

# CaseBank: Cases Added during September 2021 (sorted by Court)

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## INSTRUCTIONS/ELEMENTS / MISDEMEANORS AND INFRACTIONS

PRIVACY - GPS TRACKING DEVICE - 637.7 PC

Def and his estranged wife own a car together. Without her permission he places a GPS tracking device in the car to follow his wife. HELD: this is NOT a violation of PC 637.7. If car has two owners, ANY owner's consent is sufficient.

AGNELLI P. v. () 7/13/2021 SUPP

## INSTRUCTIONS/ELEMENTS / MISC -

CONFLICT OF INTEREST BY PUBLIC OFFICIAL - GOVT 1090

Gov 1090 prohibits gov officials from acting when they have a Conflict of Interests. Gov 1091.5(a)(3) makes an exception for "remote or minimal interests". HELD: 1091.5 is an AFFIRMATIVE DEFENSE. def has the burden to raise the issue.

DAWSON P. v. () 9/29/2021 6:

## DEFENDANT'S STATEMENTS / MIRANDA

SUBSTANTIAL COMPLIANCE

DEF Arrested, at station. NO MIRANDA Detective tells def "anytime you don't feel like talking, or you want to leave, you know, just let me know ... and we'll end our little discussion. ... So this is totally voluntary. You understand?" NOT HELD, just PRESUMED: this was NOT substantial compliance of MIRANDA.

SUMAGANG P. v. () 9/29/2021 6:

## INSTRUCTIONS/ELEMENTS / ADULT SEX CRIMES

288(c)(2) PC - SEX W/ DEPENDENT ADULT BY A CARETAKER

Def is a licensed physical therapist for dependent adults. HELD: (1) def is "a" caretaker of the victim under PC 288(c)(2). (2) "consent" is NOT a defense to a charge of PC 288(c)(2).

MONTOYA P. v. () 9/16/2021 5:

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

1170.95 PC - SUMMARY DENIALS - USE OF FACTUAL BASIS ADMISSION

In 2013 def pled guilty to 1st degree 187 and as a factual basis admitted he did what was charged. HELD: this is NOT an admission of being the actual shooter who acted with premed/delib. Def is NOT PER SE ineligible for PC 1170.95 relief. Petition cannot be SUMMARILY denied.

EYNON P. v. () 9/15/2021 4:2

## JUVENILE / MISC - JUVENILE

CYA/DJF - MUST "BENEFIT" MINOR - EVID TO THE CONTRARY

At sentencing, MINOR presents evid that commitment to CYA/DJJ would actually be counter-productive to his rehabilitation. HELD: DDA has burden to REBUT such evidence.

MIGUEL C. In Re () 9/30/2021 4:1

## MOTIONS / CONTINUANCES

PEOPLE'S MOTION - IF DISMISSAL IS CONSEQUENCE OF DENIAL

Disagreeing with FERRER (2010) 184 CA4th 873, DCA holds that when a DDA seeks a continuance of a 1538.5 hearing w/out good cause, and the 1538.5 is granted because the DDA presents no evidence, and therefore the case is Dismissed, this is OKAY under PC 1050.

BROWN P. v. () 9/21/2021 6:

## DEFENDANT'S STATEMENTS / MIRANDA

OVERCOMING TAINT - 2ND CONFESSION AFTER TAINTED 1ST

Detective intentionally conducts custodial interrogation without MIRANDA. Then, after def confesses, MIRANDA is given and def confesses a 2nd time. HELD: Even if 2nd confession was VOLUNTARY, it should be excluded because process undermined MIRANDA's effectiveness.

SUMAGANG P. v. () 9/29/2021 6:

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

1170(d)(2) PC - ELIGIBILITY - PRIOR 2ND DEGREE BURGLARY CONVICTION

Def's petition for resentencing under PC 1170(d)(2) summarily denied due to a prior juvi 2nd Degree Burglary adjudication. HELD: this is NOT a crime that by its nature creates a risk of physical harm to others. Therefore, it does NOT make def ineligible for 1170(d)(2) relief.

