

<p style="text-align: center;">ac STATUTORY CONSTRUCTION</p> <p>STATUTORY CONSTRUCTION</p> <p style="text-align: center;">RULE - RULES OF GRAMMAR - USE OF WORD "AND"</p> <p>Supreme Ct finds PC 136.1 ambiguous in its use of the word "AND" and then invokes Rule of Lenity to hold that 136.1 does NOT cover dissuading a witness AFTER the case has been filed.</p> <p>REYNOZA <i>P. v. ()</i> CAL</p> <p style="text-align: right;">4/22/2024</p>	<p style="text-align: center;">bc INSTRUCTIONS/ELEMENTS</p> <p>MISC -</p> <p style="text-align: center;">WITNESS INTIMIDATION - 136.1(b)(2) PC - MUST HAPPEN BEFORE FILING</p> <p>Supreme Ct finds PC 136.1 ambiguous in its use of the word "AND" and then invokes Rule of Lenity to hold that 136.1 does NOT cover dissuading a witness AFTER the case has been filed.</p> <p>REYNOZA <i>P. v. ()</i> CAL</p> <p style="text-align: right;">4/22/2024</p>
<p style="text-align: center;">cd MOTIONS</p> <p>1385</p> <p style="text-align: center;">LIMITS ON - CAN'T USE TO GIVE LESSER GUN ENHANCEMENT - NOT</p> <p>PC 1385 gives court authority to dismiss a PC 12022.53 gun enhancement and SUBSTITUTE a non-12022.53 gun enhancement.</p> <p>McDAVID <i>P. v. ()</i> CAL</p> <p style="text-align: right;">4/29/2024</p>	<p style="text-align: center;">de SENTENCING</p> <p>ENHANCEMENTS - SENTENCING</p> <p style="text-align: center;">GUN USE - 12022.53 PC - 1385 AUTHORITY TO PICK NON-12022.53 LESSER</p> <p>PC 1385 gives court authority to dismiss a PC 12022.53 gun enhancement and SUBSTITUTE a non-12022.53 gun enhancement.</p> <p>McDAVID <i>P. v. ()</i> CAL</p> <p style="text-align: right;">4/29/2024</p>
<p style="text-align: center;">ee MENTAL HEARINGS</p> <p>MISC - MENTAL HRGS</p> <p style="text-align: center;">MISC - SETTING THE MAX TIME OF POSSIBLE HOSPITAL CONFINEMENT</p> <p>Def pleads guilty to non-life crimes and to strike allegations and is then found NGI. HELD: his max time of confinement in Hospital is affected by the strike allegations -- the max time is LIFE. (not 25-to-life, just LIFE).</p> <p>GRAY <i>P. v. ()</i> 5:</p> <p style="text-align: right;">4/4/2024</p>	<p style="text-align: center;">ee MENTAL HEARINGS</p> <p>MISC - MENTAL HRGS</p> <p style="text-align: center;">MISC - SETTING THE MAX TIME OF POSSIBLE HOSPITAL CONFINEMENT</p> <p>2016: Def pleads guilty to crimes and to one-year prior allegations under PC 667.5(b) and is then found NGI. HELD: Even if his max time of confinement in Hospital is affected by the 667.5(b) allegations, PC 1172.75 does NOT authorize changing it.</p> <p>GRAY <i>P. v. ()</i> 5:</p> <p style="text-align: right;">4/4/2024</p>
<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.75 PC - 667.5 PRIORS - AMENDING NGI MAX HOSPITAL TIME</p> <p>2016: Def pleads guilty crimes and to one-year prior allegations under PC 667.5 (b) and is then found NGI. HELD: Even if his max time of confinement in Hospital is affected by the 667.5(b) allegations, PC 1172.75 does NOT authorize changing it.</p> <p>GRAY <i>P. v. ()</i> 5:</p> <p style="text-align: right;">4/4/2024</p>	<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.6 PC - SUMMARY DENIALS - GUILTY PLEAS AFTER SB 1437</p> <p>Def took a plea bargain for Manslaughter six months AFTER SB 1437 amended 187 et seq. HELD: def is NOT eligible for relief under PC 1172.6.</p> <p>LEZAMA <i>P. v. ()</i> 4:3</p> <p style="text-align: right;">4/22/2024</p>
<p style="text-align: center;">ae MISC ODDS & ENDS</p> <p>ODDS & ENDS</p> <p style="text-align: center;">COMPASSIONATE RELEASE - PC 1170(e)</p> <p>Prisoner w/ rapidly increasing ALS requests Compassionate Release under PC 1172.2. Denied because def, a gang killer, could still "order" other gang members to do violence. REVERSED. Def was a Gang soldier, not a gang leader. No "reasonable risk" he will give orders.</p> <p>LEWIS <i>P. v. ()</i> 4:2</p> <p style="text-align: right;">1/3/2024</p>	<p style="text-align: center;">bb EVIDENCE</p> <p>HEARSAY</p> <p style="text-align: center;">FIRST COMPLAINT - (FORMERLY FRESH COMPLAINT)</p> <p>DCA acknowledges that "fresh complaint" became "first complaint" 30 years ago. The circumstances of the first report of being molested is relevant regardless how much time passed between the molest and the report.</p> <p>FLORES <i>P. v. ()</i> 4:1</p> <p style="text-align: right;">4/15/2024</p>

