

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

www.casebanklaw.com

bc INSTRUCTIONS/ELEMENTS

MISC -

TRUE THREATS - 1ST AMENDMENT - SUBJECTIVE ELEMENT

COUNTERMAN v. COLORADO: For a threat to be a crime, there must both an objective element and a subjective element. HELD: Recklessness - Def must consciously disregard substantial risk his statements will cause harm to another. - is enough for subjective element.

COUNTERMAN U.S. Supreme 6/27/2023 U.S.

bd OTHER TRIAL ISSUES

ARANDA ISSUES

ARANDA - EDITING - REFERENCE TO OTHERS

SAMIA v. U.S. : ARANDA/BRUTON editing accomplished by Officer testifying to co-def's confession as if he just took notes (as opposed to tape recording). When reference to DEF was unavoidable, officer testified the co-def said "some other person" did A,B, and C. Jury properly instructed UPHELD.

SAMIA U.S. Supreme 6/23/2023 U.S.

cd MOTIONS

DOUBLE JEOPARDY

APPELLATE REVERSAL DUE TO IMPROPER VENUE

SMITH v. U. S.: A conviction that is reversed for improper VENUE can be retried just any other case reversed for LEGAL error. Double Jeopardy does NOT prevent retrial.

SMITH U.S. Supreme 6/15/2023 U.S.

de SENTENCING

DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - TIMELINESS OF REQUEST

A request for pretrial Mental Health Diversion under PC 1001.36 must be made before the attachment of Jeopardy at trial, or, before before entry of a Guilty or No Contest Plea. This case: request made after verdict and before sentencing. HELD: too late.

BRADEN P. v. () 6/5/2023 CAL

bc INSTRUCTIONS/ELEMENTS

ROBBERY / ASSAULTIVE CRIMES

KIDNAPPING - VICTIM HIGHLY INTOXICATED - UNABLE TO RESIST

When the kidnapping victim is unable to resist due to extreme intoxication, the amount of FORCE necessary to make the kidnapping a FORCIBLE kidnap (PC 207) is the same as that necessary if the victim were an INFANT unable to resist.

LEWIS P. v. () 6/22/2023 CAL

ab CONSTITUTIONAL ISSUES

RETROACTIVE

BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON - PROBATION LENGTH

AB 1950 (reducing felony probation to two years in most cases) is retroactive. AND, in plea bargain cases, appellate court can just REDUCE the length of probation and NOT remand for new plea bargain.

PRUDHOLME P. v. () 6/26/2023 CAL

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

AID & ABET - IMPLIED MALICE 187 - POST SB 1437 - GANG CONTEXT

In Reversing a PC 1172.6 denial, Supreme Ct says CALCRIM 520 misstates the law of aid/abet Implied Malice 187. -- def aid/abetting dangerous act that led up to the shooting is invalid nat/prob/conseq thinking. def must aid/abet the dangerous act that directly resulted in death. (i.e. the shooting itself)

REYES P. v. () 6/29/2023 CAL

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

AID & ABET - IMPLIED MALICE 187 - POST SB 1437 - GANG CONTEXT

Def, and other gang members, travel into rival gang territory, armed, hoping to cause a confrontation to justify shooting a rival gang member. -- This would satisfy nat/prob/conseq theory of aid/abet 187, but, does NOT satisfy aid/abet implied malice 187.

REYES P. v. () 6/29/2023 CAL

ad ATTORNEY / JUDGE DUTIES & ETHICS

ATTY DUTIES & ETHICS

CONFLICT OF INTEREST - ATTY INCOMP ALLEGED - CASE ON REMAND

Trial 1: def represented by atty X. Def convicted. Appeal filed, Habeas alleging incompetence of X filed. Habeas mooted by appeal that reversed the conviction. X is reappointed for trial 2. Def never unambiguously objects to reappointment of X. Def convicted again. UPHELD. No Conflict of Interest.

WILSON P. v. () 6/8/2023 CAL

cd MOTIONS

DOUBLE JEOPARDY

APPELLATE REVERSAL RE: IMPROPERLY EXCUSED JUROR / RE-TRIAL

Def's 1st conviction was reversed due the improper discharge of a juror during deliberations. HELD: this is a LEGAL error having nothing to do with sufficiency of evidence. Double Jeopardy does NOT prevent a re-trial.

WILSON P. v. () 6/8/2023 CAL

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

www.casebanklaw.com

db APPELLATE ISSUES

HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - ALTERNATIVE LEGAL THEORIES - SB

Applying SB 1437 retroactively to case on appeal, Cal Supreme Ct finds Retroactive Harmless Error. Jury findings that def engaged in Kidnapping and Personal use of a gun make it certain they would have found def a Major Partic / Reckless Indifference if asked.

