CRIMINAL COURTS BAR ASSOCIATION

NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION OCTOBER, 2015

Visit our New Website:
LACCBA.ORG

The Criminal Courts Bar Association

cordially invites you to the

OCTOBER DINNER MEETING

"THIS YEAR'S CASES"

presented by

ALBERT MENASTER

Los Angeles County
Public Defender's Office Appellate Branch

TUESDAY, OCTOBER 13, 2015

Cocktails & Reception - 6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.
$40.00 per person

LES FRERES TAIX RESTAURANT
1911 Sunset Blvd., Los Angeles, CA 90026

1 Hour MCLE

Reservations advised. Call Elizabeth Ferrat at (626) 577-5005
or email at: *criminalcourtsbarassociation@gmail.com*

PAY BY CREDIT CARD/ONLINE REGISTRATION IS AVAILABLE!
GO TO "SEE EVENTS." *http://www.laccba.org*

CCBA Newsletter Case Digest

By Gary Mandinach

People v. Eandi (2015)__Cal.App.4th__ , reported on August 21, 2015, in 2015 Los Angeles Daily Journal 9585, the Third Appellate District held that Proposition 47, section 1170.18, does not authorize a trial court to reduce a charge of failure to appear (FTA) on a felony charge, which is a violation of section 1320, subdivision (b), to one of FTA on a misdemeanor charge in violation of section 1320, subdivision (a), where the underlying charge was a felony as of the date of the nonappearance. However, on remand to the trial court, because a violation of section 1320, subdivision (b) is a "wobbler," the trial court has discretion to reduce it to a misdemeanor under section 17, subdivision (b).

People v. Sherow (2015)__Cal.App.4th __, reported on August 24 2015, in 2015 Los Angeles Daily Journal 9667, the Fourth Appellate District, Division 1 held that the burden is on the defendant, who sought resentencing on multiple theft-related felony counts under Proposition 47, section 1170.18, to establish that each of the counts on which he sought resentencing involved no more than $950. On a proper showing the defendant may be able to show eligibility on either counts 1 or 2, or both; the petition is denied without prejudice and at that time he can at least show the items that were taken.

People v. Williams (2015)__Cal.4th__, reported on August 25, 2015 in 2015 Los Angeles Daily Journal 9760, the California Supreme Court held that the trial court in this capital case did not abuse its discretion by excusing a juror where the evidence which was established was credible evidence from the statements of her fellow jurors that the juror was sleeping during deliberations, where the court concluded it was "very clear" that the juror had "violate[d] her jury oath by not deliberating," and where the juror was suffering from an illness that was disrupting the court's schedule and had described flu-like symptoms that caused the court to fear she might be contagious. Neither the allegations of juror misconduct made by the excused juror regarding deliberations after previous jurors had been dismissed, nor the speed with which the jury reached its verdict after the juror was excused, established that jury's verdict was coerced or that jury failed to deliberate anew after the excusal.

People v. Seumanu (2015)__Cal.4th__, reported on August 25, 2015, in 2015 Los Angeles Daily Journal 9728, the California Supreme Court held that the testimony of an accomplice-witness regarding his conversation with the defendant's brother did not constitute hearsay, given the fact that the information derived from testimony, namely that the defendant had taken out a contract to have the witness killed, but that his brother could convince him to rescind the contract if the witness changed his mind about testifying, was not hearsay, as it was admissible to show witness' state of mind and thus his credibility. The witness believed that he could avoid being killed if he would decline to assist the prosecutor, but he was willing to testify against the defendant anyway. The prosecutor committed misconduct when, following introduction of the defense attorneys and their client, the prosecutor said the victim was her "client." The misconduct was harmless, however, where the evidence of guilt was overwhelming, and the jury was instructed not to be swayed by passion or prejudice, and that the arguments of counsel are not evidence.

United States v. Sanchez-Gomez (2015, 9th Cir.)__F.3d__, reported on August 26, 2015, in 2015 Los Angeles Daily Journal 9865, the Ninth Circuit Court of Appeal held that the district court erred in upholding a district-wide policy whereby United States Marshals placed pretrial detainees in full shackle restraints for most appearances before a judge, including arraignments, unless a judge specifically requested the restraints be removed in a particular case. The record failed to establish that the policy was justified by a commensurate need and was not primarily motivated by economics. Based on this court's decision in United States v. Howard (2007, 9th Cir.) 480 F.3d 1005, there must be an adequate justification for its restrictive shackling policy, and here the court found there was none. The full restraint policy must be justified by commensurate need which was not shown in this case.

