

# CaseBank: Cases Added - during June 2017 (sorted by Court)

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## SENTENCING / PROBATION

TERMS - NO SOCIAL MEDIA SITES - CHILD SEX OFFENDERS

PACKINGHAM v. NORTH CAROLINA: Statutory restriction on sex offenders accessing social networks sites frequented by children is OVERBROAD and unconstitutionally restricts free speech. --- the definition was so loose it would include Facebook, Twitter, and LinkedIn.

**PACKINGHAM** U.S. 6/19/2017 U.S.

## MISCELLANEOUS / WRITS

FED HABEAS - AEDPA - FED DEFERENCE TO STATE

VIRGINIA v. LeBLANC: The Virginia State Court's interpretation of Graham v. Florida (re: life terms for juvenile offenders, may not be right. It might be wrong. BUT, it is NOT so clearly wrong as to support a reversal on a FED HABEAS petition. --- If Graham is fuzzy, it can't be clarified by Fed Habeas.

**LeBLANC** U.S. 6/12/2017 U.S.

## DEFENDANT'S / AMBIG. INVOKE

QUOTE - WHY WOULD I WANT TO TALK ABOUT THAT?

Post Miranda, def says "Why would I want to talk to you about X?" HELD: this is NOT an invocation.

**PARKER** P. v. () 6/5/2017 CAL

## DEFENDANT'S / MIRANDA

POST INVOKE - SEPARATE CRIMINAL INVESTIGATION

Crime spree def has officers lined up to talk to him. Just because officers for crime X were told he didn't want to talk does NOT mean officers for crime Y can't "ask" def if he is willing to talk to them.

**PARKER** P. v. () 6/5/2017 CAL

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

JURY WAIVERS ON SPEC CIRC'S

There no CONSTITUTIONAL need for an explicit, separate, jury waiver for Spec Circs. One for guilt and one for penalty is enough. Violation of any Statutory requirement is harmless.

**SIVONGXXAY** P. v. () 6/19/2017 CAL

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

DEF WAS ESCAPED PRISONER AT TIME OF MURDER

Fact that def was on the run as an escaped prisoner when he committed the murder is a relevant "circumstance of the crime" in penalty phase.

**SIVONGXXAY** P. v. () 6/19/2017 CAL

## MOTIONS / DISCOVERY

EXCULPATORY - BRADY - REASONABLE PROBABILITY TO CHANGE RESULT

TURNER v. UNITED STATES: Trial court found post-conviction discovery was wrongfully withheld, but not "material" enough to support reversal under BRADY. Court of Appeal disagreed and reversed. U.S. Supreme Ct agrees with trial court. -- No reasonable probability of a different result.

**TURNER** U.S. 6/22/2017 U.S.

## INSTRUCTIONS/ELEMENT / MISDEMEANORS AND

MEDICAL MJ - L.A. CITY ORDINANCE

LOS ANGELES APPELLATE DIV: Case involves L.A. City ordinance re: Medical MJ.

**CHR HERBAL** P. v. () 5/30/2017 SUPP

## DEFENDANT'S / AMBIG. INVOKE

GENERALLY - REFUSING TO TALK ABOUT A PARTICULAR TOPIC

Post-Miranda, and otherwise talkative def, deflects officers away from certain subjects. When officers keep returning to subject, def gives a definitive NO, Not TODAY. Officers abide and change subjects and def talks. UPHELD.

**PARKER** P. v. () 6/5/2017 CAL

## TRIAL / MISC - TRIAL

JURY WAIVER - ADVISEMENT

As GUIDANCE only, Supreme Ct urges future JURY WAIVERS to include (1) jury is 12 people; (2) picked with atty participation; (3) verdict must be unanimous; (4) waiver means Judge will decide all factual issues.

**SIVONGXXAY** P. v. () 6/19/2017 CAL

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

JURY WAIVERS

Before guilt phase, def (and People) waive jury for both Guilt and Penalty phases. HELD: there is no need to get a reaffirmation of Penalty phase waiver AFTER the guilt verdicts.

**SIVONGXXAY** P. v. () 6/19/2017 CAL

## EVIDENCE / IMPEACH/INCONSIS

PRIOR INCONSISTENT - I DON'T REMEMBER DOING X

On the stand the witness says "I did not do X." HELD: The prior statement of the witness saying that she "has no memory of ever doing X" is NOT INCONSISTENT.

