

# CaseBank: Cases added during February 2025 (sorted by Court)

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## db APPELLATE ISSUES

### HARMLESS ERROR

#### HARMLESS ERROR - MISINSTRUCTION - HARMLESS SHOWN BY CO-DEF

2005 conviction. Def or co-def shot V1 and V2 in the head. V1 died, V2 survived.

Verdicts on V1's 187 w/ spec circ's, made pre-BANKS and pre-SB 1437 errors

HARMLESS. But, there were no spec circ findings re: V2's attempt murder. --

Therefore attempt 187 conviction REVERSED.

HIN P. v. () 2/3/2025 CAL

## db APPELLATE ISSUES

### HARMLESS ERROR

#### HARMLESS RETROACTIVE ERROR - ALTERNATIVE LEGAL THEORIES - SB

Def convicted of robbery murder in 2005. Jury instructed on (pre-BANKS) felony-

murder & nat/prob/conseq's. HELD: this retroactive error is HARMLESS due to

conviction of Gang-Murder Spec Circ which required jury to find Intent to Kill.

HIN P. v. () 2/3/2025 CAL

## cb DEFENDANT'S STATEMENTS

### VOLUNTARY

#### FACTORS - IMPLIED THREAT OF DEATH PENALTY

During interview about a robbery murder, detective told def he as going to "get

fried" if he didn't come clean. HELD: in context, 'get fried' was NOT a reference

to the death penalty. It was general statement about getting in trouble.

HIN P. v. () 2/3/2025 CAL

## eb D. P. / SPEC. CIRC.

### MISC - D.P./SPEC. CIRC.

#### HARMLESS ERROR - TWO OF THREE SPEC CIRC'S REVERSED

Jury finds 3 spec circ's. Appellate court reversed 2 and affirms 1. Jury's DEATH

decision stands.

HIN P. v. () CAL

2/3/2025

## bc INSTRUCTIONS/ELEMENTS

### ROBBERY / ASSAULTIVE CRIMES

#### KIDNAP FOR ROBBERY - MOVEMENT REQUIREMENT

Moving victims (by gunpoint) 30 feet from well-lit area of park to dark shadowed

area of park, is sufficient asportation for Robbery KIDNAP.

HIN P. v. () CAL

2/3/2025

## cd MOTIONS

### DOUBLE JEOPARDY

#### APPELLATE REVERSAL INSUFF EVID DUE TO LAW CHANGE / RETRIAL

D.P. conviction in 2005 included attempt 187 counts. (Pre-BANKS, pre-SB 1437)

Supreme Ct finds 'some' of att 187 counts had INSUFF EVID to support

conviction under CURRENT law. Question: can they be retried? Answer:

Ducked. No answer given.

HIN P. v. () 2/3/2025 CAL

## bb EVIDENCE

### 352 / RELEVANCE

#### DEF POSSESSION OF GANG RAP CD - MADE BY OTHERS

Def possessed homemade CD with rap songs about his gang. Def did not write

or perform the songs. HELD: Admissible to show gang membership, but it is

352 violation to play any of the songs, or show lyrics, to the jury.

HIN P. v. () CAL

2/3/2025

## bd OTHER TRIAL ISSUES

### MISC - TRIAL

#### JUDICIAL EMOTIONAL REACTION TO TESTIMONY

During victim impact evidence, trial court turns away from jury to conceal his

emotional reaction. Jury given standard instruction about not considering or

guessing trial court's opinion. Def asks for mistrial. Denied. UPHELD.

HIN P. v. () CAL

2/3/2025

## cb DEFENDANT'S STATEMENTS

### AMBIG. INVOKE

#### QUOTE - IS THIS JUST BETWEEN US?

Mid interview, after Miranda, def asks detective "is this just between us?"

Detective said yes. HELD: in context, this exchange was about def fearing his

gang would retaliate if he told police about the crime. It was NOT an invocation

of Miranda rights.