WILSON *P. v. ()* 6/8/2023 **CAL**

db APPELLATE ISSUES

HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - SB 567 - UPPER TERM HURDLES

SB 567 re: Upper Term restrictions is retroactive. -- Just because record could support upper term does NOT make any RETROACTIVE ERROR harmless. The original decision to impose Upper Term was made before Presumption against it was enacted. Tough to know what effect Presumption will have.

FALCON *P. v. ()* 6/26/2023 **5:**

ab CONSTITUTIONAL ISSUES

RETROACTIVE

BENEFIT TO DEF - PRIOR CONVICTION ENHANCEMENT - 186.22 PC

Def convicted of a STRIKE PRIOR based on 2015 conviction of gang-gun-possession under PC 29800 w/ 186.22(b) enhancement. UPHELD: Prop 21, which created the prior, EXPRESSLY locked in the GANG elements AS-THEY-EXISTED on enactment. (it didn't as to Spec Circ.)

FLETCHER *P. v. ()* 6/30/2023 **4:2**

bc INSTRUCTIONS/ELEMENTS

PRIORS

SERIOUS FELONY - 667 PC - GANG PRIORS - EFFECT OF AB 333

Def convicted of a STRIKE PRIOR based on 2015 conviction of gang-gun-possession under PC 29800 w/ 186.22(b) enhancement. UPHELD: Prop 21, which created the prior, EXPRESSLY locked in the GANG elements AS-THEY-EXISTED on enactment. (it didn't as to Spec Circ.)

FLETCHER *P. v. ()* 6/30/2023 **4:2**

cd MOTIONS

BAIL / OR

BAIL - SETTING 'NO BAIL' IN A NON-HOMICIDE CASE

Order that def (facing LIFE if convicted) be held with NO BAIL reversed. Generalized comments about def being a bad and dangerous guy is NOT enough. Specific findings re: def's substantial likelihood to commit GBI felony if released needed. No discussion as to what AMOUNT of bail is appropriate.

YEDINAK *def v. SUP CT* 6/23/2023 **4:2**

de SENTENCING

MISC - SENTENCING

GENERALLY - ILLEGAL SENTENCE IS NOT FINAL - CAN BE CHANGED

Court imposes an ILLEGAL sentence by failing run a particular count CONSEC. CDCR sends court letter identifying the error. HELD: (1) Court always has jurisdiction to correct ILLEGAL sentence. (2) BUT, entirely new sentencing hrg should be held. Ct can't summarily add time.

CODINHA *P. v. ()* 6/26/2023 **4:1**

ab CONSTITUTIONAL ISSUES

RETROACTIVE

BENEFIT TO DEF - PRIOR CONVICTION ENHANCEMENT - 186.22 PC

2009: def convicted of PC 186.22(a). 2022: Def's conviction alleged as a PRIOR under PC 667(a). HELD: Record of Conviction must show admissions and/or findings that def did acts that would be a violation of the 2022 version of PC 186.22.

FARIAS *P. v. ()* 5/26/2023 **3:**

bc INSTRUCTIONS/ELEMENTS

PRIORS

SERIOUS FELONY - 667 PC - GANG PRIORS - EFFECT OF AB 333

2009: def convicted of PC 186.22(a). 2022: Def's conviction alleged at a PRIOR under PC 667(a). HELD: Record of Conviction must show admissions and/or findings that def did acts that would be a violation of the 2022 version of PC 186.22.

FARIAS *P. v. ()* 5/26/2023 **3:**

db APPELLATE ISSUES

MISC APPELLATE

REMEDY - RECORD REVEALS UNDECIDED ALLEGATIONS

The Information charged the PRIOR conviction as BOTH a 667(a) Serious Felony and a 667(e)(2) STRIKE. Jury waived; trial on priors taken under submission. Minute Order mentioned only 667(a). Def was sentenced on the STRIKE. --- DCA remands.

FARIAS *P. v. ()* 5/26/2023 **3:**

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

PREMED & DELIB - PROVOCATION

Standard CalCrim Instructions re: Murder/Manslaughter and provocation DO NOT imply that a provocation that could show a lack of Premeditation/Deliberation must meet a "reasonable man" sort of threshold.