**BELL** In Re () 6/8/2017 CAL

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## INSTRUCTIONS/ELEMENT / MISC - FELONY

TERRORIST THREAT - 422 PC - GESTURES ALONE ARE NOT ENOUGH  
PC 422 requires a threat communicated "verbally, in writing, or by means of an electronic device". HELD: a wordless, silent, GESTURE, however frightening, does NOT qualify under PC 422.

GONZALEZ P. v. () 6/1/2017 CAL

## TRIAL / WHEELER

APPELLATE REVIEW - COMPARATIVE ANALYSIS OF JURORS  
Supreme Ct REVERSES DCA for its failure to engage in comparative juror analysis in their handling of WHEELER appeal.

GUTIERREZ P. v. () 6/1/2017 CAL

## INSTRUCTIONS/ELEMENT / MISC - FELONY

CONFLICT OF INTEREST BY PUBLIC OFFICIAL - GOVT 1090  
Govt 1090 -- conflict of interest self-dealing - applies to EVERYONE who has the authority to make decisions re: public contracts. This includes non-employees who have such authority by virtue of being an Independent Contractor working for a Govt Agency.

SAHLOLBEL P. v. SUP 6/26/2017 CAL

## SEARCH & SEIZURE / SW - AFF

PC - IP ADDRESSES - MATCHING THEM TO PARTICULAR HOUSE  
Child porn sent to IP address X, which is assigned to 123 Main Street, which has TWO residences on property. Main house and small back house. --- HELD: this is NOT PC to search the back house.

NGUYEN P. v. () 6/7/2017 6:

## INSTRUCTIONS/ELEMENT / ROBBERY / ASSAULTIVE

ASSAULT - 245 PC - PRESENT ABILITY - HAVE KNIFE 15 FEET FROM VICTIM  
Def may be convicted of PC 245 should jury find he ATTEMPTED to harm victim with weapon even though the weapon was a KNIFE and def never threw Knife and never got closer than 15 feet to victim.

NGUYEN P. v. () 5/30/2017 4:3

## EVIDENCE / HEARSAY

CRAWFORD - TESTIMONIAL - STATEMENTS TO FRIENDS  
Co-def tells friends of her guilt in helping def commit crime. Friend testifies at joint trial. Trial Ct decides redacting def out of statement not possible. HELD: statement (1) NOT TESTIMONIAL, (2) admissible against DEF as Statement against penal interest. (3) Decision not to redact was proper.

SMITH P. v. () 6/9/2017 4:1

## TRIAL / WHEELER

APPELLATE REVIEW - SCRUTINY OF DDA'S CATCH-22 QUESTIONS  
Rare case. Court OVERRULES trial ct's denial of WHEELER motion. DDA cannot put potential jurors from poor neighborhoods in a Catch-22 re: questions about Gangs. If they admit knowing gang members, they're gone. If they deny knowing anything about Gangs, they're gone as untruthful or oblivious.

GUTIERREZ P. v. () 6/1/2017 CAL

## SENTENCING / MISC - SENTENCING

ARBUCKLE RIGHT  
ARBUCKLE rights is the default position. Def does not need to show he subjectively had ARBUCKLE expectations. Record must affirmatively show that he WAIVED or did NOT have such expectations. Even if the Plea Judge was a visiting Judge.

K. R. def v. SUP 6/29/2017 CAL

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

KIDNAPPING - NEED FOR PURPOSE OTHER THAN TO KILL  
Spec Circ - Kidnapping REVERSED for failure to instruct jury that def must have had a purpose for the kidnapping OTHER than to facilitate the Murder of the Victim. --- On these facts, this omission was NOT harmless. --- D.P. not reversed. There were other Spec Circ's upheld.

BROOKS P. v. () 5/31/2017 CAL

## INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

AUTO THEFT - 10851 VC - DRIVING vs STEALING  
Def was convicted of DRIVING stolen car under VC 10851, not STEALING the car. Therefore, def can ALSO be convicted PC 496 (a) - Receiving Stolen Credit Cards for credit cars that were in the car when it was taken.