HIN P. v. () 2/3/2025 CAL

## dc NEW TRIAL MOTIONS

### NEW TRIAL - JUROR MISCONDUCT

#### HEARING - NEED ALL JURORS BE CALLED?

Post verdict Juror #7 writes declaration accusing #6 and #10 of misconduct.

Court orders those 3 plus the foreperson to testify at hearing. #6, #10, and

foreperson say #7 is mistaken. Def atty asks for continued hearing for more

jurors to testify. Denies mistrial mtn w/out more hearing. UPHELD

HIN P. v. () 2/3/2025 CAL

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<b>bc INSTRUCTIONS/ELEMENTS</b>				<b>db APPELLATE ISSUES</b>			
<b>ENHANCEMENTS</b>				<b>MISC APPELLATE</b>			
<b>GANG - 186.22 PC - BENEFIT OF - INSUFFICIENT EVID</b>				<b>MISC - JURISDICTION OF TRIAL CT AFTER OPINION, BEFORE REMITTITUR</b>			
Two gang member commit robbery together. No evid gang got any proceeds; or that def's id'd themselves as gang members during crime. HELD: INSUFF EVID that robbery benefitted gang.				DCA reverses def's conviction and remands for possible new trial. BEFORE remittitur issued, def asks trial ct to release him on bail pending new trial. Trial denies for lack of jurisdiction. HELD: Trial Ct HAS limited jurisdiction to hear this request.			
<b>HIN</b>	<i>P. v. ()</i>	<b>CAL</b>		<b>STUBBLEFIELD</b>	<i>def v. SUP CT</i>		
		2/3/2025				2/5/2025	6:
<b>dd PETITIONS TO RESENTENCE</b>				<b>db APPELLATE ISSUES</b>			
<b>PETITIONS TO</b>				<b>MISC APPELLATE</b>			
<b>COURT INITIATED - 1172.1 PC - COURT RESPONSE TO DEF MOTION</b>				<b>WENDE BRIEF - NOT APPLICABLE TO ALL APPEALS</b>			
Def files resentencing request under PC 1172.1. Ct denies saying "no jurisdiction". HELD: (1) Defs can't make such requests and Courts can ignore them or deny w/out stating reason. (2) Ct canNOT deny by stating a false reason. Since reason given was false, REVERSED and REMANDED.				Def seeks resentencing under PC 1172.1. Denied. Def appeals. WENDE brief filed. HELD: WENDE does not apply to appeals from a request for POST-CONVICTION relief. Therefore, after giving def opportunity to file pro per brief, DCA may dismiss appeal w/out reviewing the record.			
<b>CHATMAN</b>	<i>def v. SUP CT</i>		5:	<b>ROSEMOND</b>	<i>P. v. ()</i>		5:
		2/4/2025				2/5/2025	
<b>bc INSTRUCTIONS/ELEMENTS</b>				<b>bc INSTRUCTIONS/ELEMENTS</b>			
<b>HOMICIDE</b>				<b>ADULT SEX CRIMES</b>			