ab CONSTITUTIONAL ISSUES

cd MOTIONS

RETROACTIVE

DOUBLE JEOPARDY

BENEFIT TO DEF - MENTAL DIVERSION - 1001.36 PC - AMENDMENTS TO

CONVICTED OF RELATED LESSER / RE-TRIAL ON HUNG GREATER

Def's request for Mental Health Diversion - PC 1001.36 - was denied. Convicted by jury. 10 days before sentencing, 1001.36 was amended to expand eligibility. HELD: Amendments to PC 1001.36 are RETROACTIVE. REMANDED for reconsideration of def's eligibility.

Def charged with Watson 187 and DUI Veh Manslaughter. Convicted of Manslaughter, jury hung on 187. HELD: because PC 191.5 is NOT a lesser to 187, Jeopardy did NOT attach to 187 count can be retried.

BROWN P. v. () 3/26/2024 4:1

BAROOSHIAN P. v. () 4/16/2024 4:1

ce SEARCH & SEIZURE

dd PETITIONS TO RESENTENCE

AUTOS / CONTAINERS

PETITIONS TO

PC TO SEARCH AUTO - GANG DEF'S CAR 20 FEET FROM DETENTION SITE

1172.6 PC - SUMMARY DENIALS - ACTUAL KILLER - ENHANCEMENT

911 call said group of men at location X and one of them had a gun. GANG cops arrive, one person flees, detained, and gun found on his person. Others (including def) at location ID'd as Gang members. Def patted down, no gun detected. HELD: NO PC to search def's car 20 feet away for guns.

Original 187 complaint had co-defs. Def pled no contest to new Manslaughter complaint w/out co-defs. Def also admitted personal use and GBI enhancements. HELD: Plea and Admissions DO NOT per se establish def was actual killer. PC 1172.6 petition cannot be SUMMARILY denied.

MOSLEY def v. SUP CT 4/5/2024 3:

ESTRADA P. v. () 4/9/2024 2:8

bd OTHER TRIAL ISSUES

dd PETITIONS TO RESENTENCE

WHEELIE

PETITIONS TO

RCJA - DDA PREEMPT - 231.7(g) PRESUMPTIVE INVALID REASONS

1172.6 PC - SUMMARY DENIALS - PROVOCATIVE ACT CASES

DDA preempts juror X. CCP 231.7 objection. HELD: Since lack of employment is Presumptively Invalid, "lack of life experience" is pretty close and it too should be closely scrutinized by the court. Court overruled objection without explicitly finding the Presumption was overcome. REVERSED.