Dinner Menu

Complimentary Appetizers will be served.

The main entrees will be:

Short Ribs Provencal

Braised with carrots, tomatoes and celery. A house favorite.

Fresh Filet of Salmon

Grilled and served with a champagne sauce.

Entrees include relish trays, soup du jour, fresh sourdough bread, garden salad with house vinaigrette dressing, fresh vegetable, rice or potato, sherbet and coffee or tea.

People v. Prunty (2015)__Cal.4th__, reported on August 28, 2015, in 2015 Los Angeles Daily Journal 9972, the California Supreme Court determined that when a defendant is part of a gang "subset" such as "Norte" of the large gang of Norteno, and when the prosecution attempts to prove a violation of section 186.22, subdivision (b), the street gang enhancement, by showing the defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets, "other than the subset to which defendant belongs," it must prove a connection between the defendant's gang and the other subsets.

People v. Romero and Self (2015)__Cal.4th__, reported on August 28, 2015, in 2015 Los Angeles Daily Journal 9949, the California Supreme Court held that where two defendants are on trial, independent evidence that an the accomplice and one of the defendants committed a robbery, did not corroborate accomplice's testimony (see Evid. Code § 1111), that the other defendant was present. The error required reversal of that defendant's robbery conviction, but was harmless with respect to penalty determination, where the other aggravating evidence was so strong it was unreasonable to believe jury would have reached a different verdict if that robbery were not considered. The prosecution's presentation of victim-impact evidence, lasting a single

day and consisting of the testimony of six witnesses and the introduction of 28 photographs of three murder victims, was not "excessive." The trial court correctly ruled that defense counsel were permitted to remind jurors during penalty phase of the sentence received by the accomplice, but not to compare it to the potential sentence facing the defendants. The trial court correctly excluded testimony designed to link the abuse suffered by the defendant's mother to her own abusive behavior toward the defendant. Evidence that defendant's mother abused him was relevant to penalty determination, but evidence as to what caused her to do so was not.

People v. Toloy (2015)__Cal.App.4th__, reported on August 28, 2015, in 2015 Los Angeles Daily Journal 9940, the Sixth Appellate District held that section 290.017 requires notification to the defendant of the obligation to re-register within five days following release after being incarcerated for a term of 30 days or longer. The requirement is directory rather than mandatory (see Morris v. County of Marin (1977) 18 Cal.3d 901, 908; see also People v. McGee (1977) 19 Cal.3d 948, 958), and therefore did not provide a defense to an offender who had been previously informed of the requirement, but failed to re-register after serving such a term and not being renotified upon his release.

People v. Gibson (2015) __Cal.App.4th__, reported on August 28, 2015, in 2015 Los Angeles Daily Journal 9928, the Second Appellate District, Division 8 held that the trial court's admission of a certified prison packet under section 969b for the purpose of proving a "strike," where the admission of the packet was "by reference" and the packet was not retained in the court's records in violation of section 1417 et. sec., was error but harmless. This court reviewed a certified copy of the packet, which demonstrated the prior conviction was in fact a strike.

People v. Segura (2015)__Cal.App.4th__, reported on August 31, 2015, in 2015 Los Angeles Daily Journal 10022, the Fourth Appellate District, Division 3 held that Proposition 47, section 1170.18, does not apply to convictions for conspiracy, even where the target offense is a misdemeanor to which Proposition 47 does apply.

People v. Gallardo (2015)__Cal.App.4th__, reported on August 31, 2015, in 2015 Los Angeles Daily Journal 10067, the First Appellate District, Division 2 held that where the defendant, at a hearing on his request to set aside a wage assignment for child support, held up a bevy of fraudulent papers that he described to the court as cancelled checks and other documents that proved he owed no money and then handed the documents to his ex-wife and the Department of Child Support Services attorney, he was properly convicted of offering forged and fraudulent documents into evidence in violation of section 132. A person "offers in evidence" such documents when he uses them in an effort to persuade the court even though they were never formally introduced into evidence.