<b>PROVOCATIVE ACT - PROVOCATIVE ACT BY CO-DEF</b>				<b>DURESS - CONVINCING V THAT GOD WILL PUNISH IF NO CONSENT</b>			
Def need not personally commit the provocative act. A co-def may commit the provocative act, but the Def must personally have acted with MALICE. -- The Felony murder rule is NOT applicable (even if def was MAJOR participant acting w/Reckless Indifference)				Def tells his daughter (age 16) Bible says she must comply with father's demand for sex and if she refuses GOD (not the def) will punish her. HELD: this is DURESS under PC 261(b)(1).			
<b>TAYLOR</b>	<i>P. v. ()</i>		5;	<b>TOWNES</b>	<i>P. v. ()</i>		4:3
		2/11/2025				2/3/2025	
<b>ee MENTAL HEARINGS</b>				<b>cd MOTIONS</b>			
<b>BAIL / OR</b>				<b>SPEEDY</b>			
<b>BAIL - 1270.2 PC - AUTOMATIC BAIL REVIEW HRG</b>				<b>FILING TO ARREST DELAY - MUST BALANCE ALL 4 FACTORS</b>			
Def held w/out bail at arraignment. Per PC 1270.2, def is entitled to AUTOMATIC bail review hrg is 5 days unless he waives it. Def need not allege a change in circumstances in order to get the hearing.				2018: felony complaint and warrant issued on def, an unlicensed contractor with an on-going business. Zero effort made to serve warrant. Def arraigned 46 months later. Trial Ct dismisses case due to delay. REVERSED and REMANDED for full evaluation of ALL FOUR Barker v Wingo factors.			
<b>BUNKER</b>	<i>def v. SUP CT</i>		4:2	<b>MARTINEZ</b>	<i>P. v. ()</i>		4:2
		1/24/2025				2/7/2025	
<b>dd PETITIONS TO RESENTENCE</b>				<b>cd MOTIONS</b>			
<b>PETITIONS TO</b>				<b>DISCRIMINATORY PROSECUTION</b>			
<b>1170(d)(10) PC - DE FACTO LWOP - DEF 3051 PC ELIGIBLE</b>				<b>CRJA - APPT OF COUNSEL (HABEAS)</b>			
2000: Def gets LWOP for 187 committed at age 17. 2018: def resentenced to 50-to-life per PC 1170(d)(1). 2022: def gets a Parole Hrg under PC 3051, gets 5-year denial. Def now seeks additional resentencing under 1170(d)(10). HELD: due to PC 3051, 50-to-life is NOT de facto LWOP.				2024: After 18 years representing def, Lawyers A&B prepare CRJA petition for def. -- court appoints Pub Def to represent Def. HELD: PC 987.2 applies. Ct erred when it failed to find GOOD CAUSE to appt A&B.			
<b>VALDEZ</b>	<i>P. v. SUP CT</i>		4:2	<b>BEMORE</b>	<i>def v. SUP CT</i>		4:1
		2/10/2025				2/18/2025	

