

CaseBank: Cases Added during October 2021 (sorted by Court)

www.casebanklaw.com

MOTIONS / BAIL / OR

MOTION TO VACATE FORFEITURE - TIME LIMITS - UNCHANGED BY COVID

SAN DIEGO APPELLATE DIV: Emergency COVID rules tolling speedy trial rules etc., did NOT alter the pre-existing deadlines re: bail forfeitures and motions for summary judgments on such forfeitures.

PHILADELPHIA P. v. () 7/29/2021 SUPP

TRIAL / CROSS

CROSS OF DEF - SARCASM AND MOCKING ARE OKAY

DDA's cross-examination of def was sarcastic, aggressive, and mocked the defendant's testimony. HELD: it did NOT cross any lines into being misconduct.

NAVARRO P. v. () 10/28/2021 CAL

MENTAL HEARINGS / 1368

CAP ON HOSPITALIZATION - CLOCK STOPS BY CERTIFICATION

PC 1368 def is Certified Competent by State Hospital. HELD: For purposes of the 2-year cap on in-custody treatment, -- PC 1370(c)(1) -- the clock stops on the day of Certification. The clock does NOT continue until the Competence finding is confirmed by trial court.

RODRIGUEZ def v. SUP CT 10/20/2021 6:

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - ELIGIBILITY

Def evaluated for possible Mental Health Diversion. Def has some mental illnesses that qualify, and some that DON'T --- specifically antisocial personality disorder (ASPD). HELD: While ASPD cannot be a basis for diversion, it does NOT necessarily PREVENT diversion under PC 1001.36

NEGRON def v. SUP CT 10/26/2021 5:

INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

INSURANCE FRAUD - WORKER'S COMP DOCTOR BILLING - 550 PC

Workers Comp doctor billed W/C \$x.xx for treatment services A, B, & C. Def then (1) created new business for treatment, (2) referred all his patients to it, and (3) billed W/C far MORE than \$x.xx. HELD: this can be basis for insurance fraud count of PC 550.

BANERJEE def v. SUP CT 10/5/2021 4:2

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

1170.95 PC - SUMMARY DENIALS - BASED ON SENTENCING FINDINGS

PC 1170.95 petition wrongfully summarily denied. -- Judicial finding of "intent to kill" as an aggravating factor was based on Preponderance. 1170.95 finding must by Beyond Reasonable Doubt. ---- Prior Jury finding that was stricken is NOT useable by 1170.95 court.

JENKINS P. v. () 10/25/2021 4:2

INSTRUCTIONS/ELEMENTS / MISC -

CONSPIRACY - WITHDRAWAL DEFENSE

Def conspires to kill X. Def was a police informant at the time. Before killing, def gave police nonspecific, non useful, information of an upcoming crime. At trial, def asserts "he withdrew from conspiracy" and tried to stop it. HELD: insufficient factual basis to instruct jury.

NAVARRO P. v. () 10/28/2021 CAL

APPELLATE / HARMLESS ERROR

HARMLESS ERROR - MISINSTRUCTION RE: EYEWITNESS ID

Although the Cal Supreme Ct has said CALCRIM 315 (re: eyewitness identification) was FLAWED by including the factor of the witness' subjective Certainty, the Court did NOT say it was reversible error. This case: DCA says giving the old 315 is harmless.

GREELEY P. v. () 10/19/2021 6:

INSTRUCTIONS/ELEMENTS / 290 PC

SEX REGIS - 290 PC - LIMITS ON COURT DISCRETION

Def convicted of misd PC 242, but was ordered to 290 register because court found the battery was committed for sexual gratification. HELD: PC 290.006 does NOT require finding that def likely to reoffend. A finding of "sexual compulsion" or "sexual gratification" is enough.