HARRING P. v. () 9/27/2021 5:

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

1170.95 PC - HEARING - PRIOR JURY FINDING THAT WAS STRICKEN

In 2013 def was convicted of Spec Circ felony 187 as aid/abettor. But, the trial court struck the spec circ finding. HELD: the jury finding CANNOT be used by the 2019 PC 1170.95 judge to SUMMARILY find def ineligible.

BARBOZA P. v. () 9/15/2021 4:3

## SENTENCING / ENHANCEMENTS

DRUG QUANTITY - ONE CONSPIRACY, MANY LARGE SHIPMENTS

Count 3 charged conspiracy to transport drugs w/ a 10 kilo enhancement. Count 6 charged the same regarding a different shipment. Jury found a SINGLE conspiracy covering both shipments. Question: can court impose a 20 kilo enhancement? Answer: NO. Insufficient notice to def.

HARO P. v. () 9/9/2021 4:1

## SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - POST TRIAL REQUESTS FOR

A request for MENTAL HEALTH DIVERSION under PC 1001.36 must be made BEFORE "adjudication". This means before a Guilty Plea is entered or before a Verdict is returned.

RODRIGUEZ P. v. () 9/2/2021 4:1

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## SENTENCING / MISC - SENTENCING

FEES/ASSESSMENTS - GOV CODE 6111 / 29550.1 - REPEALED

Per amendment to Gov Code 6111, (former Gov 29550.1) all unpaid penalty assessments under these two sections as of 7/1/21, should be stricken upon request, and no efforts to collect such assessments can occur. -- But, no refunds for money paid before 7/1/21.

**VINCK** P. v. () 9/15/2021 4:1

## EVIDENCE / PRIVILEGE

MARITAL - MARRIED, BUT LONG-TIME SEPARATED, DOES COUNT

Def and witness were married. They have been separated for years. They once filed for divorce but neither pursued the case to final judgment. HELD: for purposes of MARITAL privilege under PC 970, they are still married. Witness CANNOT be compelled to testify.

**BAREFIELD** P. v. () 9/10/2021 3:

## MOTIONS / PLEA BARGAINING

BARGAIN - BARGAIN FOR TRUTHFUL TESTIMONY

Step One: co-def gives DDA a detailed statement against def and says that it true. Step Two: co-def enters Plea Bargain with a condition that he gives "truthful testimony" at def's trial. HELD: this does NOT improperly "coerce" co-def to give testimony harmful to def.

**FULTZ** P. v. () 9/27/2021 3:

## TRIAL / VOIR DIRE

CAUSE - OPINIONS ABOUT RACE IN CRIMINAL JUSTICE SYSTE,

3 different African-American jurors express views about race and police and criminal justice. DDA challenges all 3 for cause. Ct excuses 2 and leaves 1. ALL UPHELD. It is a fuzzy line. Trial court deserves deference.

**HENDERSON** P. v. () 9/9/2021 3:

## EVIDENCE / 1101 (b)

1109 EV - DOMESTIC VIOLENCE - BURG W/INTENT TO STEAL FROM DOM VICTIM

Breaking into V's home to steal something is a form of harassment and disturbs the V's peace. Therefore, such a burglary can qualify as Domestic Violence under EV 1109, thereby making admissible other Domestic violence acts def committed on V in the past.

**MANI** P. v. () 9/30/2021 3:

## EVIDENCE / 352 / RELEVANCE

STALKING - 646.9 PC - DEF'S POSSESSION OF PHOTOS OF VICTIM / WOMEN

Def charged with STALKING. Found on def's computer were hundreds of pictures of Victim taken without her knowledge. HELD: Admissible on the issue of intent. ALSO found were hundreds of pictures of other women that were taken by def without their knowledge. HELD: also admissible for same reason.