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<b>cd MOTIONS</b>				<b>dd PETITIONS TO RESENTENCE</b>			
<b>DISCRIMINATORY PROSECUTION</b>				<b>PETITIONS TO</b>			
<b>CRJA - APPT OF COUNSEL (HABEAS) - PUB DEF DUTY</b>				<b>1170 PC - REMAND FOR CTS ONLY IS NOT A NEW SENTENCING</b>			
After 18 years representing def, Lawyers A&B prepare CRJA petition for def and asks that A&B be appt'd. Pub Def asserts it should be appt'd under PC 987.2. HELD: Pub Def has DUTY to not oppose client's wishes. DCA disqualifies Pub Def from the case. (Pub Def should merely say it is available)				DCA remands case back to trial court for a recalculation of CTS/GOODTIME credits. HELD: (1) this is NOT a NEW sentencing hearing under PC 1170. (2) Def does NOT have a right to be present.			
<b>BEMORE</b>	<i>def v. SUP CT</i>	2/18/2025	4:1	<b>GONZALEZ</b>	<i>P. v. ()</i>		4:1
				2/7/2025			
<b>cd MOTIONS</b>				<b>cd MOTIONS</b>			
<b>DISCRIMINATORY PROSECUTION</b>				<b>DISCRIMINATORY PROSECUTION</b>			
<b>CRJA - PRIMA FACIE CASE - TRAFFIC STOPS - STATISTICS</b>				<b>CRJA - REMEDIES - MUST THERE BE A REMEDY?</b>			
Def stopped for having illegal tinted windows. Gun found in car. 1538.5 Denied. Def then asserts the stop was a CRJA violation citing statistics and past def/police interactions. Trial ct denies CRJA mtn summarily. DCA REVERSES. Prima facie case shown. Evid hearing is needed.				Assuming ct made racially biased comments, is a remedy of some sort required? HELD: NO. The remedies listed in PC 745 should be considered, but court has discretion to conclude NONE are applicable. (2-1 opinion)			
<b>JACKSON</b>	<i>def v. SUP CT</i>	2/28/2025	4:1	<b>R. D.</b>	<i>def v. SUP CT</i>		3:
				2/19/2025			
<b>cd MOTIONS</b>				<b>cd MOTIONS</b>			
<b>DISCRIMINATORY PROSECUTION</b>				<b>DISCRIMINATORY PROSECUTION</b>			
<b>CRJA - REMEDIES - IS DISMISSAL AUTHORIZED?</b>				<b>CRJA - CT GRATUITOUSLY INSULTS BLACK DEF - INSULT NOT RACIAL</b>			
Assuming ct made racially biased comments, is the remedy of Dismissal permissible? HELD: CRJA does NOT include the remedy of Dismissal. DCA keeps open the possibility of a PC 1385 dismissal in extreme case. (2-1 opinion)				During a pretrial detention hrg, a visiting juvi judge says def was "a serious gangbanger ... he's got it in his blood, in his culture, he can't get it out of his system". Later, another judge on case found language to be a CRJA violation. --- Opinion discusses possible remedies.			
<b>R. D.</b>	<i>def v. SUP CT</i>	2/19/2025	3:	<b>R. D.</b>	<i>def v. SUP CT</i>		3:
				2/19/2025			
<b>bc INSTRUCTIONS/ELEMENTS</b>				<b>bc INSTRUCTIONS/ELEMENTS</b>			
<b>MISC -</b>				<b>LESSER</b>			
<b>STALKING - 646.9 PC - USING INDIRECT METHODS</b>				<b>KIDNAP / ATTEMPT KIDNAP / FALSE IMPRISONMENT</b>			
Def stalks and harasses V. Def threatened V by public FaceBook posts. HELD: this is sufficient under PC 646.9 if it was "reasonably foreseeable" the victim would become aware of the threats. Direct communication is not required.				Attempt KIDNAP is NOT a lesser to KIDNAPPING. (different mens rea). FALSE IMPRISONMENT is a LESSER.			
<b>PLANCHARD</b>	<i>P. v. ()</i>	2/27/2025	3;	<b>ELLIS</b>	<i>P. v. ()</i>		2:8
				2/3/2025			
<b>bc INSTRUCTIONS/ELEMENTS</b>				<b>ce SEARCH &amp; SEIZURE</b>			
<b>ROBBERY / ASSAULTIVE CRIMES</b>				<b>DETAIN/ARREST/PAT-DOWN</b>			
<b>KIDNAPPING - MOVEMENT DISTANCE</b>				<b>PC TO DETAIN - DEF ACTING NERVOUS DURING CONTACT</b>			
Def grabs V while on the sidewalk and drags her towards his car. After 10 feet, others intervene and def lets V go. HELD: No KIDNAP because movement was not sufficient.				During nighttime, voluntary, encounter with gang members in high crime area, one of the gang members "acts nervous" (because he was concealing a gun). Based on the nervousness, officers decide to detain and pat-down. HELD: INSUFFICIENT basis for detention / pat-down.			
<b>ELLIS</b>	<i>P. v. ()</i>	2/3/2025	2:8	<b>L. G.</b>	<i>In Re ()</i>	2/11/2025	2:8