CONTRERAS P. v. () 10/13/2021 5:

INSTRUCTIONS/ELEMENTS / MISC -

WORKER'S COMP DOCTORS - IMPROPER REFERRALS - LABOR 139.3

Labor Code 139.3(a) prohibits Worker's Comp doctors from referring patients to treaters with whom the doctor has a financial interest in. Section 139.31(e) creates exception for treaters located in same physical office as the the doctor (or the doctor's "group")

BANERJEE def v. SUP CT 10/5/2021 4:2

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - APPELLATE REVIEW

On remand from Supreme Court, the DCA exercises DeNovo review of evidence of prejudice and AGAIN UPHOLDS trial court denial of def's 1473.7 motion. (if this record required granting of motion, ANY motion should be granted.)

BRAVO P. v. () 10/4/2021 4:2

JUVENILE / UNFITNESS

PROP 57 - RETROACTIVE - CLOSED CASE, BUT NEW SENTENCING ORDERED

15 yrs after being found unfit and convicted of LWOP 187, def seeks new sentence under PC 1170(d)(2) so that MILLER factors can be applied. Ct grants, and again gives def LWOP. HELD: granting 1170(d)(2) request triggers RETROACTIVE application of Prop 57. Def entitled to new UNFITNESS hrg.

MONTES P. v. () 10/7/2021 4:2

CaseBank: Cases Added during October 2021 (sorted by Court)

www.casebanklaw.com

SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - MINORS - LWOP - POST MILLER

15 yrs after being found unfit and convicted of LWOP 187, def seeks new sentence under PC 1170(d)(2) so that MILLER factors can be applied. Ct grants, and again gives def LWOP. HELD: Merely showing present maturity and ability to reform is NOT necessarily enough to get non-LWOP sentence.

MONTES P. v. () 10/7/2021 4:2

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - GROUNDS

PC 1473.7 petition does NOT allege court that took the plea did anything wrong. Does NOT allege def atty did anything wrong. Does NOT allege advisement was defective. It DOES allege that def, through his own fault, did not understand immigration consequence of plea. HELD: this is enough.

ALATORRE P. v. () 10/22/2021 4:1

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

1170.95 PC - HEARING - RECORD OF CONVICTION - APPELLATE OPINION

The "record of conviction" for PC 1170.95 petitions includes prior Appellate opinions on the case.

DOMINGUEZ P. v. () 9/23/2021 4:1

EVIDENCE / HEARSAY

COMPILATIONS - 1340 EV - INTERNET DATABASE - KELLY BLUE BOOK

Online KELLY BLUE BOOK qualifies as a "published compilation" under EV 1340 exception to hearsay rule.

JENKINS P. v. () 10/12/2021 4:1

INSTRUCTIONS/ELEMENTS / HOMICIDE

INVOL - CRIMINAL NEGLIGENCE / MISD ASSAULT

Def brutally beat her mother to death with a hammer (four blows to the head). HELD: alleged mental health issues cannot produce a verdict of INVOL. This is NOT criminal negligence, and it is NOT an unintended death following a mere assault.

SMITH P. v. () 10/14/2021 4:1

TRIAL / CROSS

EXPERTS - USE OF DEF'S SILENCE

Def expert says def was in a DAZE during crime. Def INVOKED during detective interview. It is NOT Doyle error for Expert to be asked: WHEN was the first time def ever told anyone about being in a DAZE.

SMITH P. v. () 10/14/2021 4:1

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - TIMELINESS

Def was deported in 2011 for felony conviction in 2008. PC 1473.7 enacted in 2017. In 2020, def petitions for 1473.7 relief. --- Denied as UNTIMELY.

REVERSED. in such cases as this, timeliness / due diligence clock does not start until def knew, or should have known, 1473.7 existed.

ALATORRE P. v. () 10/22/2021 4:1

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - APPELLATE REVIEW

PC 1473.7 petition denied as UNTIMELY. DCA reverses. But, instead of remanding for hearing on the merits, DCA GRANTS the motion under authority of VIVAR.