Def's PC 1172.6 petition properly summarily denied. SB 1473 et al did not affect PROVOCATIVE ACT Murder cases.

URIOSTEGUI P. v. () 4/5/2024 2:6

CUNNINGHAM P. v. () 4/23/2024 2:6

bc INSTRUCTIONS/ELEMENTS

cd MOTIONS

HOMICIDE

NEW TRIAL - NEW EVID

MALICE (IMPLIED) - DISREGARD FOR INJURY IS NOT ENOUGH

NEW EVIDENCE - CT DISCRETION TO HOLD EVID HEARING

DDA argued to jury that Implied Malice is callous disregard for the likelihood of someone "getting hurt". HELD: loose talk in appellate opinions on this subject are wrong. Callous disregard for the likelihood of DEATH is required.

After conviction, before sentencing, def's wife tells def atty she conspired with victim's mother to frame def. Trial ct denied Mtn for new trial without an evidentiary hrg. HELD: Abuse of discretion to not, at least, put wife on the stand before not believing her.

FAY P. v. () 4/29/2024 2:1

B. D. R. P. v. () 4/10/2024 1/3

de SENTENCING

de SENTENCING

RESTITUTION

RESTITUTION

GENERALLY - ADDING RESTITUTION AFTER PROBATION COMPLETED

CRIMES - HIT-AND-RUN CASES (20001 VC)

Def pled to Hit-and-Run (VC 20001) and stipulated to a Restitution order for harm done by the crash. HELD: Restitution order was NOT pursuant to PC 1202.4, but was under PC 1203.1. THEREFORE, it could NOT be amended once term of probation ended.

Def pled to Hit-and-Run (VC 20001) and stipulated to a Restitution order for harm done by the crash. HELD: Restitution order was NOT pursuant to PC 1202.4, but was under PC 1203.1. THEREFORE, it could NOT be amended once term of probation ended.

KOONTZY P. v. () 4/25/2024 1:5

KOONTZY P. v. () 4/25/2024 1:5

CaseBank: *Cases added during April 2024 (sorted by Court)*

www.casebanklaw.com

<p>DIVERSION</p> <p>DIVERSION - MENTALLY ILL - 1001.36 PC - ORDERING RESTITUTION</p> <p>Mental Health Diversion (PC 1001.36) lasts two years. After that time runs, it is too late to add a RESTITUTION Order, even if the Diversion had not yet been formally terminated.</p> <p>BERLIN <i>P. v. ()</i> 4/26/2024 1:5</p>	<p>de SENTENCING</p> <p>RESTITUTION</p> <p>MISC - ORDERING RESTITUTION TO MENTAL HEALTH DIVERSION</p> <p>Mental Health Diversion (PC 1001.36) lasts two years. After that time runs, it is too late to add a RESTITUTION Order, even if the Diversion had not yet been formally terminated.</p> <p>BERLIN <i>P. v. ()</i> 4/26/2024 1:5</p>
<p>MISC - JUVENILE</p> <p>RECORDS - SEALING OF - 781 W&I</p> <p>A dismissal of a Juvi petition under W&I 782 does not mean the findings never happened. Minor's later request for SEALING under W&I 781 should be denied if case involved adjudication for forcible lewd conduct per W&I 781(a)(1)(F).</p> <p>TAYLOR C. <i>In Re ()</i> 4/16/2024 1:3</p>	<p>ed JUVENILE</p> <p>bb EVIDENCE</p> <p>HEARSAY</p> <p>SPONTANEOUS DECLARATION - DELAYED REACTION TO OLD EVENT</p> <p>While the precise moment of the statement was spontaneous, this case involved a 5 year delay and the declarant agonized over the pros and cons of telling her mother about being sexually abused. HELD: Inadmissible under Ev 1240</p> <p>LOZANO <i>P. v. ()</i> 4/10/2024 1:3</p>