People v. Foalima (2015)__Cal.App.4th__, reported on September 1, 2015, in 2015 Los Angeles Daily Journal 10093, the Third Appellate District held that the trial court did not violate the defendant's Sixth Amendment right to confrontation when it refused to strike testimony of a possible accomplice who claimed a lack of memory with regard to most questions asked by counsel, and permitted the prosecution to make inferences from the testimony during closing argument, where defendant was given an opportunity to cross-examine the witness. (See (People v Gunder (2007) 151 Cal.App.4th 412, 419-420; United States v. Owens (1988) 484 U.S. 554, 559.) The Court of Appeal found that this was not a situation where the witness essentially refused to testify, and where the Sixth Amendment right would have been violated. (See People v. Rios (1985) 163 Cal.App.3d 852, 864.) Where the victim was stabbed to death and the apartment in which he was staying set on fire, and the defendant was convicted of murder but acquitted of arson, the acquittal did not preclude an order requiring defendant to pay restitution for property damage caused by the fire. The order was supported by evidence that defendant set the fire to conceal the murder. There is no federal constitutional right to have direct-victim restitution issues decided by a jury. Apprendi v. New Jersey (2000) 530 U.S. 466 [147 S.Ct. 435] does not apply to direct restitution orders.

In re B.L. (2015)__Cal.App.4th__, reported on September 2, 2015, in 2015 Los Angeles Daily Journal 10173, the First Appellate District, Division 1 held that there was sufficient evidence of a battery (§ 242), and battery on a school official (§ 243.6) where the defendant forcefully and deliberately knocked a walkie-talkie out of teacher's hand. The touching of victim's person is not an essential element of the offense, and the striking of an object in victim's hand with the requisite general intent was deemed sufficient.

People v. Vasquez (2015)__Cal.App.4th__, reported on September 2, 2015, in 2015 Los Angeles Daily Journal 10174, the Second Appellate District, Division 6 held that there was sufficient evidence of a burglary of an inhabited dwelling where the new owner had made progress toward moving in, and these included transferring the utilities to her name, installing locks, moving personal goods into the residence, and painting a garage wall. (See People v. Chun (2009) 45 Cal.4th 1172, 1199 [an inhabited dwelling is one in which persons reside and where occupants are generally in and around the premises].) However, she had not lived in the residence. Additionally, appellant waived the issue of ability to pay the imposition of the probation investigation fee or a criminal justice administrative fee for his failure to object. (See People v. Aguilar (2015) 60 Cal.4th 862, 866; People v. Trujillo (2015) 60 Cal.4th 850, 858-859.)

People v. Seymore (2015)__Cal.App.4th__, reported on September 2, 2015, in 2015 Los Angeles Daily Journal 10151, the Sixth Appellate District held that the defendant's failure to fully comply with the payment of $5,726.97 to the Victim Compensation an Government Claims Board (VCGCB), did permit the trial court to deny the relief otherwise mandated upon completion of probation by section 1203.4, subdivision (a). The Court of Appeal ordered that the petition under section 1203.4 be granted, and the defendant released from probation. (See People v. Holman (2013) 214 Cal.App.4th 1438 [it releases the defendant from many disabilities, but not all]; see also People v. Butler(1980) 105 Cal.App.3d 585, 587; People v. Hawley (1991) 228 Cal.App.3d 247.) The court made it clear that appellant still owes the money to the VCGCB, and it could be pursued as a civil remedy. (See In re Timothy N. (2013) 216 Cal.App.4th 725, 738.)

People v. Uffelman (2015)__Cal.App.4th__, reported on September 9, 2015, in 2015 Los Angeles Daily Journal 10396, the Third Appellate District held that the trial court did not err when it imposed a fee under section 1202.5, which prescribes a mandatory $10 fine for conviction of burglary and other theft offenses, but it also does not preclude the imposition of a fine for such an offense under section 672, which provides that where no fine is prescribed for an offense, the court may impose a fine of up to $1,000 for a misdemeanor and $10,000 for a felony. Nothing in the language or legislative history of section 1202.5 suggests that the legislature, by approving the mandatory $10 fine, intended to deprive trial courts of the right to impose the larger, discretionary fine for such offenses. (See Cf. People v. Clark (1992) 7 Cal.App.4th 1041, 1045-1046.)

Criminal Courts Bar Association
c/o Law Offices of Hutton & Wilson
1055 E. Colorado Blvd.
Suite 310
Pasadena, CA 91106

Save The Date

25th Annual Criminal Courts Bar Association and Pasadena Bar Association Golf Tournament to be held at La Cañada Country Club on Monday, October 12, 2015.