history of mental illness and made no effort to research def's medical records or to seek expert opinion in support of def's defense.

**O'HEARN** P. v. () 11/9/2020 1:2

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

1170.95 PC - PROCEDURE - ASSIGNMENT TO ORIGINAL JUDGE

Yes, a PC 1170.95 petition should be assigned to the original trial judge if available. But, this error is HARMLESS when the record of conviction shows the def to be INELIGIBLE for relief.

**DANIEL** P. v. () 11/20/2020 1:1

## JUVENILE / UNFITNESS

FACTORS - HEINOUSNESS OF CRIME

At age 17, def commits 187. No priors, good school record, good family life, exemplary behavior in juvi hall. Court found def unfit based, primarily, on heinousness of crime. HELD: this factor is not controlling. REMANDED.

**KEVIN P,** def v. SUP CT 11/6/2020 1:1

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PLEA BARGAINS, EFFECT ON

Def gets bargain for agreed sentence that included 1 year prior under PC 667.5 (b). Then SB 136 voids the prior. HELD: Def is NOT entitled to the bargain less the voided prior. DDA can insist on a new negotiation. BUT, Court cannot approve new plea that gives def a HIGHER sentence.

**GRIFFIN** P. v. () 11/30/2020 1:5

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

1170.95 PC - EVID - FACT SUMMARY FROM APPELLATE OPINION

Def files PC 1170.95 petition for 1969 murder conviction (pre-Spec Circ) in which V was killed during robbery by def and two others. Petition denied after the court considered Fact Summary from original appellate opinion. UPHELD. This was reliable hearsay that could be used.

**WILLIAMS** P. v. () 11/20/2020 1:3

## SEARCH & SEIZURE / AUTOS / CONTAINERS

PC TO SEARCH AUTO - MJ - POST PROP 64

Post Prop 64, illegally possessed MJ is NOT PC to search the car for more MJ or drugs. --- UNLESS, the MJ is in a OPEN container. -- Closed baggie, no search. Open baggie, search.

**HALL** P. v. () 11/24/2020 1:2

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

1170.95 PC - SUMMARY DENIALS W/OUT APPT'ING ATTY

Yes, once a Prima Facie valid PC 1170.95 petition is filed, Counsel should be appointed. BUT, this error is HARMLESS when the record of conviction shows def is INELIGIBLE.

**DANIEL** P. v. () 11/20/2020 1:1

## JUVENILE / UNFITNESS

FACTORS - CYA/DJJ REHAB GUIDELINES

At age 17, def commits 187. No priors, good school record, good family life, exemplary behavior in juvi hall. Court found def unfit based, in part, on CYA/DJJ guidelines saying murderers need at least 7 years of in-custody rehab before parole. HELD: this guideline is not controlling. REMANDED.

**KEVIN P,** def v. SUP CT 11/6/2020 1:1