ALATORRE P. v. () 10/22/2021 4:1

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

1170.95 PC - HEARING - PRIOR JURY FINDING THAT IS "IMPLIED"

Fact "X" was disputed at def's 1990 murder trial. Def now seeks to relitigate X in context of PC 1170.95 petition. HELD: while there was no specific Jury Finding as to X, the jury's guilty verdict is unsupported UNLESS they found X to be true. Def cannot relitigate X.

DOMINGUEZ P. v. () 9/23/2021 4:1

INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

BURGLARY - AUTO - LOCKED DOOR - SUFF OF EVID

Car burg victim cannot remember (for sure) if his car doors were locked. But, def smashed a window in order to gain entry. HELD: this is sufficient circumstantial evidence of the doors being locked to uphold the conviction.

JENKINS P. v. () 10/12/2021 4:1

DEFENDANT'S STATEMENTS / MISC - DEF'S

DEF'S SILENCE - POST-MIRANDA

After 187, def spoke to 911 and to first officer without mentioning any "being in a daze". Def INVOKED during detective interview. A year later def starts claiming mental illness induced DAZE during killing. HELD: It is NOT Doyle-error to let jury know when DAZE issue was 1st raised by def.

SMITH P. v. () 10/14/2021 4:1

DEFENDANT'S STATEMENTS / MISC - DEF'S

DEF'S SILENCE - POST-MIRANDA - USE IN CROSS OF EXPERT

Def expert says def was in a DAZE during crime. Def INVOKED during detective interview. It is NOT Doyle error for Expert to be asked: WHEN was the first time def ever told anyone about being in a DAZE.

SMITH P. v. () 10/14/2021 4:1

CaseBank: Cases Added during October 2021 (sorted by Court)

www.casebanklaw.com

APPELLATE / HARMLESS ERROR HARMLESS ERROR - VERDICT ON LESSER IS WORSE THAN HUNG JURY

Jury HUNG between 2nd degree 187 and Voluntary Manslaughter. Out of fear that def would not be retried, the 187 jurors vote for Manslaughter. HELD: This is MISCONDUCT - basing vote on fear of consequences. PLUS -- since hung jury is better for def than a conviction, this is PREJUDICIAL misconduct.

FLORES P. v. () 10/8/2021 3:

MOTIONS / NEW TRIAL - JUROR MISCONDUCT ADMISSIBILITY OF JUROR DECLARATION - 1150 EV

Yes, juror declarations submitted by defense for New Trial Motion contained a lot of stuff inadmissible under Ev 1150, but some stuff was NOT. Throwing out entire declarations was ERROR. Court must redact and use what's left.

FLORES P. v. () 10/8/2021 3:

EVIDENCE / 352 / RELEVANCE GANG EVIDENCE - MOTIVE / IMPERFECT SELF-DEFENSE / HEAT PASSION

Gang Evidence can be relevant on mental issues in addition to motive, such as self-defense, imperfect self-defense, heat of passion.

KAIHEA P. v. () 10/13/2021 3:

SENTENCING / RESTITUTION ITEM - REPAIR COST - WIDE RANGE OF ESTIMATES

Victim is need not accept cheap, discounted, restitution. Def steals and damages V's car. V gets two repair estimates, one using original manufacturer's parts, and a cheaper one using aftermarket parts. Trial Ct within discretion to use the higher estimate.

FRIAS P. v. () 10/6/2021 2:8

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170(d)(1) PC - DEPT CORRECTIONS RECOMMENDATION

CDCR sends a PC 1170(d)(1) letter recommending the trial court resentence def so that it could exercise newly granted PC 1385 authority over def's 5-year prior. --- Def's 2018 case was FINAL before SB 1393 enacted. HELD: CDRC letter gives court authority to resentence a FINAL case.

CEPEDA P. v. () 10/18/2021 2:4

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION EQUAL PROTECTION - 3051 PC PAROLE - YOUNG LWOP DEF'S

It does NOT violate Equal Protection that PC 3051 does not give young (but over 18) LWOP defendants early parole hearings.