OCEGUEDA *P. v. ()* 6/14/2023 **3:**

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

www.casebanklaw.com

<p style="text-align: right;">de SENTENCING</p> <p>MISC - SENTENCING PRESUMPTIONS - 1170(B)(6) - LOW TERM IF CHILDHOOD TRAUMA Under SB 567 -- PC 1170(b)(6) -- def's mental illness ALONE does not create presumption for low term. There must also be childhood TRAUMA of some kind, AND that trauma must have contributed to def committing the crime. TILLEY <i>P. v. ()</i> 3: 6/20/2023</p>	<p style="text-align: right;">ab CONSTITUTIONAL ISSUES</p> <p>MISC CONSTITUTIONAL ISSUES BEAR ARMS, RIGHT TO - POSSESSION BY FELONS BRUEN decision of U.S. Supreme Ct did NOT invalidate Calif's felons-can't-have-guns law. PC 29800. ODELL <i>P. v. ()</i> 2:8 6/5/2023</p>
<p style="text-align: right;">db APPELLATE ISSUES</p> <p>MISC APPELLATE APPEALABLE ORDERS - HABEAS DENIALS The Denial of a Habeas Petition is not appealable. Remedy is another Habeas petition to the Appellate court. An Appeal from an order denying post-conviction relief (like a PC 1172.6 petition) does NOT have a WENDE obligation on the DCA. HODGES <i>P. v. ()</i> 2:6 6/2/2023</p>	<p style="text-align: right;">db APPELLATE ISSUES</p> <p>MISC APPELLATE WENDE BRIEF - NOT APPLICABLE TO APPEALS OF POST-CONVICTION MTN The Denial of a Habeas Petition is not appealable. Remedy is another Habeas petition to the Appellate court. An Appeal from an order denying post-conviction relief (like a PC 1172.6 petition) does NOT have a WENDE obligation on the DCA. HODGES <i>P. v. ()</i> 2:6 6/2/2023</p>
<p style="text-align: right;">db APPELLATE ISSUES</p> <p>WAIVER OF APPEAL WAIVER - FAILURE TO ASK FOR FINDINGS - UPPER TERM IMPOSED 2020: Def given probation w/ UPPER term suspended. Then PC 1170 amended re: upper term. Then def violates probation and given the previously suspended sentence. HELD: Yes, special findings needed for upper term, BUT, def didn't ASK for them. ISSUE WAIVED on appeal. Sentence was NOT illegal. ACHANE <i>P. v. ()</i> 1:2 6/28/2023</p>	<p style="text-align: right;">ab CONSTITUTIONAL ISSUES</p> <p>COLLATERAL LAW OF THE CASE DOCTRINE - NEW FACTS CAN TRUMP Law-of-the-Case Doctrine only applies to LEGAL issues. FACTUAL issues can be re-addressed if there is new evidence. CAMPBELL et al <i>P. v. ()</i> 1:2 6/30/2023</p>
<p style="text-align: right;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - USE OF PAST JURY FINDINGS Convictions before AB 333. 1172.6 PC after. HELD: While Spec Circ-Gang must be vacated, the jury finding on Spec Circ required finding Def had Intent-to-kill. This conclusively proves Nat/Prob/Conseq theory was NOT used by the jury. -- But, Evid hrg is STILL required. CAMPBELL et al <i>P. v. ()</i> 1:2 6/30/2023</p>	<p style="text-align: right;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - ELIGIBILITY - VC 2800.3 (DEATH) CONVICTIONS PC 1172.6 does NOT apply to VC 2800.3 - death from police pursuit chase. CAMPBELL et al <i>P. v. ()</i> 1:2 6/30/2023</p>
<p style="text-align: right;">bc INSTRUCTIONS/ELEMENTS</p> <p>ROBBERY / ASSAULTIVE CRIMES KIDNAP FOR SEX - 208 PC - MOVEMENT DISTANCE Def moves V 8 feet from small stall to big stall in public restroom before raping V. HELD: (1) 8 feet was NOT incidental to rape therefore Kidnap conviction stands. (2) movement to big stall did NOT substantially increase risk of harm to V notwithstanding extra space made rape slightly easier. WAQA <i>P. v. ()</i> 1:1 6/14/2023</p>	<p style="text-align: right;">bc INSTRUCTIONS/ELEMENTS</p> <p>ROBBERY / ASSAULTIVE CRIMES KIDNAP FOR SEX - 208 PC - MOVEMENT - INCREASED RISK OF HARM Def moves V 8 feet from small stall to big stall in public restroom before raping V. HELD: (1) 8 feet was NOT incidental to rape therefore Kidnap conviction stands. (2) movement to big stall did NOT substantially increase risk of harm to V notwithstanding extra space made rape slightly easier. WAQA <i>P. v. ()</i> 1:1 6/14/2023</p>

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

www.casebanklaw.com

db APPELLATE ISSUES

MISC APPELLATE

REMAND PROCEDURE - REMAND RE: SENTENCING - NEED FOR HEARING

Jury convicts def of PC 667.61(a) - sex w/ aggravated kidnap (25-to-life). DCA finds insuff/evid of "aggravated". Modifies judgment to uncharged PC 667.61(b) - sex w/ kidnap (15-to-life) as a lesser. -- NO NEED for REMAND for resentencing.

WAQA P. v. () 6/14/2023 1:1