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<b>dd PETITIONS TO RESENTENCE</b>		<b>dd PETITIONS TO RESENTENCE</b>	
<b>PETITIONS TO</b>		<b>PETITIONS TO</b>	
<b>1172.6 PC - HEARING - EVID - PRELIM TRANSCRIPT - HEARSAY</b>		<b>1172.6 PC - POST GRANT - ADDING EXTRA COUNTS - NOT</b>	
2002: Def aid/abets shooting into home with 4 occupants. Pled to 2 counts of att		2002: Def aid/abets shooting into home with 4 occupants. Pled to 2 counts of att	
187. 2023: PC 1172.6 gets to evid hrg. HELD: Ct may NOT rely on Hearsay		187. 2023: PC 1172.6 petition is GRANTED. HELD: at resentencing, ct is	
admitted solely because was introduced at a Prelim.		limited to 2 new replacement crimes. (one per conviction).	
<b>LARA</b>	<i>P. v. ()</i>	<b>LARA</b>	<i>P. v. ()</i>
2:8		2:8	
2/13/2025		2/13/2025	
<b>ab CONSTITUTIONAL ISSUES</b>		<b>de SENTENCING</b>	
<b>MISC CONSTITUTIONAL ISSUES</b>		<b>654</b>	
<b>BEAR ARMS, RIGHT TO - POST-BRUEN - FELONS AND GUNS</b>		<b>GUN POSSESS / BRANDISHING -- TWO SEPARATE CRIMES</b>	
Felon w/gun laws survive BRUEN.		Possessing Gun and Brandishing Gun are two separate crimes. They are NOT	
<b>RICHARDSON</b>	<i>P. v. ()</i>	PC 654 to each other.	
2:8		<b>RICHARDSON</b>	<i>P. v. ()</i>
2/19/2025		2:8	
2/19/2025		2/19/2025	
<b>cd MOTIONS</b>		<b>eb D. P. / SPEC. CIRC.</b>	
<b>DISCRIMINATORY PROSECUTION</b>		<b>MISC - D.P./SPEC. CIRC.</b>	
<b>CRJA - EVIDENCE RULINGS</b>		<b>DEF'S MENTAL INCOMPETENCE TO BE EXECUTED - HABEAS</b>	
Black Def, white V. Trial court makes relevance and 352 rulings re: background		Def files Habeas petition asserting def is CURRENTLY too mentally disabled to	
facts of def and V. Def asserts the rulings show racial bias under CRJA. DCA		be executed is permitted. Trial Ct summarily denies. DCA reverses. Petition	
holds the rulings were consistent with established law.		states a Prima Facie case.	
<b>LAWSON</b>	<i>P. v. ()</i>	<b>TUILAEPa</b>	<i>In Re ()</i>
2:1		2:7	
2/13/2025		2/24/2025	
<b>db APPELLATE ISSUES</b>		<b>eb D. P. / SPEC. CIRC.</b>	
<b>WRITS</b>		<b>MISC - D.P./SPEC. CIRC.</b>	
<b>HABEAS - DEATH PENALTY - MENTAL RETARDATION RAISED IN HABEAS</b>		<b>HABEAS - POST PROP 66 - SUBSEQUENT PETITIONS - DEF MENTAL STATE</b>	
Def files Habeas petition asserting def is CURRENTLY too mentally disabled to		PC 1509 (re: D.P. habeas petitions) applies retroactively to all open petitions at	
be executed is permitted. Trial Ct summarily denies. DCA reverses. Petition		time of enactment. But, a petition asserting def is CURRENTLY too mentally	
states a Prima Facie case.		disabled to be executed is permitted under 1509(d).	
<b>TUILAEPa</b>	<i>In Re ()</i>	<b>TUILAEPa</b>	<i>In Re ()</i>
2:7		2:7	
2/24/2025		2/24/2025	
<b>cd MOTIONS</b>		<b>db APPELLATE ISSUES</b>	
<b>170 - CAUSE</b>		<b>WAIVER OF APPEAL</b>	
<b>CAUSE - JUDGE MAKES RULINGS ON WRIT, REVERSED BY DCA</b>		<b>WAIVER - FAILURE TO OBJECT - SENTENCING - MID-TERM SENTENCES</b>	
Trial Ct denies HABEAS summarily. DCA reverses and remands for hearing. Def		Def sentenced to MIDDLE term. Counsel argued for less but made no argument	
asks DCA to recuse Trial Ct off case. HELD: Simply getting reversed is NOT a		that middle term would be illegal or error. HELD: Argument that middle term	
basis to recuse judge under CCP 170.1.		was somehow illegal is WAIVED by failure to object.	
<b>TUILAEPa</b>	<i>In Re ()</i>	<b>SARMIENTO</b>	<i>P. v. ()</i>
2:7		1:5	
2/24/2025		2/19/2025	