SANDS P. v. () 10/12/2021 1:5

MOTIONS / NEW TRIAL - JUROR MISCONDUCT PREJUDICE - JUROR VOTES FOR LESSER TO AVOID HUNG JURY

Jury HUNG between 2nd degree 187 and Voluntary Manslaughter. Out of fear that def would not be retried, the 187 jurors vote for Manslaughter. HELD: This is MISCONDUCT - basing vote on fear of consequences. PLUS -- since hung jury is better for def than a conviction, this is PREJUDICIAL misconduct.

FLORES P. v. () 10/8/2021 3:

MOTIONS / NEW TRIAL - JUROR MISCONDUCT ADMISSIBILITY OF JUROR DECLARATION - 1150 EV

A declaration saying WHY a juror voted a certain way is inadmissible under EV 1150. A declaration saying improper subjects were DISCUSSED during deliberations is NOT inadmissible.

FLORES P. v. () 10/8/2021 3:

SENTENCING / CTS/GOOD TIME CTS - MULTIPLE CASES - USE OF EXCESS CTS

Def has multiple cases in multiple counties. Gets sentenced to prison in Case A (thereby cutting off earning any additional CTS on other pending cases. But later, Case A is reduced to MISD and def is released with EXCESS CTS on case A. HELD: this EXCESS can be applied to other cases.

SHROPSHIRE P. v. () 10/25/2021 3:

MOTIONS / BAIL / OR BAIL FORFEITURE - ASSESSING EXTRADITION COSTS ON BAIL BOND

Trial court has no jurisdiction to assess the def's BAIL BOND the DA's cost of extraditing def from out of state after he FTA'd.

NORTH RIVER P. v. () 10/4/2021 2:7

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170(d)(1) PC - DEPT CORRECTIONS RECOMMENDATION

CDCR PC 1170(d)(1) letter recommends trial court to resentence def so that ct could exercise newly granted PC 1385 authority over def's 5-year prior. --- At hrg, Trial Ct refuses to admit evid regarding information dated AFTER the original sentencing. REVERSED. No such restriction of new evid.

CEPEDA P. v. () 10/18/2021 2:4

INSTRUCTIONS/ELEMENTS / WEAPON TASER / STUN GUN - AT SCHOOL - 626.10 PC

Minor brings STUN GUN / TASER to school. But, there is no evidence as to how powerful (voltage) it is. HELD: PC 626.10 only applies if the devise "is capable of temporarily immobilizing a person" --- conviction reversed for insufficient evidence.

M. S. In Re () 10/22/2021 1:3

CaseBank: Cases Added during October 2021 (sorted by Court)

www.casebanklaw.com

EVIDENCE / EXPERT

GENERALLY - OPINIONS RE: SUBJECTS JURY EQUALLY ABLE TO OPINE

Once def EXPERT educates the jury about how, why, and how often False Confessions occur, and how to detect them, the expert's OPINION about the confession in this case is NOT needed. The jury is equally qualified to apply the expert's lessons to this particular case.

JAMES P. v. () 10/28/2021 1:2

SENTENCING / STRIKE CASES

1385 AUTHORITY - REASONS TO DENY - NEED TO STATE

Denial of def's ROMERO motion is Reversed and Remanded due to failure of trial court to state it's reasons for the denial.

JAMES P. v. () 10/28/2021 1:2

INSTRUCTIONS/ELEMENTS / GENERALLY

SPECIALS - FALSE CONFESSIONS

Defense presented Expert testimony re: False Confessions. HELD: Pinpoint instruction regarding False Confessions was not needed. CALCRIM 357 re: statements by defendant was fully adequate.

JAMES P. v. () 10/28/2021 1:2

MOTIONS / 1385

ABUSE OF DISCRETION IN not DISMISSING UNDER 1385 PC - MUST STATE REASONS

Denial of def's ROMERO motion is Reversed and Remanded due to failure of trial court to state it's reasons for the denial.

JAMES P. v. () 10/28/2021 1:2