

# CaseBank: Cases added during September 2023 (sorted by Court)

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## cd MOTIONS

### MISC -

#### 1387 PC - TWO BITE RULE - 995 / DISCHARGE AT PRELIM

After prelim, def HTA on counts 3 thru 6, but not 1&2. DDA files 1&2 anyway.  
Then 1&2 are dismissed under 995. HELD: this is a SINGLE dismissal (bite)  
under PC 1387's two-bites-of-the-apple rule.

**AGUILAR-JIMENEZ** P. v. () 6:  
9/15/2023

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - ELIGIBILITY - ACTUAL KILLER - DEFINED

Def is not entitled to PC 1172.6 relief because he was the Actual Killer. He drove  
the car that hit the victim while the def was engaged in committing a robbery.  
Even under current law, an accidental death is still felony murder for the Actual  
Killer.

**BODELY** P. v. () 6:  
9/11/2023

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - GENERAL - APPLICABILITY OF 170.6 CCP

DCA reverses and remands case back to trial court for a new PC 1172.6 hearing.  
Def then files CCP 170.6(a)(2). HELD: 1172.6 hearings are not "trials", therefore  
170.6(a)(2) does not apply.

**SANDOVAL** P. v. () 6:  
9/29/2023

## cd MOTIONS

### 170.6

#### POST APPEAL USAGE - APPEAL OF 1172.6 PC DENIAL

DCA reverses and remands case back to trial court for a new PC 1172.6 hearing.  
Def then files CCP 170.6(a)(2). HELD: 1172.6 hearings are not "trials", therefore  
170.6(a)(2) does not apply.

**SANDOVAL** P. v. () 6:  
9/29/2023

## bc INSTRUCTIONS/ELEMENTS

### DEFENSES

#### INTOXICATION - VOLUNTARY - UNCONSCIOUSNESS

Def sought Voluntary Intoxication/Unconsciousness instructions in DUI case on  
theory that he was so drunk he did not know he was driving, or, he was too drunk  
to be aware he was too drunk to drive. HELD: Vol intox/Unconsciousness cannot  
be used to negate knowledge elements of GENERAL INTENT crime.

**SUAZO** P. v. () 5:  
9/19/2023

## bd OTHER TRIAL ISSUES

### VOIR DIRE

#### CAUSE - CCP 231.7 APPLIES TO PRE-EMPTS ONLY - BIAS RE: COPS

DDA uses Juror's distrust of police for a successful Challenge for CAUSE. Def  
asserts this is error under new CCP 231.7. HELD: 231.7 applies ONLY to  
Peremptory Challenges.

**ARANDA** P. v. () 4:3  
9/7/2023

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - HEARING - EVID - DICTA FROM APPELLATE OPINION

Stray factual conclusions in prior appellate opinion not required for issues raised  
on appeal CANNOT be used by a PC 1172.6 court to deny the petition. (this  
case: that def was the Actual Shooter)

**BRATTON** P. v. () 4:2  
9/26/2023

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - HEARING - COLLATERAL ESTOPPEL MAY APPLY

Yes, 1996 jury found def was the Actual Shooter, BUT, for sound tactical reasons  
Def Atty argued for complete acquittal (i.e. def wasn't present) as opposed to  
guilty of 187/robbery, but he was not the shooter. HELD: Nonetheless,  
COLLATERAL ESTOPPEL prevents relitigating issue under 1172.6.

**BRATTON** P. v. () 4:2  
9/26/2023

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### VETERANS - 1170.91 PC - ORIGINAL STIP SENTENCE

PC 1170.91 lets Veterans request resentencing if service related mental illness  
could be used as a mitigating factor. Original 1170.1 excluded def's who pled to a  
stip sentence. 2023 amendments to 1170.1 eliminated the exclusion.

**HARRELL** P. v. () 4:2  
9/1/2023

## de SENTENCING

### RESTITUTION

#### ITEM - NON-ECONOMIC DAMAGES IN CHILD ABUSE CASES - 1202.4(f)

Def molested minor V on living room sofa. V's mother get new sofa because V  
has flashbacks around old sofa. HELD: cost of new sofa can awarded as  
restitution for NON-ECONOMIC damages to V under PC 1202.4(f)(3)(F).  
(Number could be much higher than cost of new sofa.)