CALISTRO P. v. () 6/2/2017 5:

## MOTIONS / PITCHESS

APPELLATE REVIEW - NEED FOR RECORD OF IN CAMERA MATERIAL  
Appeal of PITCHESS motion. Trial court found nothing to disclose. Appellate Record was ONLY the transcript of In Camera review in which the trial court verbally described the records he was reviewing. --- UPHELD

NGUYEN P. v. () 5/30/2017 4:3

## SENTENCING / ENHANCEMENTS

GENERALLY - CAN'T AMEND TO ADD/MODIFY POST TRIAL  
The alleged enhancement alleged facts AB&C with penal consequence of X. Def convicted. At sentencing court found facts AB&C supported a different enhancement with a GREATER penal consequence than X. --- REVERSED.

WILFORD P. v. () 6/12/2017 4:1

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## MOTIONS / PLEA BARGAINING

*BARGAIN - COURT CAN REJECT, BUT NOT MODIFY*

At sentencing after a plea bargain, the court only has two choices. (1) follow the bargain; or (2) reject the bargain and set case for trial. If court sentences above bargain, def can appeal. If court sentences below bargain, People can appeal. --- This case: People's appeal successful.

**WOODS** P. v. () 5/16/2017 4:1

## JUVENILE / MISC - JUVENILE

*RECORDS - SEALING OF - 786 W&I*

A juvenile has only one "case", regardless of how many petitions are filed before he turns 18. the court does not seal petitions, it SEALS the minor's "case". If any petition involved an offense that makes Sealing inappropriate, then NOTHING is sealed.

**JOSE S.** In Re () 6/21/2017 4:1

## APPELLATE ISSUES / MISC APPELLATE ISSUES

*MISC - WORKLOAD TRANSFERS AMONG DIVISIONS*

DCA transfers case to different division to balance workload. Should subsequent petitions/appeals be filed on the case, they too should be transferred to the same division that heard the case previously.

**WALKER** P. v. SUP 6/8/2017 4:1

## MENTAL HEARINGS / SexVioPredator

*PROCEDURE - EVALUATION - CAN'T UNAPPOINT INCOMPETENT SHRINK*

Per W&I 6601, two shrinks (A and B) appointed to evaluate def as possible SexVioPredator by Dept of State Hospitals. A says def "is" and B says def "isn't". The department then says B's work is substandard and un-appoints her. --- HELD Dept has NO authority to un-appoint B.

**SYNDER** In Re () 6/9/2017 3:

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

*EQUAL PROTECTION - PRCS - V/P PROCEDURE*

When supervising agency seeks to revoke def PRCS it must file petition with factual report. (Rule 4.451). When the D.A. petitions, no such report is needed. --- HELD: no Equal Protection problem. --- minor deviation in procedure has no real-world effect on def.

**ZAMUDIO** P. v. () 5/15/2017 2:7

## INSTRUCTIONS/ELEMENT / MISC - FELONY

*HIT-AND-RUN - 20001 VC - MANY IMPACTS/VICTIMS, MANY COUNTS*

Def drives his car into a crowd of people and then leaves. HELD: Def can be convicted with as many counts of VC 20001 as there were people he hit.

**CAMPBELL** P. v. () 6/8/2017 2:6

## SENTENCING / MISC - SENTENCING

Penalty Assessments SHOULD be added to Crime Lab fee under H&S 11372.5 and H&S 11372.7.

**ALFORD** P. v. () 6/15/2017 4:1

## MISCELLANEOUS / RETROACTIVE

*BENEFIT TO DEF - PROP 57 - JUVI UNFITNESS - NOT*

Def commits crime as minor. It is direct-filed in adult court. Def convicted, sentenced, and conviction reversed on appeal. Prop 57 passes while awaiting 2nd trial. HELD: Prop 57 does NOT apply to def --- OR ANY DEF whose cases was filed in Adult Ct before Prop 57.

**WALKER** P. v. SUP 6/8/2017 4:1

## SENTENCING / MISC - SENTENCING

*FEES/ASSESSMENTS - PENALTY ASSESSMENTS APPLY TO DRUG LAB FINE*

HELD: Penalty Assessments should be added to the \$50 crime lab fee assessed in drug cases per H&S 11372.5.