**WISE** P. v. () 9/7/2021 3:

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

1170.95 PC - FORUM TO APPLY BANKS RETROACTIVELY - YES

Yet another DCA adds its voice to question of whether PC 1170.95 petition is a proper forum to retroactively apply BANKS/CLARK. They say it is.

**WILSON** P. v. () 9/29/2021 4:1

## TRIAL / MISC - TRIAL

Q&A - RIGHT TO CONFRONTATION - WIT LOOKING AWAY FROM DEF

Rape victim very traumatized by being in room with def. She turned her chair towards the jury, looked at floor most of time, and spoke at very low volume. Def could not see her face. HELD: this is NOT a violation of def's Right to Confrontation.

**BHARTH** P. v. () 8/19/2021 3:

## MOTIONS / DISCOVERY

ITEM - TAPE RECORDING - TAPE NEVER MADE - CO-DEF INTERVIEW

During joint trial of A, B, & C, DDA makes plea bargains with A and B to testify against C. Before bargains, A and B gave long detailed statements detectives. These statements were NOT recorded. HELD: this was a TROMBETTA violation. (remanded for remedy determination).

**FULTZ** P. v. () 9/27/2021 3:

## TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - MISC - LYING DURING HEARING ON MISCONDUCT

During trial, an "event" happened that caused the court to question Juror #2. Court ends up excusing #2 for sole reason of remembering the "event" differently than others. HELD: misremembering is NOT grounds to excuse. LYING about something important is grounds. -- Harmless.

**HENDERSON** P. v. () 9/9/2021 3:

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

1170(d)(1) - DEPT CORRECTIONS RECOMMENDATION

Judges may not SUMMARILY reject CDCR letters recommending resentencing under PC 1170(d)(1). The court must notify both sides of the letter and give them an opportunity to be heard. --- BUT, def need not get appointed counsel, IF, the DDA does not respond to the notice.

**PILLSBURY** P. v. () 9/30/2021 3:

## INSTRUCTIONS/ELEMENTS / LESSER

ASSAULT WEAPONS - 30600 PC MANUFACTURING / 30605 POSSESSING

Possessing an assault weapon - PC 30605 - is NOT an lesser included of manufacturing an assault weapon - PC 30600. --- Def bought gun that was modified by the seller to make it NOT an assault weapon. Def then took in home and UNIDID the modification.

**WISE** P. v. () 9/7/2021 3:

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## INSTRUCTIONS/ELEMENTS / WEAPON ASSAULT WEAPONS - 30600 PC - MANUFACTURING

Possessing an assault weapon - PC 30605 - is NOT an lesser included of manufacturing an assault weapon - PC 30600. --- Def bought gun that was modified by the seller to make it NOT an assault weapon. Def then took in home and UNIDID the modification.

**WISE** P. v. () 9/7/2021 3:

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

Judges may not SUMMARILY reject CDCR letters recommending resentencing under PC 1170(d)(1). The court must notify both sides of the letter and give them an opportunity to be heard.

**MENDEZ** P. v. () 9/24/2021 2:2

## INSTRUCTIONS/ELEMENTS / DUI'S MISC - 23152(A) AND 23152(B) ARE TWO SEPARATE CRIMES - 954 PC

VC 23152(a) (DUI) and VC 23152(b) (D while over 0.08) are two different crimes. PC 954 permits convictions for BOTH. PC 654 does NOT permit sentences for both.

**GRABHAM** P. v. () 8/31/2021 1:4

## INSTRUCTIONS/ELEMENTS / MENTAL POST-TRAUMATIC STRESS SYNDROME

Def, homeless and w/PTSD, misinterprets actions of stranger and fatally stabs him. Jury convicts def of 2nd Degree 187. -- Jury is free to disagree with def expert re: the effects of PTSD. It may negate Premeditation, but maybe not Malice, it is up to jury.