**NARRO** P. v. () 4:2  
9/7/2023

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## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - ELIGIBILITY - NO "2ND" APPEALS - RE: MALICE ISSUES

PC 1172.6 does NOT give def a right to a 2nd appeal. -- Def sought to use 1172.6 to argue 2010 jury was misinstructed re: the mental state needed for aid/abetter liability for 187. HELD: def's point is unaffected by any recent statutory changes. 1172.6 was properly summarily denied.

**BURNS** P. v. () 9/21/2023 4:1

## ce SEARCH & SEIZURE

### AUTOS / CONTAINERS

#### PRETEXT AUTO STOPS - ARE OKAY

At the direction of the GANG unit, patrol officers stop def's car for illegally tinted windows, which were indeed, illegal. HELD: The stop was legal, even if reason was pretext (which it clearly was)..

**ESPARZA** P. v. () 8/23/2023 4:1

## ce SEARCH & SEIZURE

### DETAIN/ARREST/PAT-DOWN

#### PAT-DOWN, BASIS FOR - OPINION OF OFFICER W/KNOWLEDGE OF DEF

Car stopped for illegal tinted windows. Within seconds, GANG detective arrives, ID's X as gang member and opines that X is likely armed. X is patted down and gun is found. Next, all occupants are patted down. Gun found on def. UPHELD. Detective's opinion was adequate basis for pat-down.

**ESPARZA** P. v. () 8/23/2023 4:1

## ce SEARCH & SEIZURE

### DETAIN/ARREST/PAT-DOWN

#### PAT-DOWN, BASIS FOR - GANG MEMBERS IN DISPUTED TERRITORY

Traffic stop. Car contained 4 members of gang X. Car was in an area claimed by both gang X and a rival gang Y. Both X and Y use guns against each other. --- this is PC to pat-down occupants.

**ESPARZA** P. v. () 8/23/2023 4:1

## ce SEARCH & SEIZURE

### AUTOS / CONTAINERS

#### DETAIN - AUTO - DURATION - SHORT WAIT FOR GANG DETECTIVE

Yes, traffic stop was pretextual. Yes, real reason was to gather GANG information and to look for guns. BUT, the stop was NOT prolonged. Gang detectives arrived within seconds of stop.

**ESPARZA** P. v. () 8/23/2023 4:1

## ee MENTAL HEARINGS

### MDO

#### MDO TRIAL - SUFFIC OF EVID - DEF STILL CRAZY, BUT NOT VIOLENT

1999: Mentally ill def commits violent felony. 2014: def transferred from prison to hospital under MDO. Def's 2022 MSO extension is REVERSED. HELD: Def is still ill, def is potentially dangerous, but, 24 years w/out any violent act shows def is not SUBSTANTIAL danger. (Def also age 71 in wheelchair)

**JENKINS** P. v. () 9/1/2023 4:1

## bc INSTRUCTIONS/ELEMENTS

### MISC -

#### WITNESS INTIMIDATION - 136.1 PC

Def fires a gun inside home and his two children call 911, give statements, and def is arrested. Later, def attempts to get children to lie to police. HELD: this does NOT violate PC 136.1(a) or (b)(1). Def was not attempting to STOP children from doing anything.

**MORONES** P. v. () 9/19/2023 3:

## cd MOTIONS

### MARSDEN

#### GROUND - DISAGREEMENTS OVER TACTICS

An atty's refusal to do what def wants him to do is NOT grounds to grant a MARSDEN motion. Nor is def's emotional reaction to the above. The defendant does not have a right to dictate trial tactics.

**PANIGHETTI** P. v. () 9/25/2023 3:

## de SENTENCING

### MISC - SENTENCING

#### CRUEL AND UNUSUAL - LWOP (DEFACTO) - SEX CRIMES

Def gets sentence of 280 years to life for a number of forcible sex counts against a single victim. -- many occasions spanning months. HELD: this was NOT Cruel and Unusual.

**PANIGHETTI** P. v. () 9/25/2023 3:

## cd MOTIONS

### MARSDEN

#### TIMELINESS - MID-TRIAL

Def makes multiple MARSDEN motions DURING trial. -- While there is not a strict timeliness rule, the necessary consequence of a mistrial and long delay before new trial is a factor the court can consider in the exercise of discretion in deciding the Marsden motion.