**MOORE** P. v. () 6/6/2017 3:

## INSTRUCTIONS/ELEMENT / ENHANCEMENTS

*GANG - 186.22 PC - BENEFIT OF - SMALL SUB-SET GANGS*

Gang enhancement upheld. There was sufficient evidence to connect def's sub-set to larger gang. (no idea why this case was published - it is all about facts)

**RESENDEZ** P. v. () 6/30/2017 2:8

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

*DEF'S SILENCE - POST-MIRANDA - USE AS REBUTTAL*

There is no DOYLE error when DDA brings up def's post-Miranda silence when the silence is used to REBUT def's assertion that he was "fully cooperative" with the police.

**CAMPBELL** P. v. () 6/8/2017 2:6

## EVIDENCE / EXPERTS

*SHRINK OPINION - DEF DOES NOT HAVE SEXUAL INTEREST IN CHILDREN*

Def shrink was permitted to opine that def lacks sexual interest in prepubescent children BUT court did NOT permit def shrink to discuss results of def taking the "Abel" test. --- HELD: the test is NOT commonly accepted within scientific community.

**FORTIN** P. v. () 6/6/2017 2:6

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## APPELLATE ISSUES / MISC APPELLATE ISSUES

MISC - FRIVOLOUS APPEALS (BY RETAINED APPELLATE ATTYS)

DCA gives warning to RETAINED appellate counsel in criminal cases. Don't raise FRIVOLOUS issues. If you got nothing, tell the client, and file NOTHING. (if appointed counsel, file a WENDE brief.)

**SPERLING** P. v. () 6/8/2017 2:6

## MOTIONS / FARETTA / PRO PER ISSUES

ADVISEMENT/WAIVER - USE OF FORM ONLY NOT ENOUGH

Calendar court's bare-bones FARETTA waiver was too bare-bones. REVERSED. All court did was confirm def read and signed the form. --- Ct did NOT confirm that def knew he was facing 27-to-life (or anything else)

**RUFFIN** P. v. () 6/6/2017 2:4

## SENTENCING / V/P'S

PRCS VIOLATIONS - PROCEDURE - NEED FOR REPORTS

When supervising agency seeks to revoke def PRCS it must file petition with factual report. (Rule 4.451). When the D.A. petitions, no such report is needed. --- HELD: no Equal Protection problem. --- minor deviation in procedure has no real-world effect on def.

**CASTEL** P. v. () 6/26/2017 2:2

## CIVIL PROSECUTIONS / MISC - CIVIL

17200/17500 - INJUNCTIONS

B&P 17200 defendant voluntarily reforms its questionable practices while litigation in pending. Notwithstanding, court had discretion to issue INJUNCTION in the final judgment ordering them to keep doing what they are now doing.

**OVERSTOCK.COM** P. v. () 6/2/2017 1:4

## JUVENILE / MISC - JUVENILE

RECORDS - SEALING OF - 786 W&I

A charging petition was filed, and then the DDA asked that the petition be dismissed while minor completed a program under W&I 654. The minor successfully completed the informal probation program. Therefore Minor is entitled to have records SEALED per W&I 786.

**G. F.** In Re () 5/30/2017 2:6

## INSTRUCTIONS/ELEMENT / THEFT / FRAUD CRIMES

PUBLIC OFFICIALS - MISUSE OF PUBLIC MONEY - 424 PC

Not ALL public "officers" are subject to prosecution under PC 424.

The defendant must be a person charged with responsibility over "receipt, safekeeping, transfer or disbursement of public moneys"

**SPACCIA** P. v. () 6/23/2017 2:3

## CIVIL PROSECUTIONS / MISC - CIVIL

17200/17500 - CIVIL PENALTIES

A rare published opinion on scope of court discretion in setting civil penalties, including determining "the number of violations" in B&P 17200 cases. --- Abuse of discretion standard. Trial Ct imposed \$6,000,000, expressly rejecting other methods that would have been much higher. -- UPHELD.

**OVERSTOCK.COM** P. v. () 6/2/2017 1:4

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - JUVI RECORD SEALING

Changes to W&I 786 re: sealing of Juvi records applies to ALL decisions re: Sealing made after 1/1/2015 regardless of when the crime occurred, or even when the Request to Seal is made.

**I. F.** In Re () 6/16/2017 1:3