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<b>de SENTENCING</b>				<b>de SENTENCING</b>			
<b>MISC - SENTENCING</b>				<b>MISC - SENTENCING</b>			
<b>SENTENCING HRG - REASON FOR MID TERM</b>				<b>AGGRAVATING FACTORS - RULE 4.421(c) FACTOR IS TOO VAGUE</b>			
PC 1170(b) imposes no requirement for particular 'findings' before MID-TERM can be imposed. Court need only state its reasons for the sentencing choice. Appellate court should reverse ONLY where the failure to impose LOW TERM would be an Abuse of Discretion.				RULE 4.421(c) permits AGGRAVATION to be based on "... any other factors ... that reasonably relate to the def or the circumstances under which the crime was committed." HELD: this is VAGUE and therefore exceeds scope of Judicial Council authority -- de facto amending PC 1170.3. (and 1170(b))			
<b>SARMIENTO</b>	<i>P. v. ()</i>	2/19/2025	1:5	<b>LOVELACE</b>	<i>def v. SUP CT</i>	2/14/2025	1:4
<b>dd PETITIONS TO RESENTENCE</b>				<b>dd PETITIONS TO RESENTENCE</b>			
<b>PETITIONS TO</b>				<b>PETITIONS TO</b>			
<b>1172.1 - DEF CAN'T REQUEST</b>				<b>D.A. REQUESTS - 1172.1 PC - POLICY MEMOS ARE NOT REQUESTS</b>			
Shortly after def gets sentence that includes enhancements, new elected DA issues memo to DDA's to not seek Enhancement convictions/sentence. Def seeks resentencing under PC 1172.1. HELD: (1) Def can't make 1170.1 motions. (2) the memo NOT EQUAL to DA making a recommendation.				Shortly after def gets sentence that includes enhancements, new elected DA issues memo to DDA's to not seek Enhancement convictions/sentence. Def seeks resentencing under PC 1172.1. HELD: (1) Def can't make 1170.1 motions. (2) the memo NOT EQUAL to DA making a recommendation.			
<b>WILSON</b>	<i>P. v. ()</i>	2/27/2025	1:3	<b>WILSON</b>	<i>P. v. ()</i>	2/27/2025	1:3
<b>dd PETITIONS TO RESENTENCE</b>				<b>dd PETITIONS TO RESENTENCE</b>			
<b>PETITIONS TO</b>				<b>PETITIONS TO</b>			
<b>1172.6 PC - HEARING - USE OF PAST JURY FINDINGS</b>				<b>1172.6 PC - ELIGIBILITY - OLD JURY MUST HAVE GOT BAD INSTRUCTIONS</b>			
PC 1172.6 case: A prior jury finding on an issue (1) can (should) be the basis for finding no prima facie case. But, (2) if there is a factual hrg, the prior finding is CONCLUSIVE. Court may not come to a contrary conclusion.				PC 1172.6 case: If def's jury was not instructed on either Nat/Prob/Conseqs or Felony Murder, then def has no basis for seeking relief under PC 1172.6.			
<b>HILL</b>	<i>P. v. ()</i>		1:2	<b>HILL</b>	<i>P. v. ()</i>		1:2
		2/28/2025				2/28/2025	
<b>db APPELLATE ISSUES</b>				<b>ce SEARCH &amp; SEIZURE</b>			
<b>HARMLESS ERROR</b>				<b>MISC - SEARCH</b>			
<b>HARMLESS ERROR - 1172.6 PC - IF HRG NOT NEEDED, ALL HRG ERRORS</b>				<b>CRJA CLAIM RE: SEARCH ----- INDEX AID</b>			
PC 1172.6 case. Ct found prima facie case. Denied mtn after evid hrg. --- Appellate court found NO Prima Facie case. Therefore, any error committed during evid hrg is HARMLESS.				For cases addressing search and seizure issues as potential CRJA violations under PC 754 et seq, go to DISCRIMINATORY PROSECUTIONS subheading under the MOTIONS main heading.			
<b>HILL</b>	<i>P. v. ()</i>		1:2	<b>INDEX AID</b>			
		2/28/2025					