**PANIGHETTI** P. v. () 9/25/2023 3:

# CaseBank: *Cases added during September 2023 (sorted by Court)*

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<i>bc</i> INSTRUCTIONS/ELEMENTS	<i>ab</i> CONSTITUTIONAL ISSUES
<p><b>ADULT SEX CRIMES</b></p> <p><b>SEXUAL BATTERY - 243.4 PC - UNLAWFULLY RESTRAINED</b></p> <p>During a regular professional message, def gropes V. HELD: While a jury COULD find victim was "unlawfully restrained" under PC 243.4(a), it could also NOT. The misd LESSER-INCLUDED should be given.</p> <p><b>PEREZ-ROBLES</b> <i>P. v. ()</i> 3: 9/6/2023</p>	<p><b>RETROACTIVE</b></p> <p><b>BENEFIT TO DEF - EVID - 352.2 Ev - DEF'S ARTISTIC EXPRESSION</b></p> <p>Ev 352.2 (re: the admissibility of song lyrics and other creative expressions) is NOT RETROACTIVE. ESTRADA does not apply. 352.2 is a NEUTRAL evidence rule that - on its face - neither harms or benefits defendants.</p> <p><b>SLATON</b> <i>P. v. ()</i> 3: 9/11/2023</p>
<p><i>ef</i> PAROLE</p> <p><b>PAROLE DECISIONS</b></p> <p><b>PAROLE DECISIONS - DCA UPHOLDS GOVERNOR - INSIGHT INTO CRIME</b></p> <p>Lifer Def gets paroled. Gov reverses Parole Bd. Superior Ct reverses Gov. DCA reverses Superior Ct. -- No new law. Issue is the def's "insight" into the whys of his horrendous crime, and what danger exists due to the lack of "insight", plus, what is "some" evidence. (2-1 decision)</p> <p><b>CASEY</b> <i>In Re ()</i> 2:6 9/28/2023</p>	<p><i>dd</i> PETITIONS TO RESENTENCE</p> <p><b>PETITIONS TO</b></p> <p><b>667.5(b) PRIORS - 1172.5 PC</b></p> <p>Def had PC 667.5(b) prior. Prior imposed. While in prison, def commits new felonies. Later, while still in prison, PC 1172.5 enacted voiding 667.5(b) priors. HELD: No 1172.5 relief for def: because has already served the time on 1st case. They were not "presently service time" on 1st case.</p> <p><b>ESCOBEDO &amp; CHAVIRA</b> <i>P. v. ()</i> 2:6 9/12/2023</p>
<p><i>dd</i> PETITIONS TO RESENTENCE</p> <p><b>PETITIONS TO</b></p> <p><b>1172.6 PC - HEARING - EVID - GUILTY PLEA TRANSCRIPT</b></p> <p>1983: Def pleads guilty to 187 and personal use of gun. 2021: 1172.6 petition filed. -- Prelim transcript is lost. 1172.6 is DENIED. Court relied on Plea Transcript in which def gave a partial verbal factual basis (and also stip'ed to prelm transcript as factual basis). Def was sole def. UPHELD.</p> <p><b>FISHER</b> <i>P. v. ()</i> 2:5 8/28/2023</p>	<p><i>dd</i> PETITIONS TO RESENTENCE</p> <p><b>PETITIONS TO</b></p> <p><b>1172.6 PC - ELIGIBILITY - PROVOCATIVE ACT CONVICTIONS - YES</b></p> <p>Amended 1172.6 now permits defs convicted under PROVOCATIVE ACT theory to seek relief IF, they were convicted before 2009 when Provocative Act Instructions were changed to require jury to find def acted w/malice.</p> <p><b>LEE</b> <i>P. v. ()</i> 2:1 9/27/2023</p>
<p><i>bb</i> EVIDENCE</p> <p><b>HEARSAY</b></p> <p><b>IMPEACH HEARSAY DECLARANT W/ INCONSISTENT HEARSAY - 1202 EV</b></p> <p>Per Ev 1202, once hearsay statement has been admitted from a non-testifying declarant, the declarant can be impeached as if she did testify. This case: declarant's inconsistent statements and/or declarant's felony convictions.</p> <p><b>BINGHAM</b> <i>P. v. ()</i> 1:5 9/26/2023</p>	<p><i>bb</i> EVIDENCE</p> <p><b>HEARSAY</b></p> <p><b>IMPEACH HEARSAY DECLARANT W/ DECLARANT'S PRIORS - 1202 EV</b></p> <p>Per Ev 1202, once hearsay statement has been admitted from a non-testifying declarant, the declarant can be impeached as if she did testify. This case: declarant's inconsistent statements and/or declarant's felony convictions.</p> <p><b>BINGHAM</b> <i>P. v. ()</i> 1:5 9/26/2023</p>
<p><i>cd</i> MOTIONS</p> <p><b>RECUSAL</b></p> <p><b>OFFICE - NEW DA CRITICIZED OLD DA OVER THIS CASE</b></p> <p>Def's murder cousin of Husband of DDA X. While case pending, DDA X leaves office and criticizes DA's handling of case. DA is recalled. X appt'd as new DA. HELD: due to the prior public criticism, Recusal of X is NOT enough. Entire office must be RECUSED.</p> <p><b>POMAR &amp; MITCHELL</b> <i>P. v. ()</i> 1:5 9/13/2023</p>	<p><i>dd</i> PETITIONS TO RESENTENCE</p> <p><b>PETITIONS TO</b></p> <p><b>1172.6 PC - HEARING - EVID - PRELIM TRANSCRIPT - HEARSAY</b></p> <p>At 1172.6 hrg, def objects to use of 2007 Prelim testimony claiming def's interest in cross-examining witness NOW re: actual shooter is much stronger than it was in 2007. HELD: yes, some things have changed, but, def's interest in 2007 was adequate.</p> <p><b>DAVENPORT</b> <i>P. v. ()</i> 1:4 9/27/2023</p>