**MORALES** P. v. () 9/30/2021 1:4

## SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437 1170.95 PC - HEARING - EVID - POST-TRIAL DEF STATEMENTS

DDA presents NEW EVIDENCE at def's PC 1170.95 hearing consisting of statements re: crime made by def to her Parole Officer and at her Parole hearing. UPHELD. DCA declines invitation to fashion a new USE IMMUNITY rule for such statements.

**MYLES** P. v. () 9/29/2021 1:1

## TRIAL / WHEELER MISC - DDA's PAST WHEELER ACTS IN OTHER CASES

DCA uses DDA's preempts in ANOTHER CASE, and a past effort to kick a holdout juror for misconduct in THIRD case, as persuasive evid that the preempt in this case was racially motivated. DCA reverses trial court.

**SILAS** P. v. () 9/17/2021 1:1

## INSTRUCTIONS/ELEMENTS / MISC - HIT-AND-RUN - 20001 VC - PERMANENT, SERIOUS, INJURY

VC 20001(b)(2) prohibits leaving scene of accident causing "permanent, serious" injury. At trial, 9 months after accident, victim still has a serious, unhealed, injury, and doctors say it is "likely" injury will be permanent. HELD: this is sufficient evid to uphold jury's Guilty verdict.

**CHAVEZ** P. v. () 9/22/2021 2:6

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION EQUAL PROTECTION - 3051 PC PAROLE - THREE-STRIKE DEFS

Young Defs how get defacto LWOP sentences under 3-Strikes law do NOT qualify for PC 3051 early parole hearings. --- This is NOT an Equal Protection violation.

**MOORE** P. v. () 9/10/2021 2:2

## INSTRUCTIONS/ELEMENTS / HOMICIDE IMPERFECT SELF DEFENSE - FEAR OF BEING ROBBED

Def, homeless and w/PTSD, misinterprets actions of stranger and fatally stabs him. Jury convicts def of 2nd Degree 187. -- Subjective Fear of being robbed (his stuff being taken) is NOT fear of death or GBI. Therefore, Imperfect Self Defense does not apply.

**MORALES** P. v. () 9/30/2021 1:4

## MOTIONS / BAIL / OR FTA'S - IMMEDIATE BAIL FORFEITURE - GOOD CAUSE TO DELAY

If the record reveals a basis for a rational belief that the def's FTA was excusable, then the court's failure to IMMEDIATELY forfeit the bond does NOT let the bond company off the hook.

**BANKERS INSURANCE** P. v. () 9/27/2021 1:2

## TRIAL / WHEELER APPELLATE REVIEW - DEFERENCE TO TRIAL COURT - NOT

Trial Ct said the challenge for CAUSE on juror X was a close call. DDA preempts X. Wheeler motion. Denied. DCA REVERSES. Zero deference to trial ct's articulated observations re: X's body language and tone. DCA finds cold transcript fails to reveal a race neutral reason for preempt.

**SILAS** P. v. () 9/17/2021 1:1

## TRIAL / WHEELER PERMISSIBLE REASONS - OPINIONS ABOUT RACE / COURTS / COPS

African-American juror expresses STRONG opinion that cops and courts are biased against African-Americans, BUT, says she can be unbiased juror. DDA uses preempt. Wheeler motion denied. REVERSED by DCA. Opinion says preempt was due to Race, not opinions. Two blacks on trial panel.

**SILAS** P. v. () 9/17/2021 1:1

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**TRIAL / WHEELER**

*PERMISSIBLE REASONS - OPINIONS ABOUT RACE / COURTS / COPS*

Juror X says she supports BLACK LIVES MATTER. DDA uses preempt.

Wheeler motion denied. DCA REVERSES. 70 page opinion on this sole issue.

--- the DDA's job of picking a jury just got a lot harder.

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<b>SILAS</b>	<i>P. v. ()</i>	9/17/2021	1:1
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