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## *dd* PETITIONS TO RESENTENCE

## *cd* MOTIONS

### PETITIONS TO

#### **1172.6 PC - HEARING - EVID - PRELIM TRANSCRIPT - HEARSAY**

At a PC 1172.6 evidentiary hrg, DDA introduces old prelim transcript. Def objects HEARSAY. Def asserts unavailability of witness must be shown under standard Prior Testimony exception. HELD: 1172.6 itself authorizes prelim testimony w/out need to show unavailability. (PC 872 hearsay is excluded.)

**DAVENPORT** *P. v. ()* 9/27/2023 1:4

### DISCRIMINATORY PROSECUTION

#### **CRJA - PROCEDURE - PETITION MUST START W/TRIAL CT**

Def cannot seek relief under the CRJA (PC 745) directly from the DCA handling her appeal. PC 745 mandates that the process start with a petition to a trial court.

**LASHON** *P. v. ()* 9/1/2023 1:3

## *ab* CONSTITUTIONAL ISSUES

## *bc* INSTRUCTIONS/ELEMENTS

### FIRST AMENDMENT

#### **1ST AMEND - SPEECH - TRUE THREATS**

Def's communication with local politician and his family was creepy and disturbing, but it was not a "true threat" under the 1st amendment. Appellate courts should use Independent Review on determining "true threats". PC 646.9 Stalking conviction REVERSED.

**PETERSON** *P. v. ()* 9/26/2023 1:3

### MISC -

#### **STALKING - 646.9 PC - 1ST AMENDMENT ISSUES**

Def's communication with local politician and his family was creepy and disturbing, but it was not a "true threat" under the 1st amendment. Appellate courts should use Independent Review on determining "true threats". PC 646.9 Stalking conviction REVERSED.

**PETERSON** *P. v. ()* 9/26/2023 1:3

## *bc* INSTRUCTIONS/ELEMENTS

### 290 PC

#### **SEX REGIS - 290 PC - EFFECT OF LATER PC 17(b) REDUCTION**

2006: Def pled to PC 288.2 and given probation with Lifetime 290 PC obligation. After completing probation, def gets PC 17(b)(3) reduction of crime to misd. HELD: the 17(b) reduction has NO EFFECT on def's 290 obligation per PC 17(e).

**MAZOR** *P. v. ()* 9/13/2023 1:1